
Records Maintenance and Release

804.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

804.2 POLICY

The Topeka Police Department is committed to providing public access to records in a manner that is consistent with the Kansas Open Records Act (K.S.A. § 45-215 et seq.).

804.3 OFFICIAL CUSTODIAN

The Chief of Police shall designate an Official Custodian. The Official Custodian is the official custodian pursuant to K.S.A. § 45-217. The responsibilities of the Official Custodian or the custodian assigned include but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.
- (b) Maintaining and updating the department records retention schedule, including:
 1. Identifying the minimum length of time the Department must keep records.
 2. Identifying the department bureau responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records as provided by K.S.A. § 45-220.
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring the availability of a current schedule of fees for public records as allowed by law (K.S.A. § 45-218; K.S.A. § 45-219).
- (g) Ensuring a brochure on public records is available to the public that contains a description of the basic rights of a person who requests public information, the responsibilities of the Department, and the procedures and costs for inspecting or obtaining a copy of the public record (K.S.A. § 45-227).
- (h) Developing and maintaining reasonable written procedures and practices to protect personal information, as defined by K.S.A. § 50-7a01, from unauthorized access, use, modification, or disclosure. Procedures should include how members are to be trained to protect personal information (K.S.A. § 50-6,139b).

804.3.1 ADDITIONAL RESPONSIBILITIES

The Official Custodian shall establish procedures for maintaining security of the department's central records computer systems. The procedures should include the following, at a minimum:

Topeka Police Department

LE Policy Manual

Records Maintenance and Release

- (a) Data backup and storage.
- (b) System security access.
- (c) Password protection.
- (d) A security audit of the department's central records computer system, conducted at least annually.
- (e) An immediate audit of the department's central records computer system if a breach of security is discovered or suspected.
- (f) An audit of passwords used in shared databases, conducted at least annually.

[Insert your specific procedures consistent with standard 20.1.5 - see the Guide Sheet for additional guidance.]

804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any department member who receives a request for any record shall route the request to the Official Custodian or the custodian assigned. If the person to whom the request is directed determines the Topeka Police Department is not the custodian of the requested record, the requester shall be notified and provided the name and location of the custodian of the public record, if known or readily ascertainable (K.S.A. § 45-218).

804.4.1 REQUESTS FOR RECORDS

The processing of requests for any record is subject to the following (K.S.A. § 45-218; K.S.A. § 45-219):

- (a) All requests for records shall be made in writing.
 - 1. A request will not be returned, delayed, or denied because of any technicality unless it is impossible to determine the records requested (K.S.A. § 45-220).
- (b) The Department is not required to create records that do not exist.
- (c) Copies of radio or recording tapes or discs, video tapes, or films, pictures, slides, graphics, illustrations, or similar audio or visual items or devices shall not be provided unless such items were shown or played at a public meeting.
 - 1. If a record is copyrighted by a person other than the Department, the record shall not be copied.
- (d) Requesters shall not make copies of public records electronically by inserting, connecting, or otherwise attaching an electronic device to any computer or other electronic device of the Department.
- (e) When a record contains both material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released (K.S.A. § 45-221(d)).
 - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage

Topeka Police Department

LE Policy Manual

Records Maintenance and Release

system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

- (f) Computerized information shall be provided in the form requested unless the Department does not have the capability to produce the requested form.
- (g) Each request for a record shall be acted upon as soon as possible, but no later than the end of the third business day after receipt of the request.
- (h) If access to a record request is not granted immediately, the requester shall be provided a detailed explanation of the cause for the delay and notified of the place and earliest time and date the record will be available for inspection.
- (i) Payment of any associated fees is required prior to the release of records.
- (j) If fulfilling a request will require staff time of more than five hours or the estimated actual cost for staff time is over \$200, the Official Custodian or the authorized designee shall make reasonable efforts to contact the requester to discuss ways to reduce costs (K.S.A. § 45-219).

804.4.2 DENIALS

When a record request is denied, the requester shall be provided a written statement of the grounds for denial, upon request, no later than the end of the third business day after receipt of the request. The statement shall include the citation to the specific provision of law that denies access (K.S.A. § 45-218).

The Official Custodian may refuse to provide access to a public record or to permit inspection if the request places an unreasonable burden on the Department to produce the records or there is reason to believe repeated requests are intended to disrupt other essential department functions. A refusal must be supported by a preponderance of evidence (K.S.A. § 45-218).

804.5 RELEASE RESTRICTIONS

Examples of release restrictions include but are not limited to (K.S.A. § 45-221):

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification number; name, address, and telephone number; and medical or disability information that is contained in any driver's license record, motor vehicle record, or any department record, including traffic accident reports is restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722; K.S.A. § 75-3520).
- (b) Personnel records, performance ratings, or individually identifiable records pertaining to members or applicants for employment, except for names, positions, salaries, or actual compensation employment contracts/agreements and length of service.
 - 1. Unless an exception applies (under a binding settlement agreement), officer files requested pursuant to a written waiver must be released within 21 days (K.S.A. § 75-4379).
- (c) Information that would reveal the identity of an undercover agent or informant reporting a specific violation of law.

Topeka Police Department

LE Policy Manual

Records Maintenance and Release

- (d) Records that represent the work product of an attorney.
- (e) Records of emergency or security information or procedures of the Department if disclosure would jeopardize public safety (K.S.A. § 45-221).
- (f) Information that would reveal the location of a shelter, safe house, or similar place where persons are provided protection from abuse, or the name, address, location, or other contact information of alleged victims of stalking, domestic violence, or sexual assault.
- (g) Victim information, except as allowed by law (K.S.A. § 38-2310).
- (h) Records related to children in need of care, except as allowed by law (K.S.A. § 38-2213).
- (i) Records that would reveal the location of a victim of domestic violence, sexual assault, human trafficking, or stalking who is enrolled in the Kansas Secretary of State's Safe at Home Address Confidentiality Program (K.S.A. § 75-451).
- (j) Juvenile law enforcement records (K.S.A. § 38-2310).
- (k) Criminal investigation records, including audio or video recordings taken with body-worn or in-car cameras, unless ordered by a court or allowed for by K.S.A. § 45-254.
- (l) Records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.
- (m) Records containing information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy.
- (n) An individual's email address, cellular telephone number, and other contact information that has been given to the Department for the purpose of department notifications or communications that are widely distributed to the public.
- (o) Records that would disclose the name, home address, zip code, email address, telephone number, or cellular telephone number, or other contact information for any person who is licensed to carry concealed handguns, has enrolled in or completed any weapons training in order to be licensed, or has made application for such license under the Personal and Family Protection Act, unless allowed by law.
- (p) Recordings or statements made during a custodial interrogation related to a homicide or felony sex offense (K.S.A. § 22-4620).
- (q) Captured license plate data or records that pertain to the location of an automated license plate recognition system as defined in K.S.A. § 45-217.
- (r) Any other information that may be appropriately denied by K.S.A. § 45-221 and Kansas law.
- (s) Upon completion of all pending criminal or administrative investigations relating to conduct appearing in body and/or vehicle camera video footage, such video footage may be released to the public no sooner than thirty 30 days following the incident at the discretion of the City Manager after communication with the officer(s) whose actions appear in the video.

Topeka Police Department

LE Policy Manual

Records Maintenance and Release

1. Body and/or vehicle camera video footage may be released to the public sooner with mutual agreement by the City Manager and the officer(s) whose actions appear in the video or in compliance with a court order.

804.5.1 REQUIRED RELEASE

Upon request, the Official Custodian shall allow the following individuals to review recordings captured by a body-worn device or in-car camera within 20 days of the request (K.S.A. § 45-254):

- (a) A person who is a subject of the recording.
- (b) Any parent or legal guardian of a person under 18 who is a subject of the recording.
- (c) An heir at law as defined by K.S.A. § 45-254, when a decedent is a subject of the recording.
- (d) An attorney for any of the above described individuals.

804.5.2 CONSIDERATIONS FOR AUTHORIZED INDIVIDUALS REQUESTING REVIEW

In the event of a death resulting from member action or an in-custody death, the Chief of Police or the Chief's designee shall provide the authorized individual, as defined by K.S.A. § 45-254, reasonable access to view body-worn camera media depicting the incident.

Such access should be provided within 72 hours of the event, or sooner when operationally feasible, after initial investigative and evidentiary processing has been completed. Prior to review, sensitive information, including images of minors and private identifying information of civilians or witnesses, shall be redacted as required by law or investigative necessity.

The authorized individual shall be provided an explanation of the content and context of the footage, including guidance regarding any information that has been redacted or withheld due to ongoing investigative or legal restrictions. Access provided under this section shall be documented and shall include, at a minimum, the date of review, the individuals present, and a description of any redactions applied.

804.6 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Official Custodian for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, City Attorney, or the courts.

Topeka Police Department

LE Policy Manual

Records Maintenance and Release

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

804.7 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

804.8 SECURITY BREACHES

Members who become aware that any Topeka Police Department system containing personal information may have been breached should notify the Records Custodian as soon as practicable.

The Records Custodian shall conduct a prompt investigation to determine the likelihood that personal information has been or will be misused (K.S.A. § 50-7a02).

The Records Custodian shall ensure the required notice is given to any resident of this state whose unsecured personal information is reasonably believed to have been misused or where there is a reasonable likelihood that the information will be misused (K.S.A. § 50-7a02).

Notice shall be given in the most expedient time possible and without unreasonable delay consistent with the legitimate needs of the Topeka Police Department and consistent with any measures necessary to determine the scope of the breach or to restore the reasonable integrity of the agency data system. Notice may be delayed if notification will impede a criminal investigation (K.S.A. § 50-7a02).

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with any one or more of the following (K.S.A. § 50-7a01):

- (a) Social Security number
- (b) Driver's license number or Kansas identification card number
- (c) Full account number, credit or debit card number, or any required security code, access code, or password that would permit access to an individual's financial account

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Records Custodian should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

804.8.1 CYBERSECURITY BREACHES

The Records Custodian should ensure that any cybersecurity incident is reported to the Kansas Information Security Office within 12 hours after discovery of the breach (K.S.A. § 75-7244).

Topeka Police Department

LE Policy Manual

Records Maintenance and Release

804.9 EXPUNGEMENT

Expungement orders received by the Department shall be reviewed for appropriate action by the Official Custodian. The Official Custodian shall expunge such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once expunged, members shall respond to any inquiry as though the record did not exist.