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## Records Maintenance and Release

### 701.1 PURPOSE AND SCOPE

This policy establishes guidelines for the maintenance, release, and disposition of records maintained by the Humboldt County Probation Department (HCPD). The policy addresses responsibilities of the Legal Office Service Manager for the management of file access, and requests for release of information and records.

### 701.2 POLICY

It is the policy of the Department to maintain probationer records and to provide for the access to and release of records consistent with department policies, administrative directives, and applicable state law.

### 701.3 RECORDS CUSTODIAN RESPONSIBILITIES

The Chief Probation Officer shall designate the Legal Office Service Manager. The responsibilities of the Legal Office Service Manager include but are not limited to:

- (a) Maintaining and updating a records procedure manual.
- (b) Supervising the access, use, and release of protected information (see the Protected Information Policy).
- (c) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.
- (d) Maintaining and updating the department records retention schedule, including:
  1. Identifying the minimum length of time the Department must keep records.
  2. Identifying who has the responsibility for the original record.
- (e) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records (Government Code § 6253).
- (f) Identifying records or portions of records that have release restrictions or are confidential under state or federal law and not open for inspection or copying.
- (g) Establishing procedures for sharing records as permitted by law with [probationers/clients/offenders], their designees, and coordinating agencies, including law enforcement agencies, social service agencies, and medical and mental health providers.
- (h) Establishing rules regarding the processing of subpoenas for the production of records.
- (i) Maintaining compliance with federal, state, and local regulations regarding reporting requirements of data.
- (j) Ensuring the availability of a current schedule of fees for public records as allowed by law (Government Code § 6253).

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- (k) Determining how the department's website may be used to post public records in accordance with Government Code § 6253.
- (l) Ensuring that public records posted on the department website meet the requirements of Government Code § 6253.10, including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.

#### **701.4 PROCESSING REQUESTS FOR RECORDS**

Any department member who receives a request for any records shall route the request to the Legal Office Service Manager or authorized designee.

##### **701.4.1 REQUESTS FOR PUBLIC RECORDS**

The processing of requests for public records is subject to the following (Government Code § 6253):

- (a) The Department is not required to create records that do not exist.
- (b) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
  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.
  2. If the record is an audio or video recording, a copy of the redacted audio/video recording release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (c) Either the requested record or the reason for nondisclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Legal Office Service Manager or the authorized designee. If an extension is authorized, the Department shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.
  1. When the request does not reasonably describe the records sought, the Legal Office Service Manager shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request, including providing assistance for overcoming any practical basis for denying access to the records or information. The Legal Office Service Manager shall also assist in describing the information and technology and physical location in which the record exists (Government Code § 6253.1).
  2. If the record requested is available on the department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.

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- (d) Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested (Government Code § 6253.9).

#### 701.4.2 DENIALS

The denial of a request for public records is subject to the following:

- (a) If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure (Government Code § 6255).
- (b) The written response to the denial shall include the names, titles, or positions of each person responsible for the denial (Government Code § 6253).

#### 701.4.3 RELEASE RESTRICTIONS

Examples of release restrictions include (except where allowed by law or court order):

- (a) Probationer records, including probationer classification, disciplinary records, pre-sentence or disposition reports, supervision reports, and progress reports.
- (b) Probation reports filed with a court (Penal Code § 1203.03; Penal Code § 1203.05).
- (c) Records relating to juveniles (Welfare and Institutions Code § 827; Welfare and Institutions Code § 831).
- (d) Probationer medical, mental health, and substance abuse records (Government Code § 6254; 42 CFR 2.35).
- (e) Probationer education records (Family Education Rights and Privacy Act of 1974 (FERPA); Education Code § 49076).
- (f) Personnel records, medical records, or similar files that would involve an unwarranted invasion of personal privacy (Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
- (g) Home addresses, home telephone numbers, personal cellular telephone numbers, and birth dates of department members except as allowed by Government Code § 6254.3.
- (h) Criminal intelligence and criminal history information (Penal Code § 13102; Penal Code § 13300) (see also the Protected Information Policy).
- (i) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7(b)(8)).

#### **701.5 SUBPOENAS AND DISCOVERY REQUESTS**

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Legal Office Service Manager 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.

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

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.

#### **701.6 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.

#### **701.7 SECURITY BREACHES**

Members who become aware that any HCPD system containing personal information may have been breached should notify the Legal Office Service Manager as soon as practicable.

The Legal Office Service Manager shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any department information system (Civil Code § 1798.29).

Notice shall be given as soon as reasonably practicable to all individuals whose information may have been acquired. The notification may be delayed if the Department determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system (Civil Code § 1798.29).

If a single breach requires the Department to notify more than 500 California residents, the Department shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the California Attorney General (Civil Code § 1798.29).

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 data elements, when either the name or the data elements are not encrypted:

- (a) Social Security number
- (b) Driver's license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual
- (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
- (d) Medical information
- (e) Health insurance information

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- (f) A username or email address along with a password, code, or phrase that, in combination, would allow access to an online account
- (g) Unique biometric data

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

#### **701.8 SEALED RECORD ORDERS**

Sealed record orders received by the Department shall be reviewed for appropriate action by the Legal Office Service Manager and, if appropriate, the member assigned to supervision of the probationer.

The Legal Office Service Manager shall seal such records as ordered by the court. Once a record is sealed, members shall respond to any inquiry as though the record did not exist (Penal Code § 851.8; Welfare and Institutions Code § 781; Welfare and Institutions Code § 786; Welfare and Institutions Code § 786.5).

#### **701.9 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS**

Video and audio recordings related to critical incidents shall be released pursuant to a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 6254(f)(4)).

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by any [officer-agent], or depicts an incident in which the use of force by any [officer-agent] against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 6254(f)(4)).

The Legal Office Service Manager should work as appropriate with the Chief Probation Officer or the Division Director supervisor in determining what recordings may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

##### **701.9.1 DELAY OF RELEASE**

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident. After the initial 45 days and up to one year, delayed disclosure may continue if the Department demonstrates substantial interference with the investigation. Any delayed disclosure longer than one year must be supported by clear and convincing evidence (Government Code § 6254(f)(4)).

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#### 701.9.2 NOTICE OF DELAY OF RELEASE

When there is justification to delay disclosure of a recording, the [Records Custodian] shall provide written notice to the requester as follows (Government Code § 6254(f)(4)):

- (a) During the initial 45 days, the [Records Custodian] shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.
- (b) When delay is continued after the initial 45 days, the [Records Custodian] shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Legal Office Service Manager should work with the Chief Probation Officer in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

#### 701.9.3 REDACTION

If the [Records Custodian], in consultation with the Chief Probation Officer or the authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted in the recording, the Department should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 6254(f)(4)).

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Legal Office Service Manager shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 6254(f)(4)).

#### 701.9.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Department may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 6254(f)(4)):

- (a) The person in the recording whose privacy is to be protected, or the authorized representative.
- (b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.

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- (c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Department determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the [Records Custodian] shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure (Government Code § 6254(f)(4)).

The Department may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 6254(f)(4)(A)).