

Records Maintenance and Release

804.1 PURPOSE AND SCOPE

State **MODIFIED**

This policy provides guidance on the maintenance and release of Department of State Hospitals (DSH) and Office of Protective Services (OPS) reports and records in accordance with applicable law. Protected information is separately covered in the Protected Information Policy.

804.2 POLICY

State

The California Department of State Hospitals is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 7920.000 et seq.).

804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

State **MODIFIED**

The Hospital Police Chief shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

- (a) Managing the records management system for the OPS, including the retention, archiving, release, and destruction of OPS public records.
- (b) Maintaining and updating the OPS records retention schedule including:
 1. Identifying the minimum length of time the OPS must keep records.
 2. Identifying the OPS division responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of OPS public records as reasonably necessary for the protection of such records (Government Code § 7922.525; Government Code § 7922.530).
- (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 a current schedule of fees for public records as allowed by law is available (Government Code § 7922.530).
- (g) Determining how the OPS's website may be used to post public records in accordance with Government Code § 7922.545.
- (h) Ensuring that all OPS current standards, policies, practices, operating procedures, and education and training materials are posted on the OPS website in accordance with Penal Code § 13650.
- (i) Ensuring that public records posted on the OPS website meet the requirements of Government Code § 7922.680 including but not limited to posting in an open format

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where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.

- (j) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 7922.700) is publicly available upon request and posted in a prominent location on the OPS's website (Government Code § 7922.710; Government Code § 7922.720).

804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

State **MODIFIED**

Any DSH employee who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

804.4.1 REQUESTS FOR RECORDS

State

Any member of the public, including the media and elected officials, may access unrestricted records of this OPS, during regular business hours by submitting a written and signed request that reasonably describes each record sought and paying any associated fees (Government Code § 7922.530).

The processing of requests for any record is subject to the following (Government Code § 7922.530; Government Code § 7922.535):

- (a) The OPS is not required to create records that do not exist.
- (b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain OPS records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 7923.655).
- (c) Either the requested record or the reason for non-disclosure 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 Custodian of Records or the authorized designee. If an extension is authorized, the OPS 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 Custodian of Records 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 Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 7922.600).
 - 2. If the record requested is available on the OPS website, the requester may be directed to the location on the website where the record is posted. If the

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requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.

- (d) Upon request, a record shall be provided in an electronic format utilized by the OPS. Records shall not be provided only in electronic format unless specifically requested (Government Code § 7922.570; Government Code § 7922.580).
- (e) 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. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the OPS-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.
- (f) 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. The written response shall also include the names, titles, or positions of each person responsible for the denial (Government Code § 7922.000; Government Code § 7922.540).

804.5 RELEASE RESTRICTIONS

State

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any OPS record, including traffic collision reports, are restricted except as authorized by the OPS, 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).
- (b) Social Security numbers (Government Code § 7922.200).
- (c) Personnel records, medical records, and similar records that would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 7927.700; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
 - 1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
 - 2. The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer, prior approval of the Chief of Law Enforcement, or as required by law.
- (d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who

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are minors, and victims of certain offenses (e.g., sex crimes or human trafficking (Penal Code § 293)). Addresses and telephone numbers of a victim or a witness shall not be disclosed to any arrested person or to any person who may be a defendant in a criminal action unless it is required by law (Government Code § 7923.615; Penal Code § 841.5).

1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, elder and dependent adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, a copy of any accompanying or related photographs of the victim's injuries, property damage, or any other photographs that are noted in the incident report, and a copy of 9-1-1 recordings, if any, pursuant to the requirements and time frames of Family Code § 6228.
 2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).
- (e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 7923.750.
- (f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation. This includes analysis and conclusions of investigating officers (Evidence Code § 1041; Government Code § 7923.605).
1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 7923.605.
- (g) Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.
1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, the Chief Counsel, or the courts pursuant to Penal Code § 1054.5.
- (h) Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
- (i) Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure § 130).

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- (j) Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 7923.800).
- (k) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.
- (l) Any record created exclusively in anticipation of potential litigation involving this OPS (Government Code § 7927.200).
- (m) Any memorandum from legal counsel until the pending litigation has been adjudicated or otherwise settled (Government Code § 7927.205).
- (n) Records relating to the security of the OPS's electronic technology systems (Government Code § 7929.210).
- (o) A record of a 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)(9)).
- (p) Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 7927.705).
- (q) Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 827.95; Welfare and Institutions Code § 831).

804.6 SUBPOENAS AND DISCOVERY REQUESTS

Best Practice **MODIFIED**

Any DSH employee who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records 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, Chief Counsel 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.

804.7 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS

Agency Content

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Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Gov. 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 an officer, or depicts an incident in which the use of force by an officer against a person resulted in death or in great bodily injury as defined by (Pen. Code § 243(f)(4)) (Gov. Code § 6254(f)(4)).

The Custodian of Records should work as appropriate with the Chief of Law Enforcement or the Professional Standards Unit 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.

804.7.1 DELAY OF RELEASE

Agency Content

Disclosure of critical incident recordings during active criminal or administrative investigations maybe delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

- (a) Disclosure may be delayed up to 45 days from the date the OPS knew or reasonably should have known about the incident.
- (b) Delay of disclosure may continue after the initial 45 days and up to one year if the OPS demonstrates that disclosure would substantially interfere with the investigation.
- (c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would interfere with the investigation (Gov. Code § 6254(f)(4)).

804.7.2 NOTICE OF DELAY OF RELEASE

Agency Content

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

- (a) During the initial 45 days, the Custodian of Records 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 Custodian of Records 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

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outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Chief of Law Enforcement 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.

804.7.3 REDACTION

Agency Content

If the Custodian of Records, in consultation with the Chief of Law Enforcement or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted in the recording, the OPS 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 (Gov. 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 Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Gov. Code § 6254(f)(4)).

804.7.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

Agency Content

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 OPS 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 (Gov. Code § 6254(f)(4)):

- (a) The person in the recording whose privacy is to be protected, or his/her authorized representative.
- (b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.
- (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 OPS determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written

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notice of the specific basis for the determination and the estimated date of disclosure (Gov. Code § 6254(f)(4)).

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

804.8 RELEASED RECORDS TO BE MARKED

Best Practice **MODIFIED**

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

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

804.9 SEALED RECORD ORDERS

State **MODIFIED**

Sealed record orders received by the OPS shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall seal such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist (Pen. Code § 851.8; Welf. & Inst. Code § 781).

When an arrest record is sealed pursuant to Penal Code § 851.87, Penal Code § 851.90, Penal Code § 851.91, Penal Code § 1000.4 or Penal Code § 1001.9, the Records Manager shall ensure that the required notations on local summary criminal history information and police investigative reports are made. Sealed records may be disclosed or used as authorized by Penal Code § 851.92.

804.9.1 SEALING JUVENILE RECORDS

State

Upon receiving notice from a probation department to seal a citation, juvenile arrest records, or other related records pursuant to Welfare and Institutions Code § 786.5, the Records Manager should ensure that the records are sealed within 60 days of that notice and that the probation department is notified once the records have been sealed (Welfare and Institutions Code § 786.5).

Upon receiving a list of juvenile arrest records that are eligible to be sealed from the California Department of Justice (DOJ), the Records Manager or the authorized designee shall review the records identified in the list and determine if the records are eligible to be sealed in accordance with Welfare and Institutions Code § 781.2. Within six months of receiving the list, the Records Manager or the authorized designee shall electronically report to the DOJ which records were sealed (Welfare and Institutions Code § 781.2).

804.10 SECURITY BREACHES

State

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The Records 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 OPS 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 OPS 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.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following (Civil Code § 1798.29):

- (a) Social Security number
 - 1. Driver 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
 - 2. Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
 - 3. Medical information
 - 4. Health insurance information
 - 5. Information or data collected by Automated License Plate Reader (ALPR) technology
 - 6. Unique biometric data
 - 7. Genetic data
- (b) A username or email address, in combination with a password or security question and answer that permits access to an online account

804.10.1 FORM OF NOTICE

State **MODIFIED**

- (a) The notice shall be written in plain language, be consistent with the format provided in Civil Code section 1798.29 and include, to the extent possible, the following:
 - 1. The date of the notice.
 - 2. Name and contact information for DSH.
 - 3. A list of the types of personal information that were or are reasonably believed to have been acquired.
 - 4. The estimated date or date range within which the security breach occurred.

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5. Whether the notification was delayed as a result of a law enforcement investigation.
 6. A general description of the security breach.
 7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.
- (b) The notice may also include information about what DSH has done to protect individuals whose information has been breached and may include information on steps that the person whose information has been breached may take to protect him/herself (Civ. Code § 1798.29).
- (c) When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached (Civ. Code § 1798.29):
1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the Department in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.
 2. When the breach involves an email address that was furnished by DSH, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code section 1798.29.

804.10.2 MANNER OF NOTICE

State **MODIFIED**

- (a) Notice may be provided by one of the following methods (Civ. Code § 1798.29):
1. Written notice.
 2. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC section 7001.
 3. Substitute notice if the cost of providing notice would exceed \$250,000, the number of individuals exceeds 500,000 or DSH does not have sufficient contact information. Substitute notice shall consist of all of the following:
 - i. Email notice when DSH has an email address for the subject person.
 - ii. Conspicuous posting of the notice on the DSH webpage for a minimum of 30 days.
 4. Notification to major statewide media and the California Information Security Office within the California Department of Technology.

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- (b) If a single breach requires DSH to notify more than 500 California residents, DSH shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.