

City of Lebanon Police Department

Criminal History Records Policy

POLICY:

The State of Tennessee has enacted statutory requirements governing the security, privacy and dissemination of adult and juvenile arrest records information. These guidelines also pertain to physical area where such record information is collected, processed, stored and disseminated. The release of criminal history information to non-authorized persons is a criminal violation. All personnel of the Lebanon Police Department, especially those assigned to the Records office, will understand and comply with these laws, rules and regulations.

PURPOSE:

The purpose of this general order is to establish guidelines to insure security, privacy and proper dissemination of adult and juvenile arrest record information by all personnel of the Lebanon Police Department.

PROCEDURES:

1. Responsibilities
 - a. Persons authorized to release Criminal History Records Information (CHRI) are the Chief of Police, Supervisors, Administrative Secretary, Court Clerk and Records Clerk.
 - b. Supervisors will ensure that maximum-security measures will be followed to provide maximum security of criminal history record information. Unauthorized persons will not be allowed access to files where such information is stored.
 - c. The Chief of Police ensure that:
 1. CHRI inquires are processed in accordance with state and federal laws and departmental rules and regulations.
 2. Juvenile arrest records are collected, disseminated, retained and disposed of in accordance with state and federal laws and departmental rules and regulations. All juvenile criminal records will be kept separate from adult criminal records.
2. Security
 - a. Records within the department are secured inside metal file cabinets. Additionally all office doors are secured where records are stored. Access to records through automation can only be obtained by members of the department and are available 24-hours. Data integrity is maintained by restricting access to the Records Office. Access to the Records Office is restricted to department employees. Any other persons allowed to enter the Records Office must be approved by the Patrol Captain.
 - b. Records may be checked out through administrative personnel to any officer of this department for purpose of court testimony. Release of information is governed by the Tennessee's Open Record Law, Tennessee Code Annotated 10-7-503.
3. Retention of Records
 - a. The City of Lebanon has committed to conformance with the "Records Management for Municipal Governments" manual issued by MTAS (Municipal Technical Assistance Service).

4. Open Records Law
 - a. The City of Lebanon has an Open Records Policy and can be accessed from the City's website, an open records coordinator in any City department, or Commissioner of Finance's Office.
 - b. The City Council of Lebanon has adopted a Criminal History Records Policy for the City of Lebanon's Police Department.
5. Confidential Public Records (Closed Records)
 - a. While the Open Records Law may be described as "very broad," it does provide that records shall be open "unless provided otherwise by state statutes." From this passage in T.C.A. 10-7-503 it is clear that the Tennessee legislature has retained the capacity to designate certain records as "confidential public records."
 - b. An enforcement provision for maintaining confidentiality of certain records is stated in T.C.A. 10-7-504(b):

"Any record designated "confidential" shall be so treated by agencies in maintenance, storage and disposition of such confidential records."
 - c. In 1981, the Court of Appeals, Eastern Division, provided additional insight into the legislature's role in designating open and closed records. In the case of *Cleveland Newspapers v. Bradley County Memorial Hospital*, the Court Stated:

"We read the Act and the Code as now codified to say that those records which have been declared by the legislature to be confidential shall be so granted by agencies maintaining them...
We also read the statute to provide that only the legislature can declare certain records to be confidential."
 - d. The following is a list of references in the Tennessee Code Annotated which call for certain records to be confidential.
 1. Tennessee Rules of Criminal Procedure, Rule 16 (a) (2): "reports, memoranda, or other internal state documents made by the District Attorney General or other state agents or law enforcement officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses."
 2. T.C.A. 37-1-154 and T.C.A. 37-1-146: Juvenile records other than records of traffic violations.
 3. T.C.A. 37-1-409: reports of child abuse, and the identity of complainant.
 4. T.C.A. 37-7-612: reports of child sexual abuse, and all records generated as a result of such reports.
 5. T.C.A. 38-7-116: The results of blood tests ordered by District Attorney General on fire death victims.
 6. T.C.A. 62-27-124 (c): records obtained by law enforcement officers during official polygraph examinations.

7. T.C.A. 71-6-118: the identity of a person reporting abuse or neglect under Adult Protection Act.

6. Release Procedures for CHRI

- a. Requests for Criminal History Records may be oral or written requests. Any denials will be made by email or written form letter.
- b. The Lebanon Police Department will comply with the letter and spirit of Open Records Law. The Department will not release confidential public records except as provided for by statute.
- c. Department personnel authorized to release CHRI are responsible for ensuring that requestors qualify as proper recipients for CHRI prior to releasing CHRI information. All T.B.I. and F.B.I. procedures shall be followed when releasing CHRI information.
- d. Department will release information on criminal investigations, which are classified by the Department as either closed or inactive. The Department will not release information on criminal investigations, which are classified as active investigations, except as provided by law.
- e. The Department will require that requester provide a reasonably accurate description of records sought prior to initiating research for records.
- f. The Department will not allow requestors to copy departmental records. All copying will be done by an employee of the Police Department. Requestors will not be allowed to take physical possession of the department's original records. Requestors may view these records and a convenient time for the requestor and Records Clerk. Photographing of documents is permissible.
- g. The Department will, upon request, provide requestor with either a copy or a condensed summary of departmental records. The Department will collect a fee per copy/summary of records plus applicable labor charges.

The fees or charges are as follows:

1. There is no charge assessed to a requester for inspecting a public record.
2. Charges for physical or electronic copies of records, in accordance with the Office of Open Records Counsel (OORC) schedule of reasonable charges, are as follows:
 - (a) Standard 8 ½ x11 or 8 ½ x14 black and white copy - \$.15 per page for each produced + applicable labor charge
 - (b) Standard 8 ½ x11 or 8 ½ x14 color copy - \$.50 per page for each produced + applicable labor charge
 - (c) Maps, plats, electronic data, audio discs, video discs, and all other materials shall be duplicated at actual costs to the city.
 1. Charge for CDs and DVDs will be \$ 5.00 + any applicable labor charge (City will provide the CD/DVD)
 2. Charge for flashdrive will be \$ 10.00 + any applicable labor charge (City will provide the flashdrive)
 3. There is no charge for emailing existing electronic document + any applicable labor charge

- h. Requests requiring less than one hour of municipal employee labor for research, retrieval, redaction and duplication will not result in an assessment of labor charges to the requester. Employee labor in excess of one hour may be charged to the requestor, in addition to the cost per copy. The city may require payment in advance of producing any request. Requests for copies of records may not be broken down to multiple requests for the same information in order to qualify for the first free hour.
- i. For a request requiring more than one employee to complete, labor charges will be assessed Based on the following formula: In calculating the charge for labor, a department head shall determine the MTAS MORE Ordinance Establishing Procedures for Inspection of Public Records number of hours each employee spent producing a request. The department head shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The department head will then multiply total number of hours to be charged for the labor of each employee by that employee's hourly wage. Finally, the department head will add together the totals for all the employees involved in the request and that will be the total amount of labor that can be charged.
- j. When the total number of requests made by a requestor within a calendar month exceeds four (4), the requests will be aggregated, and the requestor shall charge a fee for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met. Request for items that are routinely released and readily accessible, such as police reports, agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month, shall not be counted in the aggregated requests.
- k. If the city is assessed a charge to retrieve the requested records from archives or any other entity having possession of requested records, the records custodian may assess the requestor the cost assessed to the city.
- l. The Commissioner of Finance will have the authority to waive or reduce charges based on:
 - (1) number of copies or minimum charge amount; or
 - (2) type of record: whether the requested document is a document that is produced on a regular basis, requested on a regular basis, and is easily accessible (i.e. records that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in previous calendar month); and
 - (3) whether the administrative cost of documenting fees and processing the payment (including internal controls) exceeds the cost of copying and labor.
- m. Criminal Histories gained from NCIC, TCIC inquiries are not public records and will not be released to the public. They may be released to other Criminal Justice Agencies provided a proper secondary dissemination has been logged by the Administrative Secretary. All inquiries and disseminations shall comply with NCIC/TCIC/TIES Requirements.

7. Telephone Records Checks

- a. Telephone arrest records checks from local law enforcement agencies may be honored. The employee receiving the call will:
 - 1. Obtain requestors name, position, and law enforcement agency.

2. Ask requestor for their telephone number and inform them that they will be called back.
3. Then call the law enforcement agency with whom the requestor is employed on another number other than the one given to verify that, in fact, the individual is employed there.
4. After verifying requestor's employment, call them back on the original number and provide information requested.

8. Citizen Challenge of Criminal History Information

- a. In the event a citizen wishes to challenge part of the information in his/her file, the Patrol Captain will be notified; who shall in turn make notification to the Chief of Police the information that is being challenged. The information shall be securely stored until such time as the challenge has been completed or resolved. Requests for challenge of traffic records must be made to the Department of Safety. In the event an error in records maintained is detected, all known copies of the record will be corrected.

9. Expungement / Destruction of Records

- a. All public records of a person who has been charged with a misdemeanor or felony, and which charge has been dismissed, or a no true bill returned by the grand jury, or a verdict of not guilty by a jury or a conviction which by appeal has been reversed, shall, upon petition by that person to the court having jurisdiction in such previous action, be removed and destroyed without cost to such person (TCA 40-32-101).
- b. The cost for destructions of records shall apply where the charge or warrant was dismissed in any court as a result of successful completion of a pretrial diversion program as provided by TCA 40-15-102 - 40-15-105; provided, however, such cost for destruction shall not exceed twenty-five dollars (\$25.00).
- c. Public records, for the purpose of expunction/destruction only, shall not include arrest histories, investigative reports or intelligence information of the Lebanon Police Department.
- d. The Department will immediately comply with all court orders relative to expunction/destruction of public records. Expungement/destruction of records shall include:
 1. Electronic Records – Deletion from the Records Management Database
 2. Report Documents (Paper form) – Shredding

10. Retention of Juvenile Arrest Information

- a. Juvenile arrest reports, fingerprint cards and photographs will be securely maintained separately from adult criminal records.
- b. Juvenile arrest reports, fingerprint cards and photographs will be retained indefinitely unless otherwise ordered by Court or as required by law.
- c. The Record's Clerk will be responsible for collection and retention of juvenile arrest reports and identification files.

11. Dissemination of Juvenile Arrest Information

- a. Tennessee Code Annotated requires that all law enforcement agencies take special precautions to ensure that law enforcement records concerning a child are protected against disclosure to any unauthorized person.
- b. Unless a charge of delinquency is transferred for criminal prosecution under 37-1-134, the interest of national security requires or the court otherwise orders in the interest of a child, the law enforcement records and files shall not be open to public inspection or their contents disclosed to the public. Inspection of these records and files is permitted by:
 1. A juvenile court having child before it in any proceeding.
 2. Counsel for a party to the proceeding.
 3. The officers of public institutions or agencies to whom the child is committed.
 4. Law enforcement officers of other jurisdictions when necessary for discharge of their official duties.
 5. A court in which he/she is convicted of a criminal offense for the purpose of a pre-sentence report or other dispositional proceeding, or by officials of penal institutions and to his/her penal facilities to which he/she is committed, or by a parole board in considering his/her parole or discharge or in exercising supervision over him/her.
- c. All requests for release of juvenile criminal history information will be forwarded to Patrol Captain, who will determine the appropriateness of the request. Juvenile records will be released on a "need-to-know" basis only.
- d. For release of juvenile information to the media, see GO VI-G Media Relations.

12. Expungement /Destruction of Juvenile Arrest Information

- a. The juvenile court does not have the power to expunge records of juveniles found to have committed an act of delinquency, or found to have committed a status offense. (Tennessee Attorney Generals Opinion, May 8, 1986)
- b. In all juvenile matters other than those listed above, the Department will adhere to all court orders demanding expungement/destruction of juvenile arrest records specifically and exactly as issued by a court of jurisdiction.
- c. Fingerprint cards of a juvenile will be removed from the file and destroyed if:
 1. A petition alleging delinquency is not filed, or the proceedings are dismissed after either a petition is filed or case is transferred to juvenile court from a criminal court, or the child is adjudicated not to be a delinquent child.
 2. The child reached age eighteen (18) years of age there is no record that he/she committed a criminal offense after reaching sixteen (16) years of age, unless such

fingerprints were obtained on an alleged crime, which if committed by an adult would be a felony.

3. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child he/she may fingerprint the child regardless of age or offense for purpose of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of fingerprints taken shall be immediately destroyed. If the child is not referred to the court or case is dismissed, the fingerprints shall be immediately destroyed. (TCA 37-1-155)
- d. The Department will immediately comply with all court orders relative to the expunction/destruction of juvenile arrest records and information.