

Memorandum of Understanding between the Madison Police Department and the Office of the Independent Police Monitor regarding access to MPD Records and Information

A. THE OFFICE OF THE INDEPENDENT MONITOR

The Office of the Independent Police Monitor ("OIM") was created for the purpose of providing civilian oversight of the Madison Police Department ("MPD") and ensuring that the MPD is accountable and responsive to the needs and concerns of all segments of the community, thereby building and strengthening trust in the MPD throughout the community. The OIM is managed and directed by the Independent Monitor ("the Monitor"), a full-time employee of the City of Madison, recruited and appointed by the Police Civilian Oversight Board ("PCOB") through a broad community-based outreach, and finally confirmed by the Common Council. The Monitor is responsible for ensuring that the duties of the OIM are fulfilled in consultation and collaboration with the Board, per MGO 5.19(2).

B. OIM AUTHORITY TO ACCESS TO MPD RECORDS

The OIM's authority to access MPD records derives from Section 5.19(7)(i) of the Madison General Ordinances which states that "[t]he OIM shall, to the extent permitted by law, have unfettered access to all MPD records, policies, Standard Operating Procedures, data, computer databases, and other information necessary to fulfill the duties of the OIM." Additional authority comes from Wisconsin's Public Records Law. MPD agrees to provide a timely reply to the Office of the Independent Monitor (OIM) to requests for records held and created as public records by the MPD to advance the purpose of the OIM as enacted by Common Council. This timely reply may require the viewing of records in an office at an MPD designated area.

C. TYPES OF RECORDS HELD BY MPD

Attached to this MOU is a list of records held by MPD so the OIM will know what records are available. This list may be updated and modified without having to amend the MOU.

D. RELEASE OF RECORDS BY CATEGORY

Release For Public Disclosure with Or Without Redaction (Green Flag)

Records permissible for immediate disclosure to the public, by the OIM, without further review or consultation with MPD. Records for immediate release may have redactions to the record and contain only such information that would, subject to MPD's custodial authority, be released to the public under the balancing test as set forth in Wisconsin law and/or in accordance with the Wisconsin Public Records laws, Wis. Stat. secs. 19.31-39 or any other applicable State or Federal law. These records may be shared freely amongst OIM staff, the PCOB, other government agencies, and the public through open records requests. The OIM agrees to accept the redactions to these records in order to expedite the duties and obligations of both city agencies. No "reply letter" will be provided to the OIM for these requests unless the OIM requests a letter.

EXAMPLES: arrest information (Newspapers v. Breier, 89 Wis. 2d 417), anonymous crime data, and MPD policies and agreements.

Confidential Records Released Only to The OIM (Red Flag)

Confidential records are records where the information has not been publicly shared or records, in their entirety, that cannot be redacted to make them releasable to the public. This category includes cases that are open and active and under investigation by Madison Police Department. These records contain information that is explicitly barred from public disclosure by law under the balancing test as set forth in Wisconsin law and/or in accordance with the Wisconsin Public Records laws, Wis. Stat. secs. 19.31-39 or any other applicable State or Federal law. Confidential records will not, under any circumstance, be distributed, published, or presented to the PCOB, other government agencies, and/or the public through open records requests. Confidential records are for OIM use only and will be designated as such with a stamp prior to being released to OIM. If OIM finds it necessary to make portions of a confidential document public to fulfill its statutory duties, OIM agrees to provide the document to MPD for redactions such that it would become information the OIM could publicly share. The OIM understands that at the time of the request, some open and active cases may not be able to be redacted to allow public release by the OIM.

EXAMPLES: juvenile information, employee information identified in Wis. Stat. 19.36(10)(a), and records under the protection of a court order of confidentiality.

Personnel Records and Internal Investigations (PSIA)

Release of Personnel Records and Internal Investigation (PSIA) records may be governed by other state and federal laws outside the public records law (including labor law) which may impact either the timing of the record release or the redactions made to the records. For example, in some cases, employee notice must be given before records may be legally released by MPD. In other cases, the discipline process may not be concluded which could impact the employee's rights under State labor law. When

OIM requests a personnel record, MPD agrees to inform OIM of the status of the investigation including any discipline or PFC process. MPD and OIM will work together in good faith to determine when the records can be released and whether they will be processed as confidential or released with or without redactions. In some cases, if other legal proceedings are pending that could be impacted by a public record release, MPD and the OIM agree to consult with the City Attorney's office to prevent any adverse legal consequences for the City. OIM agrees to contact MPD prior to any public (outside OIM) release of any part of an employee's personnel record to allow for discussion, review, appropriate statutory and common law redactions in protection of complainants or witnesses, and to provide the required statutory notice under Wis. Stat. §19.356 before public release. When the OIM requests a personnel record for internal use only with no public release, MPD will provide a courtesy notice to the subject of the personnel record request.

E. ACCESS TO DATA

MPD creates and keeps case and incident information in a records management system. This records management system contains confidential information regarding cases for MPD as well as all consortium members and information from the FBI and other federal law enforcement agencies. MPD cannot release other consortium members' data. To the extent the OIM is asking for MPD data, the release of this data will be governed by the agreement listed above. Confidential data will be released as confidential data and marked in some way in the database itself; this data may not be released by the OIM to anyone. If the OIM requests data that could be released as a public record, the MPD will release the data as a public records request.

F. PROCEDURE OF RELEASE OF RECORDS TO THE OIM

- Request from OIM to Executive Office or Records Custodian.
- MPD response acknowledging OIM request.
- MPD review and determination if the records can be a public release (with or without redaction) or whether they are released as confidential OIM use only in accordance with the public records laws and other laws that govern law enforcement records.
- Confidential records will be stamped stating CONFIDENTIAL RELEASE TO OIM ONLY
- In the interest of faster record processing, OIM and MPD agree to waive the standard reply letter unless either OIM or MPD determine one is necessary for a particular request.
- At any time, an individual may sign an informed consent form for release of records related to themselves that would not otherwise be released to the public. This includes parents or legal guardians for some records related to their children/ward. Wis. Stat. 48.396, 938.396(1)(c)2. To facilitate the release of these records, the OIM can provide MPD with a release from the individual.

- If there is a request made from the OIM that is extremely time sensitive as determined by the OIM, the MPD agrees to make all reasonable efforts to comply with the timeliness of the OIM request. MPD agrees to prioritize all records requested by the OIM.

G. PRIOR NOTIFICATION OF PUBLIC RELEASE OF ACTIVE INVESTIGATIONS AND PERSONNEL RECORDS

Active Investigations.

It is anticipated that some information regarding open and active investigations may be of critical interest to the public, particularly critical incidents, investigations with a high level of public interest, or investigations directly related to an independent investigation conducted by the OIM in accordance with MGO 5.19 (7)(b)1. In an effort to balance the public's need to know with MPD's duty to investigate crimes, to the extent MPD is the investigating agency, the release of information from the OIM may be handled jointly between the Monitor and MPD's Public Information Officer or Assistant Chief of Support & Community Outreach (or designee). Working together, the Independent Monitor and MPD will review the information released to the OIM and the OIM planned public release to determine what information may be publicly released in keeping with state or federal law governing law enforcement records release including release of active investigation information. A representative of the City Attorney's Office may be present at such meetings to provide insight and guidance.

Personnel Records.

The OIM agrees to consult MPD prior to any release if the Independent Monitor decides to include an MPD personnel record as an attachment or exhibit in any investigation, report, or any other document the OIM is creating with the intent to publish, present, or distribute outside the OIM. Once contacted, OIM and MPD will discuss and review the records to determine if any statutory redactions should be made or if redactions should be made to protect those that provide information such as complainants, victims or witnesses.

H. DISPUTE RESOLUTION

Recognizing that communication and understanding is the best way to resolve any disagreements, OIM and MPD agree to engage in regular discussions with the Assistant Chiefs of Investigative & Specialized Services and Field Operations, or their appointees, MPD Director of Data, Reform and Innovation, and the MPD Records Custodian on the matter of Law Enforcement Sensitive Information (LESI) and other information the Monitor may be exposed to which, if known to the public, could endanger officer and individuals' safety or jeopardize MPD's effectiveness in the detection and investigation of crimes. MPD and OIM agree to work cooperatively together, in good faith, to resolve

any disagreements regarding this MOU and/or the availability of MPD records to the OIM.

I. AMENDMENTS AND ADDENDUMS

This MOU may be modified or amended, or the provisions waived with the written consent of both the Chief and the Independent Monitor, witnessed by the City Attorney.

This MOU and any of its addendums, appendices, or indexes is a “record” under the Wisconsin Public Records Law and is subject to public disclosure. Wis. Stat. sec 19.32(2).

Shon F. Barnes

Shon F. Barnes, Chief of Police

01/04/2024

Date

Michael Haas

Michael Haas, City of Madison Attorney

1/2/2024

Date

Robert Copley

Robert Copley, Independent Police Monitor

1/4/2024

Date