

	SECTION:	SERVICES	SER-323
	CHAPTER:	RECORDS	
	DIRECTIVE:	CRIMINAL JUSTICE RECORDS RELEASE	

323.01 SUMMARY

Criminal justice records are open for inspection by any person at reasonable times, except as otherwise provided by law. The official custodian of such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian. (Section 24-72-304, C.R.S.)

The Records Section (“Records”) is the official custodian of records maintained by the Grand Junction Police Department and accordingly handles requests for information from the public made in person or through telephone and mail requests.

323.02 DEFINITIONS

ARREST OR OFFICIAL ACTION - The following are elements of an arrest or official action:

- Information reporting the arrest (also called Official Action);
- Indictment or other formal filing of criminal charges against a person;
- The identity of the criminal justice agency taking such official action against such accused person;
- The date and place of the action;
- The name, birth date, last known address, and sex of an accused person;
- The nature of the charges brought or the offenses alleged against an accused person; and the disposition of the charge (Section 24-72-302(1), C.R.S.)

CRIMINAL JUSTICE RECORDS - All books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained or kept by any criminal justice agency for use in the exercise of functions required or authorized by law or administrative rule. (Section 24-72-302(4), C.R.S.)

CCIC - The Colorado Crime Information Center is a computerized information system available to law enforcement and criminal justice agencies to obtain accurate and timely criminal justice information.

DEFINITIONS (con't)

MEDICAL MARIJUANA REGISTRY - A protected registry established by Article XVIII of the state constitution and administered by the Colorado Department of Public Health and Environment, of individuals who have been approved for medical marijuana use and issued registry identification cards. It is a class 1 misdemeanor to release or make public any information from this registry.

NCIC - The National Crime Information Center is the national computerized database of criminal justice information available only to federal, state and local law enforcement and other criminal justice agencies.

OFFICIAL ACTION RECORDS - Any record pertaining to an arrest, indictment, charge, disposition, pretrial or post trial release from custody, judicial determination of mental or physical condition, decision to grant, order or terminate probation, parole or participation in correctional or rehabilitative programs, and any decision to formally discipline, reclassify or relocate any person under criminal sentence. (Section 24-72-302 (7), C.R.S.)

SEX OFFENDER - Any person who has been convicted in the State of Colorado, or other jurisdiction, of any sex offense is required to register as a sex offender pursuant to C.R.S. 18-3-412.5(1)(a), (b), (c), and (d); or by the law of such other jurisdiction, applicable to registered sex offenders.

323.03 GENERAL PROCEDURES

The Grand Junction Police Department **Open Records Request for Criminal Justice Records Form** will be provided to each person making a request for information from the Records section. This form is used to record the case number, the full name and date of birth for background checks, and any other criminal justice record requested.

The requesting party will be asked to provide his/her name, address, e-mail address, and phone number. The requestor will be asked to read and sign the form affirming that the information he/she is receiving will not be used for direct solicitation of business for pecuniary gain. (Section 24-72-305.5, C.R.S.)

The reverse side of the form is the Privilege Log. The Privilege Log will state which documents or information contained on the reports, if any, is privileged and not open for public inspection and therefore will not be provided to the requestor.

If any reports, documents or other data in the custody of the GJPD are not provided in response to the request, then the type of record and the reason for not providing the record shall be indicated on the Privilege Log. Types of privileged records include, but are not limited to:

**GENERAL PROCEDURES
(con't)**

- CCIC/NCIC reports and records;
- Medical reports (see Grounds for Refusal (323.09) HIPAA below);
- Medical Marijuana Registry reports (see Definitions above);
- Protected parties (see Grounds for Refusal (323.09) below);
- Open and under-investigation cases; or
- Cases being investigated or prosecuted by the Mesa County District Attorney, prior to trial and sentencing.

If the requested record(s) is/are not in the custody or control of the GJPD, the Records custodian must notify the requestor in writing and advise the requestor (in detail and to the best of his knowledge and belief) which agency has the record(s) in question. (Section 24-72-203(2), C.R.S.)

Note: Both statute requirements are accomplished at the time of the request, by adding specific agency information or a date and time for providing the reports within the Privilege Log.

The Records custodian shall provide the case number, the date and time and the requestor's name on the Privilege Log. The Privilege Log is signed by the Records custodian and photocopied for the requestor. The original is retained in Records.

If any documents are excluded or other provisions require less than complete release of the entire case record(s) requested, a copy of the Privilege Log is provided to the party making the request.

If the Records custodian denies access to any public record, the requestor may ask for a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the requestor (Section 24-72-204 (4), C.R.S.)

If a report or record is not open to public inspection, the requestor will receive a Grand Junction Police Department Denial Letter at the time of the request, citing the law or regulation under which access is denied.

**323.04 EMPLOYEE
RESPONSIBILITIES**

All Records personnel are provided training in Colorado Open Records Act (CORA). In addition to training, each Records employee is expected to complete a test compiled by the CORA course facilitator to successfully pass Part 4 of the Colorado Certified Records Network (CCRN) skill sets for Colorado Certified Records Technician certification.

**EMPLOYEE
RESPONSIBILITIES (con't)**

Records employees that have not yet attended a CORA course and passed the examination shall not release criminal justice records/information without the review and approval of a CORA trained employee who has successfully passed the examination.

**323.05 RELEASE OF
OFFICIAL ACTION
(ARRESTS)**

Official action records shall be released by Records on Grand Junction Police Department cases only. No official action records of other agencies shall be provided by the GJPD Records section.

Each request must include the full name and date of birth of the person in which the official action is being requested.

Records shall provide official action records, when requested, of Registered Sex Offenders (RSO), regardless of arresting agency. If the RSO has successfully petitioned the court and obtained an order to be removed from the Colorado state sex offender registration program, Records will not release their (former) RSO status.

Background checks on arrests are provided upon request. They may be provided in letter format including what type of identification was provided, or as third party requests. They may also be provided in a system report printed from the GJPD in-house records management system.

Juvenile arrest records are not open for public inspection, unless the juvenile is requesting the information on himself/herself and can provide a photo identification card or driver's license.

Certain juvenile information may be provided to the public including the name, date of birth, last known address, sex and physical description of the juvenile (not a mug shot) in the following circumstances:

- The juvenile is charged with the commission of the crime of possession of a handgun by a juvenile;
- The juvenile is charged with commission of what would be a Class 1, 2, 3, or 4 felony if committed by an adult;
- The juvenile is charged with any crime that involved the use or possession of a weapon if such act were committed by an adult;
- The juvenile has been adjudicated a juvenile delinquent for having committed one of the above acts;
- The juvenile is subject to revocation of probation for committing one of the above acts.

**323.06 RELEASE OF
CRIMINAL JUSTICE
RECORDS**

Criminal justice records include everything produced by the Grand Junction Police Department, including photographs, tapes, recordings, and all other documentary material, regardless of form or characteristics.

Criminal justice records will be provided to the requestor, as soon as they are available, unless there are grounds for denial of inspection. If the records are not available at the time of the request, a date and time when the records will be available shall be given to the requesting party.

**323.07 REGISTERED SEX
OFFENDER
RELEASE**

A local law enforcement agency shall release information regarding any RSO residing within the local law enforcement agency's jurisdiction, to any person requesting such release. (C.R.S. 16-22-112 (2))

Only the following may be released regarding a convicted sex offender in accordance with this directive:

- Name and sex of the person
- A physical description of the person, including a recent picture of the person.
- The person's residence address in the City of Grand Junction, if available.
- The record of any convictions of the person for unlawful sexual conduct which resulted in the person being required to register as a Sex Offender under state law, or under similar provisions of other jurisdictions, if available.

NO RELEASE will be made concerning:

- The identity of any victim of any such sex offender, or
- The identity of any other non-offender parties to an offense.

REQUESTS FOR INFORMATION – Any request for sexual offender information made by an individual may be released either in person, by phone, fax, mail (including electronic mail) or through the Department's web-site.

323.08 FEE SCHEDULE

Fees for photocopies of criminal justice records or records of official action are contained in the GJPD Criminal Justice Records Copy Fee Schedule.

323.09 GROUNDS FOR REFUSAL

Inspection of criminal justice records (Section 24-72-305, C.R.S.) may be denied in one of the following circumstances:

- 1) Contrary to state statute,
- 2) Prohibited by court order or supreme court rule,
- 3) Disclosure would be contrary to the public interest, or
- 4) Failure to sign a Pecuniary Gain Statement.

The following describes each exception in detail.

1) CONTRARY TO STATE STATUTE

NAME OF VICTIM OF SEXUAL ASSAULT OR ALLEGED SEXUAL ASSAULT. (C.R.S. 24-72-304,) The name of the victim of an alleged sexual assault must be deleted from the criminal justice record prior to release to any person or agency other than a criminal justice agency. (Section 24-72-302 (4)(a), C.R.S.)

PROTECTION ORDER VIOLATIONS - Victims and Witnesses (Section 18-6-803.5(3) (e)). When a person is arrested for violation of a protection order, the arresting agency is required to send to the court a copy of the arrest report, a list of witnesses to the violation, and, as applicable, a list of charges filed or requested to be filed against the restrained person. At the request of a victim or a witness, the agency must delete the address and phone number of that witness from the list sent to the court, and the address and phone number shall not thereafter be made available to any person, except law enforcement officials and the prosecutor, without order of the court.

INFORMATION FROM THE MEDICAL MARIJUANA REGISTRY (C.R.S. 18-18-406.3(5)) Records personnel shall not release or make public any confidential information contained in the Medical Marijuana Registry without the written authorization of the marijuana registry patient.

REPORTS AND IDENTIFYING INFORMATION IN AT-RISK ADULT CASES (C.R.S. 26-3.1-102) Definition of "At-Risk" Adult (C.R.S. 26-3.1-101) An individual, 18 years of age or older, who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for the individual's health, safety, or welfare, or lacks the understanding or capacity to make or communicate responsible decisions concerning the individual's person or affairs.

**GROUND FOR REFUSAL
(con't)**

Disclosure of the name and address of an at-risk adult or member of the adult's family and other identifying information contained in a report shall be permitted when:

- Authorized by a court for good cause.
- A criminal complaint, indictment, or information based on the report has been filed; or
- There is a death of a suspected at-risk adult resulting from mistreatment or self neglect and a law enforcement agency files a formal charge or a grand jury issues an indictment in connection with the death. (C.R.S. 26-3.1-102 (7)(b))

MENTAL HEALTH HOLDS (C.R.S. 27-10-105 and 27-10-120) When a person appears to be mentally ill and, as a result of such mental illness, appears to be an imminent danger to others or to him/herself, or appears to be gravely disabled, a peace officer, upon probable cause, may take the person into custody and place him/her into an approved facility for a 72-hour evaluation and treatment. All information concerning the officer's actions is confidential and privileged, and may be disclosed only under the following circumstances:

- In the communications between qualified professional personnel in the provision of services or appropriate referrals.
- When the recipient of services designates persons to whom information or records may be released.
- To the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled.
- To the courts.
- To persons authorized by court order.
- To adult family members upon admission of a mentally ill person for inpatient or residential care and treatment. The only information to be released shall be the location and fact of admission of the mentally ill person receiving care and treatment.
- To adult family members actively participating in the care and treatment of the mentally ill person, regardless of the length of participation.

**GROUND FOR REFUSAL
(con't)**

DETOXIFICATION HOLDS - (C.R.S. 25-1-310) Any person who is intoxicated or incapacitated by alcohol and clearly dangerous to the health and safety of himself or others, may be taken into protective custody by law enforcement authorities, acting with probable cause, and placed in an approved treatment facility. "Taking into protective custody" is not an arrest, and no entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

REPORTS AND IDENTIFYING INFORMATION IN CHILD ABUSE REPORTS - (C.R.S. 19-1-307) All identifying information, except as otherwise provided including reports of child abuse or neglect and the name and address of any child, family, or informant other any other identifying information contained in such reports shall be confidential and shall not be open to public inspection.

Exceptions to confidentiality of child abuse reports:

- Authorized by a court for good cause; or
- Death of a suspected victim of child abuse or neglect and the death becomes a matter of public record.

Only the following agencies or persons shall be given access to child abuse or neglect records and reports:

- Law enforcement agencies.
- District Attorney.
- Coroner when there is a death of the victim of child abuse, and it becomes a matter of public record.
- Dept of Human Services, if investigating or treating a child or family subject to the report.
- A physician who is treating a child whom he or she suspects is a victim of abuse or neglect.
- Any agency having the legal responsibility or authorization to care for, treat or supervise a child who is the subject of child abuse or neglect.
- Any person named in the report who is alleged as a child to be abused or neglected, or if incapacitated at the time of the request, his or her guardian ad litem.

**GROUND FOR REFUSAL
(con't)**

- Parents, guardian, legal custodian, or other person responsible for the health or welfare of the child named in the report.
- A court upon its finding that access may be necessary for determination of an issue before the court.
- All members of a child protection team.
- Others as a court may determine for good cause;
or
- Private adoption agencies.

**HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT (HIPAA)**

- The Grand Junction Police Department is not a "covered entity", as defined by HIPAA, and therefore, the Privacy Rule under HIPAA regarding protected health information (PHI) does not fully apply; however, medical reports and health information contained in GJPD Records, used for criminal investigations and to investigate unattended deaths and other law enforcement matters, is information that is exempt from disclosure under Colorado law (Section 24-72-305(5), C.R.S.)

Medical reports and health information contained in GJPD Records, and used for criminal investigations and to investigate unattended deaths and other law enforcement matters, may be disclosed to agencies permitted under state law to access such information for use in criminal investigations, public health and safety investigations or intervention.

Medical reports and health information contained in GJPD Records, and used for criminal investigations and to investigate unattended deaths and other law enforcement matters shall not be released to the public.

2) COURT ORDER OR SUPREME COURT RULE**ORDER PROTECTING WITNESS INFORMATION -**

(C.R.S. 16-5-203) The court may enter an order that denies disclosure to a defendant of the names and addresses of witnesses or that requires the defense counsel not to disclose such information to the defendant. The names and addresses of witnesses who are the subject of an order may be withheld pending a ruling of the court, but the prosecution must notify defense counsel in writing that a motion to withhold has been filed and that such information will be withheld pending the court's order.

**GROUND FOR REFUSAL
(con't)**

ORDER SEALING RECORDS - (C.R.S. 24-72-308) Any person in interest may petition the court to seal all arrest and criminal records information pertaining to him/her if the records are those of official actions involving a criminal offense for which the person was not charged, in any case which was completely dismissed, or in any case in which the person was acquitted. Additionally, after 15 years, a person may petition the court to seal cases which were dismissed or not charged as a result of a plea agreement, under certain conditions.

Inspection of the records included in an order for sealing may thereafter be permitted by the court only upon petition by the person who is the subject of such record(s) or by the prosecuting attorney, and only for those purposes stated in the petition.

If the criminal justice record is open and under investigation, but not yet sent to the District Attorney for prosecution, public disclosure would be contrary to the public interest. (C.R.S. 24-72-305(5))

3) DISCLOSURE CONTRARY TO PUBLIC INTEREST

“Contrary to the public interest” examples may include, but are not limited to:

- When a person's safety could be jeopardized.
- When the integrity of an investigation and/or subsequent prosecution could be jeopardized.
- When a confidential source would be revealed.
- When personnel matters are involved.
- When disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- When disclosure could disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Per Grand Junction Police Department Directive “**Public Information and News Media Release**” **OPR-293**, the following specific information is defined as “contrary to the public interest”:

- Names of informants and witnesses except for traffic offenses.
- Comments about a suspect's character or reputation or opinions about the suspect's guilt or innocence.

**GROUNDS FOR REFUSAL
(con't)**

- The name and address of a suspect's employer, unless the crime or incident relates specifically to the suspect's employment.
- The identity of critically injured persons prior to notification of next-of-kin.
- Information about the existence or content of a suspect's confession, admission, or statement.
- A suspect's refusal to make a statement or submit to tests or examinations.
- Results of any tests or examinations, including blood alcohol content results (except to the defendant).
- The identity, testimony, or comments or opinions about the credibility of any witnesses in any criminal case.
- The identity of a suspect who has not been charged.
- Conjecture about suspects or fugitives; or
- Exact dollar amount taken in a robbery, theft, or burglary (except a report may be released to a crime victim).

Additionally, the following information shall NEVER be released to the public, regardless of case status:

- Names of informants, witnesses, or reporting parties except for traffic offenses; or
- Social Security number.

4) FAILURE TO SIGN PECUNIARY STATEMENT

Records will be denied to requesting parties who refuse to affirm that the records will not be used for the direct solicitation of business for pecuniary gain. (Section 24-72-305.5, C.R.S.)

323.10 CITIZEN APPEAL

If an applicant is unsatisfied with the custodian's decision regarding the release of records and wants to appeal the decision, have the applicant contact the City Attorney's office to discuss the matter.

