



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **EMPLOYEE FILES**

SCOPE: All Department Personnel
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: 2021 Wisconsin Act 82

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- RESCINDS
- AMENDS

INDEX AS: Employee files

PURPOSE: 2021 Wisconsin Act 82 (Act 82) requires the Department to create, maintain, and retain an employment file for all Department members, including those members no longer employed by the Department, but where records exist that relate to the Statute employment file definition.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. PROCEDURE

I. POLICY

It is the policy of the Department to create, maintain, and retain an employment file for each member, both present and past, and abide by the provisions for these files as set forth in Act 82.

II. EMPLOYMENT FILES

2021 Wisconsin Act 82, adopted November 8th, 2021 requires each law enforcement agency to have and maintain an employee file, along with other provisions, for every member of the Department, both present and past (where any records currently exist). Further, the Act includes the requirement to share employment information in these files as part of each agency's recruitment and hiring processes.

- A. An employment file by Statute means: all files relating to a person's employment, including performance reviews, files related to job performance, internal affairs investigative files, administrative files, previous personnel applications, personnel-related claims, disciplinary actions, and all substantiated complaints and commendations, but does not include pay or benefit information, similar administrative data or information that does not relate to performance or conduct, or medical files unless the medical file relates to mental competency issues bearing on the person's suitability for a law enforcement position.
- B. Therefore, the Department shall have in place a system for an employment file for every person, present or, past as required by Statute. Each file shall be kept up-to-date and maintained on a continuous basis as new documents or information becomes available.
 - 1. This system shall also include a process for keeping each employment file secure in location and access, and compliant with recordkeeping laws and retention. The system should ensure files maintained by the Department (and/or City Human Resources are cohesive). Records protected by the FMLA, GINA, and ADA should continue to be kept confidential and separate from the other records in the employment file.
 - 2. Employment files for all persons who have retired, resigned, or left the Department for any reason shall be included in this system, only if any information listed in the employment file definition currently exists in Department records.
- C. The Act further provides new obligations pertaining to sharing of an employment file with other law enforcement agencies during their recruitment process for law enforcement positions or when the Department is requesting this information during any hiring process. Under the Act, law enforcement positions are defined as any law enforcement, tribal law enforcement, jail, or juvenile detention position.”

Specifically, when a law enforcement agency recruits a Department current or former employee for a law enforcement position, that interviewing agency must receive a written waiver from the candidate that gives the Department permission to share their employment file with the interviewing agency.

The interviewing agency may not consider any candidate who fails to provide a waiver that meets the Act's requirements. Specifically, the waiver must include language that releases both the interviewing agency and the law enforcement agencies the candidate works for, or has previously worked for, from liability

pertaining to the use and disclosure of their employment file.

Once disclosure of the employment file is ready to occur, the Act indicates the Department can share copies with the interviewing agency or allow the interviewing agency to review the file at the Department. The interviewing agency may also choose to orally interview people from the Department. The Act states law enforcement agencies shall not be liable for complying with its provisions or for participating in an official oral interview with an investigator from the interviewing agency.

The record sharing dictated by this Act must meet specified deadlines. First, the interviewing agency must provide the executed waiver to the current and former employing agencies at least 30 days before making its decision on whether to hire the candidate.

Second, once the current or former employing agency receives the waiver from the interviewing agency, the current or former employing agency has 21 days to provide the requested information.

An exception to this requirement is if there is a nondisclosure agreement between the Department and the candidate that precludes the employment file being shared with the interviewing agency.

However, the Act limits this exception to nondisclosure agreements entered into on or before November 7, 2021 and it prohibits law enforcement agencies from entering into nondisclosure agreements as of November 8, 2021 that prevent an interviewing law enforcement agency from viewing an “employment file” in a current or former employing agency’s possession.

- D. This Act also empowers the Wisconsin Law Enforcement Standards Board (LESB) to decertify a Department Officer for certain violations or other conditions, refer to the Act. In addition, the Act authorizes the LESB to require that law enforcement agencies submit reports and other information that relate to the administration of the rules that this Act imposes to show compliance with them.
- E. Also refer to Policy & Procedure 3.01: Recruitment/Selection, Policy & Procedure 4.01: Commendations, Policy & Procedure 4.02: Disciplinary Procedures, Policy & Procedure 4.03: Citizen Complaints/Internal Affairs, and Policy & Procedure 5.01: Use of Force for further information.

Michael Meeusen
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

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