

# National Landscape Cheat Sheet

## Public Access to Police Disciplinary Records

---

### **COMPLETE PUBLIC ACCESS**

A record is considered “Complete Public Access” when the public has access to both sustained and unsustained complaints without any caveats (with the exception of completion of investigation meaning disciplinary records subject to a pending or ongoing investigation are not subject to disclosure; once the investigation is complete these records are subject to public scrutiny).

1. Arizona: A.R.S. § 38-1109
  - a. *Once investigation is complete*
2. Connecticut: Conn. Gen Stat. § 1-200 et seq.; *Conn. State Police Union v. Rovella*, 494 F. Supp. 3d 210 (2020)
3. Florida: Fla. Stat. Ann. §119 et seq; Art I, s. 24(a), Fla. Con.; Ch. 119, F.S.; ss. 112.532-534, F.S. [Note: The constitutional right of access trumps the LEO Bill of Rights]
  - a. *Once investigation is complete*
4. Georgia: Georgia Code § 50-18-72(a)(8)
  - a. *Once investigation is complete*
5. Illinois: 5 ILCS 140/1.2
6. Kentucky: KRS § 61.878(1)(a)
7. Louisiana: La. RS 44:1; *City of Baton Rouge v. Capital City Press*, 4 So.3d 807.
8. Massachusetts: ALM GL ch. 66, § 10; G.L. c. 4, section 7, Clause Twenty-Sixth (c) as amended by St. 2020, chapter 253, section 2.
9. Minnesota: Minnesota Statute § 13.43.
10. New York: NY Pub Off § 86.
11. North Dakota: North Dakota Century Code § 44-04-18
  - a. *Once investigation is complete*
12. Ohio: O.R.C. § 149.43
13. Washington: RCW § 42.56; RCW § 43.101.010.

**LIMITED PUBLIC ACCESS**

30 states and the District of Columbia are considered “Limited Public Access” because there is some limitation to access police disciplinary records. **Note:** in practice, discretionary disclosure often results in no disclosure. However, by letter of the statute/decision, discretion is an indicator of limited public access.

Various Categories of Limited Public Access							
	Balancing Test	Suspension	Termination	Police Involved Shooting	Decertified	Demotion	Loss of Pay
Alabama	X <sup>1</sup>						
Arkansas		X	X				
California	all use of force complaints are accessible however sexual assault and job-related dishonesty complaints are limited to substantiated only; all other complaints are confidential.						
Colorado	<u>Specific incidents</u> of on-duty and/or in-uniform officers						
D.C.	Agencies have discretion to exempt records						
Hawai'i	X	X	X				
Idaho				X	X		
Indiana <sup>2</sup>		X	X			X	
Iowa	<u>the fact</u> of resignation in lieu of termination, discharge or demotion are public						
Maine	All incidents that in Death or Serious Bodily Harm; and all sustained complaints						
Maryland	Sec. 4-351(b) a custodian <u>may deny</u> inspection by a person in interest only to the extent that the inspection would: (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual.						
Michigan	X <sup>3</sup>						
Missouri	Sustained Complaints of misconduct during performance of official duties						
Montana	Discretionary disclosure however names are public						
Nebraska	Discretionary disclosure although certain criminal convictions are accessible some information relating to officers						

<sup>1</sup> Presumption in favor of public disclosure however disclosure is subject to a showing of undue hardship in obtaining information elsewhere. *City of Mobile v. Howard*, 59 So. 3d 41, 2010.

<sup>2</sup> Requests must be made with “reasonable particularity” such that the agency is able to “search for, locate, and retrieve the records.” *Jent v. Fort Wayne Police Dep’t*, 973 N.E. 2d 30 (Ind. Ct. App. 2012).

<sup>3</sup> The agency has discretion to disclose which may be challenged subject to a statutory balancing test.

	Balancing Test	Suspension	Termination	Police Involved Shooting	Decertified	Demotion	Loss of Pay
New Hampshire	X <sup>4</sup>						
New Jersey		X - 5+ days	X			X	
New Mexico	citizen complaints are public but disciplinary records are confidential; letts of opinion are public						
North Carolina	Access only to the date/fact of dismissal						
Oregon	X						
Oklahoma		X	X			X	X
Rhode Island	civilian complaints are available whereas internal affairs records are subject to a balancing test						
Pennsylvania	The fact of demotion or discharge is available.						
South Carolina	Unreasonable invasion to personal privacy						
Tennessee	Records related to criminal charges are exempt						
Texas		X					X
Utah	Only sustained complaints						
Vermont					X		
Virginia	Discretionary disclosure						
West Virginia	some agencies do not maintain records and/or release them <sup>5</sup>						
Wisconsin	X						

1. Alabama: while there is a presumption of disclosure, disclosure is subject to a demonstration of “undue hardship” in obtaining records elsewhere. *City of Mobile v. Howard*, 59 So. 3d 41, 2010.
2. Arkansas: only substantiated complaints resulting in suspension or termination with “compelling public interest” in disclosure. Arkansas Code § 25-19-105(c)(1)
3. California: For sexual assault and job-related dishonesty, only agency sustained complaints are public. Use of force/police shooting incidents do not have to be sustained. Cal. Penal Code § 832.7
4. Colorado: all records of in uniform or on-duty officers. C.R.S. 24-72-303
5. District of Columbia: agencies have discretion to exempt records. DC Code § 2-534
6. Hawaii: substantiated complaints that result in suspension or discharge are subject to disclosure all other complaints must pass a balancing test prior to disclosure. §92F-14.

<sup>4</sup> ACLU contact indicated this is subject to pending litigation.

<sup>5</sup> ACLU contact indicated this.

7. Idaho: officer involved shootings & *potentially*<sup>6</sup> decertification records. *Federated Publs. v. Boise City*, 128 Idaho 459 (1996).
8. Indiana: substantiated complaints resulting in demotion, suspension, or discharge. § 5-14-3(b)(8)
9. Iowa: fact of resignation in lieu of termination, discharge or demotion is public. § 22-7(11)(a)(5).
10. Maine: complaints related to misconduct that resulted in death or serious bodily harm; and disciplinary records that result in disciplinary action. § 503(1)(B)(5).
11. Maryland: A custodian may deny inspection only to the extent of certain predetermined circumstances. § 4-351.
12. Michigan: discretionary disclosure subject to a balancing test. MCL § 15.243
13. Missouri: substantiated complaints related to performance of official duties. *Chasnoff v. Mokwa*, 466 S.W.3d 571 (2015).
14. Montana: discretionary disclosure. 2-6-1003, MCA.
15. Nebraska: discretionary disclosure. Nebraska Statute § 84-712.05.
16. New Hampshire: disclosure is subject to a judicial balancing test which is subject to pending litigation. New Hampshire Statute § 91-A:5; *Salcetti v. City of Keene*, 2020 N.H. Lexis 106
17. New Jersey: complaints resulting in “major discipline,” sanction of termination, demotion, or five or more days of suspension. *In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6*
18. New Mexico: citizen complaints are available however the records of disciplinary action are exempt. *Cox v. New Mexico Dep’t of Public Safety*, 148 N.M. 934 (Ct. App. 2010).
19. North Carolina: Access is restricted to only the date of dismissal. North Carolina General Statutes § § 153A-98 ;160A-168
20. Oklahoma: complaints resulting in loss of pay, suspension, demotion or termination. Oklahoma Open Records Act § 51-24A.7
21. Oregon: complaints resulting in disciplinary action are subject to a public interest exception. ORS §§ 192.345(12), 181A.830(3).
22. Pennsylvania: The fact of demotion or discharge is discoverable however further records are unavailable. 65 P.S. § 67.708(b)(7)(viii)
23. Rhode Island: Civilian complaints are public but internal affairs records are subject to a balancing test.<sup>7</sup> Rhode Island General Law § 38-2-2(4)(A)(1)(b). *Lyssikato v. Narragansett Police Department*, Attorney General Neronha (2020 August 17)  
<http://www.riag.ri.gov/documents/PR20-58Lyssikatosv.NarragansettPoliceDepartment.pdf>
24. South Carolina: exemption for unreasonable invasion to personal privacy. South Carolina Code § 30-4-40
25. Tennessee: All records are public with the exception of those with criminal charges are part of an ongoing criminal investigation. T.C.A. §10-7-503
26. Texas: substantiated complaints resulting in suspension or loss of pay. Texas Government Code § 552; Local Government Code § 143
27. Utah: substantiated complaints only. Utah Code Ann. § 63G-2-201.
28. Vermont: misconduct that results in desertification only. 1 V.S.A. § 317(c)(7); 20 V.S.A. § 1923
29. Virginia: discretionary disclosure. § 2.2-3706
30. West Virginia: exemption for unreasonable invasion to personal privacy. West Virginia Code § 29B.
31. Wisconsin: if non-disclosure is challenged, the court will evaluate utilizing a balancing test. Wis. Stat. §§ 164.01-164.06.

<sup>6</sup> Local News article discusses access to decertified officers records.

<https://www.idahostatesman.com/news/local/investigations/watchdog/article243471211.html>

<sup>7</sup> The ACLU contact flagged this is subject to pending litigation.

**CONFIDENTIAL RECORDS**

7 states do not permit for any public access to police disciplinary records. While all of these states effectively make disciplinary records confidential, Delaware is the only state that considers the records “confidential” by language in its statute.

1. Alaska: state employee disciplinary records are confidential “personnel records” under the State Personnel Act. *Basey v. Dep’t of Pub. Safety, Div. of Alaska State Troopers*, 462 P.3d 529, 538 (Alaska 2020).
2. Delaware: All [police disciplinary] records . . . remain confidential and shall not be released to the public. § 9200(c)(12).
3. Kansas: K.S.A. § 45-221(a)(4).
4. Mississippi: MS Code § 25-1-100; MS Code § 25-61-11.
5. Nevada: Nevada Administrative Code § 284.718.
6. South Dakota: § 1-27-1.5(7).
7. Wyoming: Wyoming Statute § 16-4-203(d).