



# COMMONWEALTH OF MASSACHUSETTS

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**MMARS Policy: Payroll**

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## **Payroll Public Records Exemption**

### **Executive Summary**

This policy is issued jointly by the Office of the Comptroller (CTR) and the Human Resources Division (HRD) to provide guidance on the implementation of several exemptions limiting disclosure of employee information under the Public Records Law. Chief Fiscal Officers (CFOs), Human Resource Directors (HR Directors) and Public Information Officers are responsible for implementation of this policy.

### **Policy**

Under the public records law [G. L. c. 4, § 7\(26\)](#), an employee's name, title, salary and department are considered public information. If a public information request is made to either a department or a statewide payroll request is made to the Office of the Comptroller (CTR), the department and CTR are mandated to provide this information, including electronically. Under this law, a person making a public records request cannot be asked the reason for the request, nor can the Commonwealth control how that individual uses or publishes this information. The home address and telephone number for government employees is not public under G.L. c. 4, s. 7 (26)(o) and the name, home address and home telephone number is not public for family members of government employees under G.L. c. 4, s. 7 (26)(p).

The personal safety of certain victims of adjudicated crimes or domestic violence, sexual assault or rape may be compromised when this type of information is released. Pursuant to [G. L. c. 66, § 10\(d\)](#), the name, place of employment or education for state employees and family members who are also employed by the Commonwealth will be exempted from public records disclosure if the employee self identifies as a victim of an adjudicated crime or is a victim of domestic violence.

Each department will have its own internal procedures related to responding to public records requests, including payroll requests and will need to update these procedures to include this exemption. Each department will have to take steps to ensure that any inquiries are properly redacted to remove the name and other required information for employees who have claimed and been approved for these exemptions.

### **Procedure**

#### **Responsibilities for distribution of the Payroll Public Records Exemption Form**

Each department is responsible for notifying employees of the availability of the **Public Records Exemption Form** in a manner determined by the department. The form can be distributed in paper or by

email. This form should be included in new employee orientation. If an employee wants to qualify for the exemption and wants to have their name, title and department exempted from payroll public records requests made either to his/her department or to CTR for statewide payroll requests, they must submit the **Public Records Exemption Form**. Employees may submit this form and supporting documentation (if available) to their HR Director, General Counsel or, as the alternative, they have the option of contacting (in confidence) the Chief Human Resources Officer at HRD at (617) 878-9703 who will facilitate the review. HR Directors will review the **Public Records Exemption Form** and the documentation, if any, to determine if the documentation reasonably supports that the employee is a victim of domestic violence, sexual assault or rape or that the employee was a victim of an adjudicated (resolved) crime.

**Please note that Department Heads and other individuals who represent the Department publicly are not eligible for this exemption.**

### **Exemption for Victims of Domestic Violence, Rape or Sexual Assault**

Many victims of domestic violence, sexual assault, or rape typically do not want to disclose these issues to their employer due to concerns regarding confidentiality and privacy, the fear that their employment or opportunities will change and concerns about being stigmatized.

The HR Director may ask the employee to submit either a signed statement outlining the circumstances and safety concerns or a copy of a protective order. If the employee is uncomfortable providing written documentation, (s)he may provide a brief oral description to the HR Director identifying the need for the exemption due to safety concerns. The HR Director (or designee) may ask some questions to ensure that the request is legitimate so that the exemption is provided only to eligible individuals. The HR Director should not offer legal advice but may provide a list of resources related to domestic violence and may address an employee's needs or concerns for any workplace safety plans. Training is available through the Human Resources Division.

HR Directors have the discretion to approve or deny the request based upon the information presented by the employee. HR Directors are not expected to be experts regarding domestic violence issues and should use their best judgment. If they are uncomfortable with entering an exemption for either an employee or a family member, they should seek guidance from the Chief Human Resources Officer at (617) 878-9703.

Employees, who are denied a request for the exemption by their HR Director or General Counsel, may contact the Chief Human Resources Officer at HRD for a final determination. Every effort will be made to make this determination quickly. If the exemption is approved, the HR Director will be notified and will be instructed to enter the exemption in the payroll system.

Employees who are untruthful in their request for exemption from the public records law may be subject to disciplinary action.

### **Exemption for Victims of Adjudicated Crimes**

For victims of adjudicated crimes (crimes that have been resolved through the courts system after an arrest has been made), the employee will need to provide some documentation of the case. This may include a trial report, prosecutor statement or other supporting documentation of the case and outcome. The fact that a case was dismissed does not negate the fact that the employee was a victim of a crime. Therefore, if the employee has been involved in a recent criminal case and they have imminent safety concerns, the HR Director will determine whether the exemption is appropriate.

If the employee is involved in a current criminal case *and* the employee has imminent safety concerns, the HR director will determine whether the exemption is appropriate. Since the goal is safety and the employee would be eligible for the exemption once the criminal matter is resolved, the exemption can be used to protect disclosure of the payroll information.

## **Exemptions for “Family Members”**

If an employee qualifies under one of the exemptions, either as a victim of an adjudicated crime or as a victim of domestic violence, the employee may identify any family member who also works for a Commonwealth agency. The exemption can be applied only to employees in the state payroll system (not state authorities, quasi-public entities, municipalities or employees in the University of Massachusetts system who are not paid through the state payroll system). The employee must identify the legal name, department and employee ID of the family member for the exemption flag to be entered for that employee’s state payroll system record.

An eligible family member is the spouse, child, foster child, step child, parent, step parent, brother, sister, grandparent, grandchild of either the victim or his/her spouse, person for whom the employee is legal guardian, or for a person living in the victim’s immediate household. An employee cannot identify friends or acquaintances to give them the exemption flag.

The exemptions under this form may be claimed solely by the victim. For privacy reasons, an employee who is a family member may not identify another individual who is a victim under either exemption to claim the exemption either for themselves or the victim. The employee (family member) may work with the victim to claim this exemption through his/her department. If the victim is not a state employee, the victim will need to submit this form and documentation to the family member’s HR Director requesting the exemption for the employee as a family member. Family members are required to sign the victim’s certification form.

The exemption for either a victim or any family member can be made at any time. The employee victim must complete this form with the listed family member(s) and submit to the Department HR Director. The employee does not have to resubmit supporting documentation since this has already been reviewed. The HR Director may ask questions to confirm that the additional individuals are family members.

## **What is the exemption flag?**

An exemption indicator has been added to the payroll system to identify employee records that have an eligible exemption. The public record exemption page has been added to the Personal Data record. A new security role, PUBLIC PUR U/D, has been created for the public records exemption page. Requests for access to this page must be routed through and authorized by the Department HR Director due to the confidential nature of the exemption status and to guard against misuse of the exemption program. Only HR Directors and/or their designee should enter public records exemptions into the payroll system. The exemption indicator is generic and does not identify the reason for the exemption, only that the employee has the exemption. The indicator enables both your department and CTR to run warehouse queries in the Commonwealth Information Warehouse (CIW) to identify those employee records that should have the name, title and department redacted either for a departmental request at your department or by CTR for a statewide request. This systemic solution provides greater accuracy than a paper-based, manual process.

If an exemption is approved, the HR Director or other authorized designees with appropriate security will enter the exemption flag for the employee in the state payroll system. (Please refer to the [Job Aid](#).)

If family members are listed on the form and are employed by another department within the Commonwealth, the HR Director will not be able to enter the exemption in the state payroll system. The HR Director will call the Chief Human Resources Officer at HRD (617) 878-9703 first and then fax the request to HRD and HRD will facilitate the entry of the exemption for any listed family members.

## **Retention of The Public Records Exemption Form And Supporting Documentation**

The **Public Records Exemption Form** and any supporting documentation are not considered public records, are strictly confidential and may not be disclosed for any reason. All supporting documentation should be reviewed by the HR Director and returned to the employee or destroyed, and shall not be included in the employee’s personnel file, unless the documentation is included as part of an overall employee workplace safety plan (i.e., a 209A protective order).

The completed and executed **Public Records Exemption Form** must be maintained in one confidential file within the department's Human Resource or General Counsel's Office, or a centralized location designated by the Agency Head/Cabinet Secretary or Appointing Authority.

If the forms are not submitted to your HR or General Counsel but are submitted to the Chief Human Resources Officer at HRD, the forms will be retained at HRD in a confidential file. The Chief Human Resources Officer at **HRD will communicate the decision to grant an exemption to the Department Human Resource officer in writing.**

The **Public Records Exemption Form** is valid for **5 years**. Upon the date of expiration, HRD will notify the HR director who will notify the affected employees that the exemption will be removed unless a new form is submitted.

While victims are not required to turn over a protective order to the designated HR Director, if it includes a vacate order pertaining to the workplace, agencies may ask to maintain it in a confidential file as a part of an overall workplace safety plan. Departments must abide by an active 209A restraining and vacate order as these pertain to the workplace of the victim, since violation of these orders will be a mandatory arrest for the abuser. Whenever an employee believes their safety is at risk, he/she should work with the HR director to identify a workplace safety plan for protection.

Given the risk of ineligible individuals seeking to obtain the exemption flag in the state payroll system so that their payroll information is not released publicly, the Commonwealth needs to be able to conduct quality assurance reviews or audits of the use of the flag. CTR and/or HRD will conduct periodic quality assurance with HR Directors to ensure that they are obtaining the forms, reviewing the basis for the exemption and maintaining confidential files for the forms. CTR and HRD will not contact an employee directly to verify the information related to the exemption.

#### **HR Directors, Chief Fiscal Officers (CFOs) and Public Information Officers must coordinate Payroll Information Requests**

The Commonwealth is committed to upholding current public records statutes, including authorized exemptions. HR Directors must coordinate with their CFOs and Public Information Officers for all payroll information requests to ensure that this exemption is incorporated into their internal public records procedures.

With regard to statewide payroll inquiries and inquiries made to CTR for specific department payroll information or specific employees, CTR notifies CFOs when either a statewide or a department specific public records request is made to CTR. CTR will run a CIW query to identify all employees in the state payroll system that have this exemption indicator and redact the names, titles and departments of these employees from the public records produced, stating that certain individuals' names, titles and departments have been redacted in accordance with M.G.L. c. 66, s. 10. Salary information may be released but the name and title will not be identified with the salary amount.

Requests made directly to your department should be handled in accordance with your internal public records and payroll records policy which will require coordination between your CFO, HR Director and the Public Information Officer. CFOs, HR Directors and Public Records Officers must work together to ensure that whenever a payroll request or other information request is made related to any employee with the exemption indicator that the name, title, and department for these individuals is redacted from the records disclosed.

Public Information Officers who must support this exemption by redacting information when a payroll public records request is made will be able to query the Commonwealth information Warehouse (CIW) to identify the individuals in your department that have the exemption.

If an employee has been approved for this exemption and wants to be notified when any specific request regarding the employee is made related to payroll information, they should make this request to the HR Director who will coordinate with the Public Records Officer to ensure that the information is not disclosed

and to identify who is requesting information, if this is known. Please be advised that under the public records law, a department cannot require any public records requestor to identify him/herself or who is seeking the information. Public records requests may be made in person or in writing. HR Directors should coordinate with employees who have been approved for this exemption for the release of income verification or employment verification requests (e.g., mortgage applications, credit cards, school courses).

### **Information Sources**

Related Policy: Policy for Zero Tolerance for Domestic Violence

Legal Authority:

- [G. L. c. 4, § 7\(26\)](#), [G. L. c. 66, § 10\(d\)](#)
- [M.G.L. c. 7A](#) (Office of the Comptroller); [M.G.L. c. 29](#) (State Finance Law);
- Attachments – [Process Public Information Exemptions Job Aid](#)
- Forms: [Public Records Exemption Form](#)
- Contacts: [Comptroller Web portal](#)

MMARS HELPLINE: **617-973-2468**

**Chief Human Resources Officer at HRD (617) 878-9703**

### **Revisions:**

**February 6, 2012**--Non-substantive edits of HRD contacts and contact information and for consistency.