

Interim Guidelines for the Protection of Personal Identifying Data  
in Publicly Accessible Court Documents<sup>1</sup>

**(Approved by the Supreme Judicial Court, to take effect September 1, 2009)**

(a) Purpose and Scope. These guidelines are intended and should be construed to prevent the unnecessary inclusion of certain personal identifying data elements in publicly-accessible documents filed with or issued by the courts, in order to minimize the opportunity to use such documents for identity theft or other improper purposes. As used in these guidelines, personal identifying data elements are those listed in subparagraphs (b)(1)-(b)(2). The guidelines are interim in nature and carry no sanctions for violations. They are intended to focus the attention of litigants and courts on (1) minimizing the inclusion of such data, beginning on the effective date of these guidelines; and (2) considering the necessity, desirability, and feasibility of revising current practices, court rules, standing orders, and court-issued forms, so as to facilitate adoption of a binding rule governing this issue.<sup>2</sup> The guidelines apply to civil and criminal cases in all departments of the Trial Court, in the Appeals Court, and in the Supreme Judicial Court. They apply to documents filed or issued on or after their effective date, both in pending and new cases. They do not apply to documents that are not publicly accessible, pursuant to law, court rule, standing order, or impoundment or similar order issued in a particular proceeding.

(b) Redaction or Omission of Personal Identifying Data from Filings. Except as provided in these guidelines, a document filed with a court, including a proposed order or an exhibit offered in evidence,<sup>3</sup> should not include a complete version of any of the following personal identifying data elements. Instead, the filer<sup>4</sup> should redact information from the document, or omit information when drafting any document specifically for filing with the court, so that the document includes at most:

(1) in the case of a social security number, taxpayer identification number, credit card or other financial account number, driver's license number, state-issued identification card number, or passport number, only the last four digits; and

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<sup>1</sup> The footnotes in these guidelines, while not formally a part of the guidelines, were drafted by the Subcommittee on Personal Identifying Data of the Supreme Judicial Court's Standing Advisory Committee on the Rules of Civil and Appellate Procedure in order to facilitate understanding and compliance.

<sup>2</sup> The guidelines apply to paper documents, as well as to electronic documents to the extent that such documents may in the future be filed with or issued by the courts. The guidelines do not govern the separate question whether various court documents should be made publicly available on the Internet.

<sup>3</sup> Exhibits offered at evidentiary hearings, although not "filed" as that term is used in Mass. R. Civ. P. 5 or Mass. R. Crim. P. 32, are subject to these guidelines. Prior to trial or other evidentiary hearing, the parties should discuss how to handle exhibits in compliance with these guidelines, as well as any issues of waiver of the guidelines' protection pursuant to paragraph (d).

<sup>4</sup> This term is used to encompass any person or entity making a filing (including, e.g., persons applying for criminal complaints, police officers applying for search warrants, putative interveners, and *amici curiae*) regardless of their status as parties. The term "person" itself is insufficient because it ordinarily does not apply to governmental entities.

(2) in the case where a person's mother's maiden name is identified as such, only the first initial of the maiden name.

The filer shall<sup>5</sup> mark any redaction with a notation indicating that it was made by the filer on a specified date pursuant to these guidelines.<sup>6</sup> If any document is redacted under these guidelines, the filer shall retain an unredacted copy and shall furnish it to any party or to the court promptly upon request, but nothing herein requires furnishing of unredacted copies of documents redacted on other grounds. Where the filer, in drafting any document specifically for filing with the court, omits all but the last four digits from any of the numbers listed in subparagraph (b)(1) above, the filer should so indicate, by the use of three "x" characters or by the phrase "ending in."<sup>7</sup>

(c) Exemptions. Paragraph (b) does not apply to a data element if any of the following apply:

(1) Inclusion of the data element in the document is specifically required by law, court rule, standing order, court-issued form, or order issued in the proceeding.

(2) In a criminal or youthful offender case, the data element is the defendant's social security number, driver's license number, state-issued identification card number, or passport number, or the defendant's mother's maiden name identified as such.<sup>8</sup>

(3) The filer reasonably believes that including the complete data element in the document is necessary either to resolve any issue before the court or to establish the identity of any person before the court. A filer should first consider whether it is

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<sup>5</sup> The word "shall" is used in this and the next sentence, even though these are guidelines, because willingness to make a record of the redaction, and to maintain and make available an unredacted copy, are conditions of the voluntary act of filing a redacted copy.

<sup>6</sup> This provision creates a record that helps protect against claims of improper alteration of documents. Particularly in documents with multiple redactions, the required notation of each redaction need be no more than an asterisk or similar mark, together with a single statement, on or accompanying the document, explaining that redactions so marked were made by the filer on a specified date.

<sup>7</sup> In the case of documents drafted specifically for filing with the court (e.g., motions, memoranda, affidavits, as opposed to pre-existing exhibits), there is no need to require the filer to prepare a second version with complete personal identifiers; the filer could, after all, have omitted such information from the filing even absent these guidelines. Nor is there a need to require the filer to supply such a complete version to other parties (or the court) upon request; that is more a matter of discovery law and, under subparagraph (g)(3), nothing in these guidelines limits the court's power to order that such complete information be supplied.

<sup>8</sup> In virtually all criminal and youthful offender cases, publicly accessible documents, often filed early in the case, necessarily include numerous complete personal identifying data elements of the defendant. In such cases, there is little to be gained by partially redacting or omitting those particular data elements of the defendant in subsequent filings in the same case. (This exemption does not apply to the defendant's taxpayer identification number or credit card or other financial account number, because such data elements do not routinely appear in such documents.) Future technological developments and/or rule changes may allow for positive identification of a defendant without the need to include complete personal identifying data elements in publicly accessible documents, in which case this exemption may be narrowed or eliminated.

sufficient to furnish the complete data element to the parties, or to the person or entity to whom a requested court order would be directed, without filing it with the court.<sup>9</sup> A filer should be particularly cautious before using a belief of necessity as the basis for including any of the following complete data elements:

(A) Social security number;

(B) Credit card or other financial account number,<sup>10</sup> except when necessary to identify an account that is the subject of a forfeiture proceeding;

(C) Driver's license number, except in cases adjudicating an alleged motor vehicle infraction, or the validity of a motor vehicle insurance surcharge or of suspending, revoking, or conditioning a person's right to operate a motor vehicle;  
or

(D) Passport number.

(4) The document including the data element is a transcript of the court proceeding, filed directly by a court reporter or transcriber;<sup>11</sup> or is the official record of an administrative adjudicatory proceeding or another court proceeding, filed by the agency or court.<sup>12</sup> This exemption does not apply to a record appendix prepared by a party for purposes of an appeal; record appendices are governed by subparagraph (h)(2) of these guidelines.

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<sup>9</sup> For example, particularly in civil cases, a motion for an order to a third party to produce records, such as a person's hospital records under G.L. c. 233, § 79, or a person's criminal offender record information (CORI), need not include the person's unredacted personal identifying data. The motion and any resulting order may include redacted data, and the moving party may then, at the time the order is served on the entity required to respond to it, provide any unredacted data the entity requires in order to respond.

<sup>10</sup> Filers should be cautious about including bank or other asset account numbers in court filings in connection with court orders that serve to secure assets to satisfy a judgment. To the extent that complete account numbers are necessary, the filer (usually the plaintiff's attorney) may provide this information separately, along with any other unredacted personal identifying data (such as a social security number) necessary to identify an account holder, to those who may need it to carry out the order. One example involves trustee process. If a bank requires a complete account number to respond to a trustee summons, the plaintiff's attorney may supply that information, along with any other necessary identifying information, directly to the bank at the time the summons is served. Likewise, a bank responding to a trustee summons should not include the entire account number in the trustee's answer.

<sup>11</sup> Transcripts are exempted to avoid undue burden on the court reporter or transcriber.

<sup>12</sup> Such records are exempted because of the degree of burden on agencies and courts and because such records, often being lengthy, are less likely to be searched through for the purpose of obtaining information to be used for identity theft purposes. The term "adjudicatory proceedings" refer to proceedings that are judicially reviewed primarily or exclusively on the agency record, under G.L. c. 30A or other law such as G.L. c. 249, § 4. The qualifier "adjudicatory" is used because the reasons for exempting records of such proceedings are less likely to apply to documents concerning other, less formal administrative proceedings..

(5) The document including the data element is produced directly to or in the court by a non-party in response to a subpoena, summons, or other court order;<sup>13</sup> but any party that intends to offer such a document in evidence should, where feasible, make a copy thereof, redact the copy in accordance with these guidelines, and offer the redacted copy.

(d) Waiver. The filing of a document that contains one or more of the filer's own complete data elements does not by itself waive the applicability of these guidelines to the filing of such filer's complete data elements by any other filer. A filer may waive the applicability of these guidelines only by an express statement of waiver filed in writing or made in open court.

(e) Responsibility for Redaction or Omission of Data. The responsibility for redaction or omission of complete data elements from filings rests solely with the filer. The clerk should encourage compliance with these guidelines but need not review each filed document for compliance and should not reject for filing any non-compliant document.

(f) Applicability to Court Orders and Other Court-Issued Documents. In any order, memorandum of decision, or other document issued by the court that will be publicly accessible, the court should, through redaction, omission, or use of pseudonyms, avoid inclusion of a complete version of any data element covered by these guidelines, unless inclusion of the complete data element (1) is specifically required by law, court rule, standing order, or court-issued form; (2) is necessary to effectuate the purpose of the document being issued,<sup>14</sup> or (3) is for other good cause.

(g) Relation to Other Confidentiality Provisions. These guidelines are not intended to:

(1) limit a filer's ability to move, under court rule, standing order, or law, to impound or otherwise keep confidential<sup>15</sup> any document containing complete or partial personal identifying data elements;

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<sup>13</sup> This exemption is intended to cover documents produced by a non-party pursuant to Mass. R. Civ. P. 45(b), Mass. R. Crim. P. 17(a)(2), Superior Court Rule 13 and G.L. c. 233, § 79 (hospital records); and similar court rules or laws. It is intended to be consistent with the Dwyer protocol applicable to defendants' motions for Rule 17(a)(2) summonses. See Commonwealth v. Dwyer, 448 Mass. 122, 147-50 (2006). The exemption recognizes that requiring the non-party to redact, particularly where some or all of the records may never become available to the public, would be unduly burdensome.

<sup>14</sup> Many types of court documents are not drafted for the general public but for specialized parties that require specific identifying information, yet the file copies of most such documents are publicly accessible as a matter of law. Although the inclusion of personal identifying data should be minimized when drafting such documents, it must be recognized that often, unredacted data will be necessary to effectuate the purpose of the document.

<sup>15</sup> The phrase "otherwise keep confidential" is included because of the various confidentiality labels now in use. For example, the Uniform Rules of Impoundment Procedure do not, in terms, apply in criminal cases, although they are to be followed as closely as possible. See Commonwealth v. Silva, 448 Mass. 701, 704-05 (2007). See also, e.g., G.L. c. 265, § 24C (requiring that court records containing rape victims' names be "withheld from the public"); cf. G.L. c. 6, § 178M (on judicial review of Sex Offender Registry Board decisions, records to be kept "confidential and . . . impounded").

(2) relieve any filer of the obligation to comply with any court rule,<sup>16</sup> order, or law governing impounded or confidential documents; or

(3) limit a court's authority to order that an unredacted version of a filed redacted document, or a complete version of a data element omitted from a filed document, be provided to any party or non-party, filed with the court, or both.

(h) Appellate Court Filings: Additional Guidelines. In addition to the above guidelines, filers should pay particular attention to the following considerations in all appellate court filings, including those in the Appellate Divisions of the Superior, District, and Boston Municipal Courts.

(1) Briefs, Memoranda of Law, Motions, and Similar Filings. In complying with paragraphs (b) and (c) above, the filer should exercise particular caution before including, based on a belief of necessity under subparagraph (c)(3), any complete data element in an appellate brief, memorandum of law, motion, and any similar filing or attachment thereto. Appellate briefs in particular, unless impounded, may be subject to wide electronic dissemination. If a filer includes any complete data element in an unimpounded brief in the Supreme Judicial Court or the Appeals Court, the filer should simultaneously file one additional, unbound copy of the brief, with such data element redacted or complete data omitted according to these guidelines, clearly marked "Limited Personal Identifying Data" on the cover and without including any addendum or appendix. The additional copy may, alternatively, be filed in portable document format (PDF) on CD-ROM or by other means approved by the court.

(2) Record Appendices. A party<sup>17</sup> should make every effort to avoid unnecessarily designating for inclusion in the record appendix any document, particularly any portion of a transcript, that contains complete data elements covered by these guidelines. In addition:

(A) If a document to be included in the record appendix was redacted, or had complete versions of data elements omitted, when filed in or issued by the trial court, the same version of the document should be included in the record appendix.

(B) If a document to be included in the record appendix was not redacted, or contained complete versions of data elements, when filed in or issued by the trial court, even where complete data elements were included pursuant to the

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<sup>16</sup> An example is Mass. R. App. P. 16(m), governing "references to impounded material."

<sup>17</sup> This subparagraph refers to a "party" rather than a "filer," because non-parties to an appeal do not file record appendices, and because use of the term "party" is necessary in order to allocate responsibility for any redactions made pursuant to this subparagraph.

exemptions in subparagraphs (c)(2) or (c)(3),<sup>18</sup> the party designating the document for inclusion in the record appendix should redact it in accordance with paragraph (b) above, unless the party reasonably believes that including the complete data element in the record appendix is necessary to the resolution of any issue before the appellate court, including a party's identity. The party shall mark any such redaction with a notation in accordance with paragraph (b) above.

(C) If a document to be included in the record appendix was filed in or issued by the trial court prior to the effective date of these guidelines, it is not subject to these guidelines when included in the record appendix, except that the party should make every effort to avoid unnecessarily designating for the record appendix any document that includes complete data elements covered by these guidelines.<sup>19</sup>

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<sup>18</sup> The rationales underlying those exemptions ordinarily would not apply, and would not serve any useful purpose if applied, to documents presented to the appellate court. If the complete data element is nevertheless reasonably believed to be necessary to the resolution of an issue on appeal, this subparagraph approves its inclusion.

<sup>19</sup> This sentence is a transitional provision.