

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION

103 CMR 157

ACCESS TO AND
DISSEMINATION OF EVALUATIVE INFORMATION

TABLE OF CONTENTS

157.01	Purpose
157.02	Statutory Authorization
157.03	Cancellation
157.04	Applicability
157.05	Access to Regulations
157.06	Definitions
157.07	Access to Intelligence Information
157.08	Access to Evaluative Information by the Individual
157.09	Access to Evaluative Information by Legal Representatives of the Individual
157.10	Access to Evaluative Information by Third Parties
157.11	Access to Evaluative Information by Criminal Justice Agencies
157.12	Receipt of a Copy of Evaluative Information by the Individual
157.13	Appeal Process
157.14	Challenges to the Accuracy or Completeness of Evaluative Information
157.15	Time Limits
157.16	Responsible Staff
157.17	Annual Review Date
157.18	Severability Clause

157.01 Purpose

The purpose of 103 CMR 157-00 is to establish Department of Correction (Department) guidelines governing the content and use of evaluative information, and to govern, ~~limit, or prohibit~~ the inspection, receipt of copies, and challenges to challenge-of such information. 103 CMR 157 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law. an individual referred to therein.

157.02 Statutory Authorization

103 CMR 157.~~00~~ is issued pursuant to M.G.L. ~~c. Chapter~~ 6, ~~§§ s.~~167-178, 803 CMR 2.00 et seq., Criminal Offender Record Information (CORI), and 803 CMR 9.00, et seq., Victim Notification Registry (VNR). 103 CMR 157 is issued pursuant to, and in conjunction with, the Massachusetts Public Records Law, M.G.L. c. 66, § 10, and Massachusetts Fair Information Practices, M.G.L. c. 66A, §§ 1-3. ~~, in particular, pursuant to M.G.L. Chapter 6, s.171.~~

157.03 Cancellation

103 CMR 157 cancels all~~All~~ previous Department and institutional policy statements, bulletins, directives, orders, notices, departmental rules and regulations regarding access to and dissemination of evaluative information ~~are hereby cancelled to the extent they are inconsistent with~~103 CMR 157.00.

157.04 Applicability

103 CMR 157.~~00~~ shall apply to all inmate evaluative information held by the Department~~department~~ in inmate files, and on the Inmate Management System (IMS) database, except the separate medical, mental health and~~er~~ dental records.

157.05 Access to Regulations

~~Copies of~~ 103 CMR 157.~~00~~ shall be maintained within the Department's central policy file ~~of the department,~~ in each superintendent's central policy file, and in each inmate library and inmate policy manual.

~~Copies of 103 CMR 157.00 shall also be made available in the records section of correctional facilities and in the central office.~~

157.06 Definitions

~~Case Folder. At the institution, the institutional case file of the inmate. At the central office, the central office file on the inmate.~~

Commissioner -- The Commissioner of the Department of Correction.

~~Criminal History Systems Board (CHSB). The board responsible for regulating the collection, storage, dissemination and usage of criminal offender record information.~~

Criminal Offender Record Information (CORI) - Records and data in any communicable form ~~compiled~~decompiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. CORI shall be limited to factual statements about an individual's movement through any one or more of the formal stages of the criminal justice process. CORI ~~shall~~does not include intelligence information or evaluative information as those terms are defined in 103 CMR 157.06.

Criminal Record Review Board (CRRB) - A statutorily-created board within the Department of Criminal Justice Information Services (DCJIS) that reviews complaints and investigates incidents involving allegations of violations of the laws governing CORI.

Department -- The Department of Correction.

Department of Criminal Justice Information Services (DCJIS) - The Massachusetts agency statutorily designated to do the following: provide a public safety information system and network to support data collection, information sharing and interoperability for the Massachusetts criminal justice and law enforcement community; oversee the authorized provision of CORI to the non-criminal justice community; provide support to the CRRB; operate the Firearms Records Bureau; and provide and technically support the Victim Notification Registry for the victims of crime.

~~Evaluative Information~~ -- Records, data, or reports, concerning identifiable individuals charged with crime(s) and compiled by criminal justice agencies, which appraise mental condition, physical

condition, extent of social adjustment, rehabilitative progress ~~etc., and the like,~~ and which are primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correctional, and rehabilitative planning, probation or parole.

Inmate Management System (IMS) - The Department's automated information system that provides processing, storage and retrieval of inmate-related information needed by Department personnel and other authorized users within the criminal justice system.

~~Indigency. Upon request for waiver of fees or costs, an inmate may be declared indigent if:~~

~~(a) At the time of the request, the inmate has, in all accounts to which he or she has access, a total amount less than or equal to \$10.00 plus the cost or fees sought to be waived; and~~

~~(b) The inmate has had such an amount in said account(s) for period of 60 days or more; (e.g. request to waive \$5.00 on July 1, 2004; indigent if, at no time since May 1, 2004, total in account(s) has been more than \$15.00).~~

~~The superintendent may designate an inmate as indigent in such other circumstances than described herein as he or she deems appropriate.~~

Intelligence Information -- Records and data compiled by criminal justice agencies for the purpose of criminal investigation, including reports of informants, investigators or other persons, or any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by criminal justice agencies for the purpose of investigating a substantial threat of harm to an individual or to the order or security of a correctional institution ~~facility~~.

Screening Employee -- The central office employee(s) designated by the Commissioner or the institutional employee(s) designated by the Superintendentsuperintendent or Director ~~director~~ of

that facility to screen six-part folders for evaluative information.

Six-part Folder - The institutional case file of an inmate.

157.07 **Access To Intelligence Information**

Requests for access to intelligence information by the individual to whom the intelligence information pertains or to the individual's approved, third party representative, shall not be granted have access to intelligence information pertaining to the individual.

157.08 **Access to Evaluative Information by the Individual**

1. Individuals may request Request for access to their evaluative information by the individual to whom the evaluative information pertains may be submitted in person or by mail. Where practicable, a Massachusetts Department of Correction Application to Review Evaluative Information form Form shall be used, but failure to use this form by the requesting individual shall not, on its own, prevent serve as a bar to access. Current inmates shall direct requestssuch request to the screening employee at thetheir correctional institution where such inmate is incarcerated.facility in which they are presently serving their sentences. Former inmates and legal representatives of inmates (excluding legal representatives who are currently inmates) may submit such requestsrequest to the central office screening employee or the appropriate correctional institution.

2. The screening employee shall review the evaluative information contained in the six-part folder and the IMS database, asif applicable, and make a determination regarding review by the individual as follows:

- (a) Approval for full review of information requested;
- (b) Approval for partial review of information requested; or

(c) Disapproval for review of information requested.

3. Under no circumstances will the ~~The~~ following information ~~shall not be disclosed, even in the event that a request for evaluative information is approved:~~

(a) Documents prepared by an agency other than the ~~Department~~department, which contain evaluative information. ~~The~~ ~~In this case,~~ ~~the~~ screening employee shall notify the individual of the existence of such a document and the name of the agency producing the document; ~~so that the individual may directly contact the agency to request access to the document.~~

(b) Information, ~~which if disclosed~~ would pose a direct and articulable threat of harm to a Department employee, ~~or~~ any other person, or the security of a correctional institution; facility.

(c) Information, ~~which would if disclosed would~~ clearly impair a treatment relationship between a counselor and a client; ~~or~~

(d) Information provided to the ~~Department~~department under a clear and justifiable condition of confidentiality; ~~or~~

(e) Attorney documents ~~which would not be~~ subject to disclosure in a civil or criminal proceeding; ~~or~~

(f) Documents or working papers of the deliberative process of a deciding authority.

4. The screening employee~~authority~~ shall make every effort to disclose all evaluative information which is reasonably segregable from that withheld under 103~~under 103~~ CMR 157.08(3).

5. A ~~Department~~department employee who prepares or compiles a report containing evaluative information may indicate on such report ~~his/her~~their opinion that part or all of its contents should not be disclosed to the individual. The screening employee shall take any such notation into account ~~but shall make a decision independent determination of such notations~~when determining whether or not to disclose the information.
6. Within 15 business days of receipt of the request for information, the screening employee shall record ~~his/her~~their determination including the basis for denial of access, if applicable, on the Massachusetts Department of Correction Application to Review Evaluative Information form or written request. This form shall be retained in the individual's ~~six-part~~case folder.
7. Where full or partial review of evaluative information by the petitioning individual has been approved by the screening employee, ~~access~~the review of all information not withheld should occur as soon as is ~~practicable~~practice following the notification of approval. The individual shall be permitted to receive one photocopy of any evaluative information which was approved for release by the screening employee.
8. To ensure efficiency of operations, the Superintendent~~8. In order to allow access by all inmates to their evaluative information the central office supervisor of records and the superintendent~~ may establish guidelines limiting the number of requests an inmate may make for access to ~~his/her~~their evaluative information. Such guidelines shall be subject to approval by the Assistant Deputy Commissioner~~director~~ of Reentry~~research~~ or designee.
9. Any inmate who is denied access, to all or part of his/her evaluative information, may appeal, in writing, to the DCJIS within 30 days of such denial.

157.09 Access to Evaluative Information by Legal Representatives of the Individual

~~(1.)~~ Legal representatives of an individual may have access to the individual's evaluative information, subject to the restrictions set forth in ~~ef~~ 103 CMR 157.08(3), provided the individual has given informed written authorization for such access and the legal representative so authorized satisfactorily provides identification to the screening employee. Such legal representatives shall include:

- (a) The attorney of the individual;
- (b) An authorized agent of the individual's attorney who is also an attorney; and,
- (c) A law student or paralegal~~legal paraprofessional who is~~ working under the authorization and supervision of the individual's attorney, provided, that the said law student or paralegal submits written documentation from the attorney indicating that the law student or paralegal~~legal paraprofessional~~ is working under the authorization and supervision of the attorney. Law students or paralegals~~legal paraprofessionals~~ who are presently inmates or parolees, or who have been inmates or parolees within the last five years, shall not be permitted access to evaluative information unless the Superintendent~~superintendent~~ or the Assistant Deputy Commissioner~~director~~ of Reentry~~research~~ approves such access.

2. A legal representative who wishes to review evaluative information pertaining to a client shall complete the application to review evaluative information. Relevant~~by legal representative.~~ The relevant sections of the application~~this form~~ should ~~also~~ be completed by the individual to whom the evaluative information pertains, the Department screening employee, and where required, the attorney providing

~~authorization~~ supervision for a law student or ~~paralegal.legal~~ ~~paraprofessional.~~ The original copy of the application shall be retained in the individual's ~~six-part~~ ~~ease~~ folder.

157.10 **Access to Evaluative Information by Third Parties**

1. Access to Evaluative Information by Reintegration, Rehabilitation, or Health Agencies.

Agencies or individuals ~~responsible for~~ ~~furtherring~~ the reintegration, rehabilitation, or health of an individual, may have access to evaluative information pertaining to the individual where access to such evaluative information is necessary to facilitate such reintegration, rehabilitation, or health. Informed consent for such access by the individual is ~~required~~ ~~necessary~~ unless the individual is unable to give ~~such~~ ~~informed~~ consent.

2. Access to Evaluative Information by Members of an Individual's Family.

Members of an individual's family may have access to evaluative information pertaining to the individual, subject to the provision set forth in ~~of~~ 103 CMR 157.08(3), provided that the individual has given informed consent for such access. In an emergency, where it is appropriate to notify next of kin, and the individual is unable to give his or her informed consent due to a medical or psychiatric disability, such consent shall not be required.

3. Access to Evaluative Information by Other Agents for the Sole Purpose of Dissemination.

Any other person may have access to evaluative information pertaining to the individual, subject to the provision set forth in ~~of~~ 103 CMR 157.08(3), provided that the individual has given his/her informed consent for such access. Such access shall be for the sole purpose of disseminating the evaluative information to the individual where inspection and copying by the

individual would cause undue burden. Persons who are presently parolees or inmates, or who have been parolees or inmates within the last five years, shall not be permitted access to evaluative information unless the ~~Superintendents~~superintendent, or the ~~Assistant Deputy Commissioner~~director of ~~Reentry~~research approves such access.

4. ~~4.~~ Access to Evaluative Information by Victims of Crime.

~~Pursuant~~Evaluative information may be disclosed to M.G.L. c. 6, § 178A, a victim of crime, a witness, or a family member of a homicide victim, all as defined in M.G.L. c. 258B, may obtain, upon registration approval, all available CORI of the person accused of or convicted of said crime. All information received pursuant to 803 CMR 9.05~~who~~ is confidential and shall not be shared~~certified~~ by the victim, witness, or family member with any other individual or entity, except as~~Criminal History Systems Board,~~ provided by law. Criminal justice agencies may also disclose to individuals registered for 178A CORI access such additional that the information, including, but not limited to, evaluative information as such agencies determine, in their discretion, is reasonably necessary for the security and wellbeing of~~well-being of~~ such person, that the request for such information relates to the offense in which such persons.~~person was involved and that such disclosure is consistent with 103 CMR 157.08(3).~~

157.11 Access to Evaluative Information by Criminal Justice Agencies

Access to evaluative information by criminal justice agencies shall be subject to the ~~DCJIS~~Criminal History Systems Board regulations regarding access to and dissemination of CORI, ~~103 CMR 157.00 are contained in~~ 803 CMR 2.00 et seq., Criminal Offender Rrecord Information (CORI). Access to evaluative information shall be limited to that which is necessary for the discharge of the statutory responsibilities of the criminal justice agency.

157.12 Receipt of a Copy of Evaluative Information by the Individual

When the screening employee has determined that the individual may review the evaluative information, that individual shall, upon request, be permitted to receive one photocopy or the IMS screen print of such evaluative information. The ~~Department~~ department may impose a charge set by the Massachusetts Executive Office of Administration and Finance, ~~and 20 cents a page for the fulfillment of the request~~ copying services for evaluative information. each IMS screen printout and 50 cents per computer printout.

- ~~1. No charge shall be made if the total fee for copying services would not exceed \$2.00; and,~~
- ~~2. No charge shall be made for indigent inmates.~~

The same procedures for photocopying or the, IMS screen printouts and costs apply where a third party has requested and received access to the evaluative information, pursuant to 103 CMR 157.07, 157.08, 157.09, and 157.10.

157.13 Appeal Process

1. Institution: If an individual is ~~dissatisfied~~ unsatisfied with the ~~decision of the screening employee's decision~~ employee regarding the request to review evaluative information pertaining to the individual ~~which is contained at the institution,~~ the individual may, appeal, ~~that decision~~ in writing, to the Superintendent. ~~superintendent.~~ The ~~Superintendents~~ superintendent or a designee shall respond, in writing, to the individual within 15 business ~~15 business~~ days of receipt of appeal.
2. Central Office: If an individual is ~~dissatisfied~~ unsatisfied with the ~~decision of the screening employee's decision~~ employee regarding the request to review evaluative information pertaining to the individual contained at the central office, the individual may, appeal, ~~that~~

~~decision~~ in writing, to the Assistant Deputy Commissioner~~director~~ of Reentry.~~research.~~ The Assistant Deputy Commissioner~~director~~ of Reentry~~research~~ shall respond, in writing, to the individual within 15 business~~15business~~ days of receipt of appeal.

157.14 Challenges to the Accuracy or Completeness of Evaluative Information

1.—An individual who believes that the evaluative ~~information~~ pertaining to him or her contained in an institutional file or in the IMS database is inaccurate, incomplete, or improperly maintained or disseminated may, in writing, request the Superintendentsuperintendent of the institution to ~~purge, modify or supplement the evaluative information or to take other appropriate~~ remedial action. The Superintendentsuperintendent or a designee shall respond, in writing, to the individual within 15 business~~15business~~ days of receipt of request. If it appears to the Superintendentsuperintendent or the designee that the individual's challenge is valid, the Superintendentsuperintendent or designee may take corrective action with regard to the evaluative information contained in the file. If the individual is dissatisfied~~unsatisfied~~ with the response of the Superintendentsuperintendent or designee, or if the superintendent or designee has not responded within 15 business~~15business~~ days of receipt of request, the individual may, in writing, request review by the Commissioner. The Commissioner or his/her designee shall respond, in writing, to the individual within 15 business days. ~~Any individual aggrieved by the decision of the Department may appeal the denial in writing within 30 days thereafter to the Criminal History Systems Board. Any challenge by the individual regarding the accuracy or completeness of the evaluative information shall become a permanent part of receipt of request. the individual's file.~~

~~2. Evaluative Information in Central Office Files. An individual who believes that evaluative information pertaining to the individual contained in central office files is inaccurate, incomplete, or improperly maintained or disseminated may, in writing, request the director of research in the central office to purge, modify or supplement the evaluative information or to take other appropriate remedial action. The director of research shall respond, in writing, to the individual within 15 business days. The director of research may take corrective action with regard to the evaluative information. If the individual is unsatisfied with the response of the director of research, or if the director has not responded within 15 business days the individual may, in writing, request review by the Commissioner. The Commissioner or his designee shall respond, in writing, to the individual within 15 business days. Any individual aggrieved by the decision of the Department may appeal the denial in writing within 30 days thereafter to the Criminal History Systems Board. Any challenge by the individual regarding the accuracy or completeness of the evaluative information shall become a permanent part of the individual's file.~~

157.15 Time Limits

All procedural time limits set forth in 103 CMR 157.~~00~~ are directory and may be modified by the Superintendent, the superintendent, Commissioner, or their designee(s).

157.16 Responsible Staff

1. The Assistant Deputy Commissioner~~director~~ of Reentry~~research~~ or designee shall be responsible for implementing and monitoring 103 CMR 157.~~00~~ ~~throughout the department.~~
2. Each Superintendentsuperintendent shall be responsible for the implementation of 103 CMR 157.~~00~~ and for the development of any ~~and all necessary and appropriate~~ institution policies

and procedures as necessary for the efficient administration of the regulation.

157.17 Annual Review Date

103 CMR 157.~~00~~ shall be reviewed at least annually ~~from the effective date~~ by the Commissioner or his designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File~~central policy file~~ indicating ~~that the review has been completed.~~ Recommendations for revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

157.18 Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 157.~~00~~ is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, clause or phrase of 103 CMR 157.~~00~~.

REGULATORY AUTHORITY

103 CMR 157; M.G.L. c. 6, §§ 167-178A; 803 CMR 2.00 et seq., Criminal Offender Record Information (CORI) and 803 CMR 9.00 et seq., Victim Notification Registry (VNR).