

CONSIDERATION OF BUSINESS RECORDS

There are records which were admitted in this case which will go to the jury room with you. You may consider these records only if these four things have been proved to you about them:

***First:* That the entry, writing, or record was made in good faith;**

***Second:* That it was made in the regular course of business;**

***Third:* That it was made before the beginning of this criminal proceeding; and**

***Fourth:* That it was the regular course of business to make such memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter.**

If these four things have not been proved, then you may not consider the content of these records in any way.

NOTES:

1. **Statutory requirement.** In a criminal proceeding where the judge admits a business record under G.L. c. 233, § 78, the questions of fact serving as a basis of admissibility must be submitted to the jury. See G.L. c. 233, § 78; *Commonwealth v. Zeininger*, 459 Mass. 775, 782 n.12, 947 N.E.2d 1060, 1066 n.12 (2011); *Commonwealth v. Reyes*, 19 Mass. App. Ct. 1017, 1019, 476 N.E.2d 978, 980 (1985).

2. **Requiring presence of a witness.** The trial judge may, as a condition to admissibility of business records, require the party offering the business records into evidence to call a witness who has personal knowledge of the facts stated in the record. See G.L. c. 233, § 78; *Burns v. Combined Ins. Co. of Am.*, 6 Mass. App. Ct. 86, 92, 373 N.E.2d 1189, 1193 (1978). Such a witness may be necessary to establish the foundation required to find that a document constitutes a business record. See *Commonwealth v. Gray*, 80 Mass. App. Ct. 98, 101, 951 N.E.2d 931, 934 (2011).

3. See Massachusetts Guide to Evidence § 803(6)(A) and notes following.