

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 8.00: DATABASES AND DISSEMINATION OF INFORMATION

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8.01: Authority

The Massachusetts Peace Officer Standards and Training Commission promulgates 555 CMR 8.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2): *Applicability*.

8.02: Scope

- (1) 555 CMR 8.00 applies to:
 - (a) Databases that the Commission must maintain pursuant to M.G.L. c. 6E, §§ 4(h), 4(j), 8(e), and 13(a);
 - (b) Other databases and electronic recordkeeping systems maintained by the Commission; and
 - (c) Commission responses to requests for records served upon it pursuant to M.G.L. c. 66, § 10.
- (2) 555 CMR 8.00 does not apply to any of the following:
 - (a) A response by the Commission to compulsory legal process, except as provided in 555 CMR 8.10;
 - (b) A response by the Commission to a court order relative to the disclosure of information;
 - (c) An inquiry or request concerning personal data, made on behalf of the individual to whom the personal data refers, under M.G.L. c. 66A, §§ 2(g) or 2(i); or
 - (d) The Commission's treatment of evidence that it knows to be relevant to a pending criminal case or exculpatory as to any criminal case.
- (3) With respect to matters to which 555 CMR 8.00 applies, it is intended to supersede 801 CMR 3.00: *Privacy and Confidentiality*.
- (4) Nothing in 555 CMR 8.00 is intended to:
 - (a) Foreclose the Commission's invocation of any provision, privilege, or doctrine, regardless of whether it is cited in 555 CMR 8.00;
 - (b) Establish a standard of care or create any independent private right, remedy, or cause of action on the part of any person or entity on account of any action the Commission takes or fails to take; or
 - (c) Otherwise waive any power, right, privilege, protection, or immunity that may be available to the Commission.
- (5) Neither 555 CMR 8.00, nor the Commission's provision of any information through a public database or in response to a records request, is intended to:
 - (a) Create an attorney-client relationship, a principal-agent relationship, or a confidential relationship with any person or entity;
 - (b) Make the Commission a part of the prosecution team, the defense team, or the litigation team of any other party in relation to any criminal or civil action or controversy;
 - (c) Impose upon the Commission any duty or obligation of any other entity or person; or
 - (d) Otherwise surrender the Commission's independence.

8.03: Definitions

(1) 555 CMR 8.00 incorporates all definitions set forth in 555 CMR 2.02: *Definitions*, except those definitions of terms that are defined in 555 CMR 8.03(2).

(2) For the purposes of 555 CMR 8.00, the following terms have the following meanings, unless the context requires otherwise:

Agency. An "agency" as defined in M.G.L. c. 30A, § 1.

Certification. Certification or recertification of a law enforcement officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, regardless of whether it is conditioned, limited, restricted, or suspended.

Commission. The Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, § 2 as an agency, including its Commissioners and its staff.

Complaint. A complaint that must be reported to the Commission pursuant to 555 CMR 1.01(1): *Transmittal of Complaint by Agency to Commission*.

Compulsory Legal Process. A demand that is issued by or through a federal or state court or party to litigation, including any demand made by summons, subpoena, discovery request, or judicial order.

Deadly Force. "Deadly force" as that term is defined in M.G.L. c. 6E, § 1.

Decertification. A revocation of certification made by the Commission pursuant to M.G.L. c. 6E, § 10, an action distinct from a denial, a nonrenewal, or an expiration of certification.

Division of Police Certification. The Division of Police Certification of the Commission established pursuant to M.G.L. c. 6E, § 4(a)(1).

Division of Police Standards. The Division of Police Standards of the Commission established pursuant to M.G.L. c. 6E, § 8(a).

Executive Director. The Executive Director of the Commission appointed pursuant to M.G.L. c. 6E, § 2(g) or that person's designee for relevant purposes.

Law Enforcement Agency. A "law enforcement agency" as that term is defined in M.G.L. c. 6E, § 1.

MPTC. The Municipal Police Training Committee established within the Executive Office of Public Safety and Security pursuant to M.G.L. c. 6, § 116.

Officer. A "law enforcement officer" as that term is defined in M.G.L. c. 6E, § 1.

Personal Data. "Personal data" as that term is defined in M.G.L. c. 66A, § 1.

RAO. The Commission Records Access Officer designated pursuant to M.G.L. c. 66 and 950 CMR 32.00: *Public Records Access*, or that person's designee for relevant purposes.

Record, Information, and Data. Any form of record, document, written material, or data, regardless of whether it constitutes a "public record" as that term is defined in M.G.L. c. 4, § 7, cl. 26 or "personal data" as that term is defined in M.G.L. c. 66A.

Records Request. A request for Commission records made pursuant to, and in conformance with, M.G.L. c. 66, § 10.

Untruthful. "Untruthful" as that term is defined in M.G.L. c. 6E, § 1.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

8.04: Submission of Information by Law Enforcement Agencies

When a law enforcement agency supplies information concerning an officer to the Commission, the law enforcement agency:

- (a) Must notify the officer that it has done so in accordance with any other provision of 555 CMR that requires notification; or
- (b) In the absence of any such provision, must notify the officer that it has done so within ten calendar days, unless such notification would compromise an ongoing investigation or the security of any person or entity, or would be precluded by federal or Massachusetts law.

8.05: Division Databases

(1) The Division of Police Certification, in consultation with the Division of Police Standards, shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a database containing records for each certified law enforcement officer including, but not limited to:

- (a) The date of initial certification;
- (b) The date of any recertification;
- (c) The records of completion of all training and all in-service trainings, including the dates and locations of said trainings, as provided by the MPTC and the Department of State Police;
- (d) The date of any written reprimand and the reason for said reprimand;
- (e) The date of any suspension and the reason for said suspension;
- (f) The date of any arrest and the charge or charges leading to said arrest;
- (g) The date of, and reason for, any internal affairs complaint;
- (h) The outcome of an internal affairs investigation based on an internal affairs complaint;
- (i) The date of any criminal conviction and crime for said conviction;
- (j) The date of any separation from employment with a law enforcement agency and the nature of the separation including, but not limited to, suspension, resignation, retirement or termination;
- (k) The reason for any separation from employment including, but not limited to, whether the separation was based on misconduct or whether the separation occurred while the appointing law enforcement agency was conducting an investigation of the certified individual for a violation of an appointing law enforcement agency's rules, policies, procedures or for other misconduct or improper action;
- (l) The date of decertification, if any, and the reason for said decertification;
- (m) Any other information as may be required by the Commission; and
- (n) Any other information expressly required by M.G.L. 6E, § 4(h).

(2) The Division of Police Standards shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a database containing information related to the following for each officer serving on or after July 1, 2021:

- (a) The officer's receipt of complaints including, but not limited to:
 - 1. The officer's appointing law enforcement agency;
 - 2. The date of the alleged incident and the date of the complaint;
 - 3. A description of circumstances of the conduct that is the subject of the complaint; and
 - 4. Whether the complaint alleges that the officer's conduct:
 - a. Was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level;
 - b. Was unprofessional;
 - c. Involved excessive, prohibited or deadly force; or
 - d. Resulted in serious bodily injury or death;
- (b) Allegations that the officer was untruthful;
- (c) The officer's failure to follow Commission training requirements;
- (d) The officer's decertification by the Commission;
- (e) Discipline of the officer imposed by a law-enforcement agency;
- (f) The officer's termination for cause;
- (g) Any other information the Commission deems necessary or relevant; and
- (h) Any other information expressly required by M.G.L. 6E, § 8(e).

(3) The Commission may combine the databases prescribed by 555 CMR 8.05(1) and (2) within a single database.

8.06: Public Database

(1) The Commission shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a public database of information concerning individuals who, at any point since July 1, 2021, have served as an officer or have been certified.

(2) The public database must be searchable and accessible to the public through the Commission's official website.

(3) Except as provided in 555 CMR 8.06(4), the public database shall make the following available to the general public, to the extent that the information is possessed by the Commission:

(a) These forms of information for each officer identified in 555 CMR 8.06(1):

1. The officer's first name and surname;
2. The officer's current certification status in Massachusetts, provided that, if the officer is challenging, or has the opportunity to challenge, a certification decision before the Commission or any of its personnel in accordance with a Commission regulation or policy, the officer's status shall be listed as under review or described in a comparable manner;
3. The dates on which the officer, in Massachusetts, was first certified, was most recently certified, and ceased being certified;
4. All of the officer's employing law enforcement agencies in Massachusetts and elsewhere, and the dates of the officer's employment with such law enforcement agencies;
5. Commendations received by the officer in connection with the officer's service in law enforcement;
6. The date of, and reason for, any decertification by the Commission or by a comparable body in any other jurisdiction;
7. The beginning date and end date of, and the reason for, any suspension of certification by the Commission;
8. As to any retraining order issued by the Commission, the date of the order, the reason for the order, the type of retraining ordered, and any date of completion of the retraining ordered;
9. A copy of each final opinion, decision, order, set of findings, and vote issued by the Commission pursuant to M.G.L. c. 6E, § 10 in connection with any proceedings concerning the officer, accessible in a commonly available electronic format; and
10. A summary of the officer's disciplinary record, which may incorporate information provided by law enforcement agencies that have employed the officer, and which shall list:
 - a. Complaints against the officer;
 - b. The final disposition of each listed complaint;
 - c. The nature of any discipline imposed as a result of each listed complaint;
 - d. Whether each complaint was submitted anonymously; and
 - e. Whether each complaint was submitted under the pains and penalties of perjury.
11. For each decision and action referenced in the database that is being challenged through a proceeding before the Commission, the Civil Service Commission, an arbitrator, or a court, an accompanying notation of that fact; and

(b) Prominently displayed advisories concerning the possibility that decisions and actions concerning officers have been or will be challenged and the benefit of independently seeking the most current information.

(c) To the extent reasonably feasible, ways for public users to obtain information regarding the following, aggregated by rank, by department, or statewide:

1. Decisions by the Commission and comparable bodies in other jurisdictions to decertify officers;
2. Decisions by the Commission to suspend the certification of officers;
3. Decisions by the Commission to order the retraining of officers;
4. Officers who have served;
5. The number of complaints that were resolved adversely to officers; and
6. The number of complaints that were not resolved adversely to officers.

8.06: continued

(4) Except as provided in 555 CMR 8.06(5), the public database shall not make available to members of the general public:

(a) The following forms of information:

1. Records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry that are confidential under M.G.L. c. 6E, § 8(c)(2), or 555 CMR 1.03: *Confidentiality of Preliminary Inquiries* or 1.07(2);
2. Other information related to disciplinary proceedings that is confidential under 555 CMR 1.01(2)(d), 1.09(6)(c): *Public Access*, or 1.10(4)(a): *Public Access*;
3. Identifying or contact information that is generally non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
4. Criminal offender record information that cannot be communicated under M.G.L. c. 6, §§ 168 or 178, 803 CMR 2.00: *Definitions*, or 803 CMR 7.00: *Criminal Justice Information System (CJIS)*; and criminal history record information that cannot be disseminated under 803 CMR 7.00;
5. Sealed or expunged records that are non-public and confidential or are unavailable for inspection under M.G.L. c. 276, §§ 100L, 100O, or 100Q;
6. Juvenile delinquency records that must be withheld under M.G.L. c. 119, § 60A, or juvenile criminal records that cannot be communicated under M.G.L. c. 6, §§ 168 and 178;
7. Police-log entries pertaining to arrests of juveniles that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
8. Police-log entries pertaining to handicapped individuals that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
9. Police-log entries pertaining to alleged domestic violence or sex offenses that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
10. These records, to the extent that they are not public reports and generally must be maintained by police departments in a manner that shall assure their confidentiality under M.G.L. c. 41, § 97D:
 - a. Reports of rape and sexual assault or attempts to commit such offenses;
 - b. Reports of abuse perpetrated by family or household members, as defined in M.G.L. c. 209A, § 1; and
 - c. Communications between police officers and victims of such offenses or abuse;
11. Information in court and police records that identifies alleged victims of sex offenses or trafficking and is non-public, must be withheld, and cannot be published, disseminated, or disclosed under M.G.L. c. 265, § 24C;
12. Identifying, contact, employment, or educational information of victims of crimes or domestic violence or members of their families that is non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
13. Contact, employment, or educational information of victims, members of their families, or witnesses that is confidential and non-disclosable under M.G.L. c. 258B, §§ 3(h) and 3(w);
14. Identifying, contact, employment, or educational information of family-planning personnel or members of their families that is non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
15. Personal data that is non-accessible under M.G.L. c. 66A;
16. Forms of "personal information" referenced in M.G.L. c. 93H, § 1, other than the names of individuals;
17. Data that the Commission is precluded from disclosing pursuant to a court order;
18. Information the disclosure of which would violate a person's right against unreasonable, substantial, or serious interference with privacy under M.G.L. c. 214, § 1B; and
19. Any other information that is non-disclosable under federal or Massachusetts law; and

(b) The following additional forms of information:

1. These forms, the revelation of which could potentially impact officer health or safety, including by facilitating attempts to coerce officers or exploit any individual vulnerabilities:

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- a. Information relating to a member of an officer's family, except where such family member is an officer and any relation between the two officers is not revealed;
 - b. Information concerning an officer's personal finances that is not otherwise publicly available;
 - c. Information that could readily be used to facilitate identity theft or breaches of data security including, but not limited to, an officer's date of birth, passwords, and entry codes;
 - d. Information concerning an officer's medical or psychological condition;
 - e. Any assessment of whether an officer possesses good moral character or fitness for employment in law enforcement under M.G.L. c. 6E, § 4(f)(1)(ix) that was made:
 - i. By a person or entity other than the Commission or its personnel; and
 - ii. Pursuant to 555 CMR 7.05: *Determination of Good Character and Fitness for Employment* or 7.06(9): *Good Character and Fitness for Employment* or otherwise in response to a request by the Commission in connection with a process of determining whether to initially certify or recertify an officer;
 - f. Information concerning an officer's conduct as a juvenile;
 - g. Information concerning any firearm, or firearms license or permit, that an officer currently possesses in a personal capacity;
 - h. Law enforcement information, including information concerning the following subjects, if disclosure could compromise law enforcement or security measures:
 - i. Undercover operations;
 - ii. Confidential informants;
 - iii. Clandestine surveillance;
 - iv. Secretive investigative techniques;
 - v. Passwords and codes;
 - vi. The details of security being provided to a person or place; or
 - vii. Subjects of comparable sensitivity.
 - i. Information concerning any complaint or disciplinary matter that has not been resolved adversely to the officer, unless the matter was resolved in a manner that the Commission determines to have been unwarranted;
 - j. Information concerning a decision or action that has been reversed or vacated; and
 - k. Any other information that could readily be used in an attempt to coerce action or inaction, or exploit individual vulnerabilities, of an officer.
2. Law enforcement agency records that are within the scope of those being audited by the Commission pursuant to M.G.L. c. 6E, §§ 3(a)(9), 3(a)(21), and 8(d);
 3. Records associated with Commission meetings that may be withheld under M.G.L. c. 30A, § 22;
 4. Information that an individual has the ability to have corrected, amended, or removed pursuant to M.G.L. c. 66A, § 2(j) or 555 CMR 8.08;
 5. Information that shall not be disclosed pursuant to 555 CMR 8.08(10);
 6. Information that is protected by a privilege against disclosure recognized by law and is held by the Commission;
 7. Information that is protected by a privilege against disclosure recognized by law and is held by a person or entity other than the Commission;
 8. Data that is non-disclosable under any formal agreement or memorandum of understanding between the Commission and any other federal, state, local, or tribal governmental entity including, but not limited to, any Commonwealth of Massachusetts Data Sharing Memorandum of Understanding, any Data Use License Agreement between the Commission and another governmental entity, and any Massachusetts Criminal Justice Information System (CJIS) User Agreement;
 9. Information that a court has expunged, placed under seal, impounded, or relieved the Commission of having to disclose;
 10. Information the confidentiality of which is the subject of dispute in litigation or an administrative proceeding;
 11. Any document, record, or petition generated by the Witness Protection Board or by a prosecuting officer and related to witness protection services that is non-public and non-disclosable under 501 CMR 10.14: *All Other Disclosures Related to Witness Protection*;

8.06: continued

12. Information concerning a complaint or disciplinary matter that the Commission, by vote of the Commissioners, has decided not to make available to members of the general public;
 13. Information concerning any individual who is no longer serving as an officer and who last received a certification more than three years earlier, but who has not been decertified; and
 14. Information that otherwise does not constitute a public record under M.G.L. c. 4, § 7, cl. 26.
- (5) The public database may be designed to allow particular individuals to access certain forms of information that are listed in 555 CMR 8.06(4) to the extent that the Commission is not precluded by law from making such information available to those individuals.
- (6) The Commission may make other determinations concerning the content, the accessibility of information, and the format of the public database as follows:
- (a) Any such determination shall be made in accordance with guidelines established by a vote of the Commissioners following an opportunity for public input, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director;
 - (b) Such a determination may provide for forms of information that are not specifically referenced in 555 CMR 8.06(3) or (4) to be made available, or to be made unavailable, to the general public or to particular individuals;
 - (c) Any such determination must be consistent with 555 CMR 8.00 and other relevant provisions of law; and
 - (d) Any such determination must be made with due consideration for the health and safety of officers.

8.07: Maintenance and Security of Databases and Electronic Recordkeeping Systems Generally

- (1) When designing or acquiring an electronic record keeping system or database, the Commission's RAO and its Chief Technology Officer shall consult with each other, and with the Commission's Executive Director, its Chief Financial and Administrative Officer, or the Massachusetts Executive Office of Technology Services and Security to ensure, to the extent feasible, that the system or database is capable of providing data in a commonly available electronic, machine readable format.
- (2) Any database designs or acquisitions shall allow for, to the extent feasible, information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access.
- (3) The Commission shall not enter into any contract for the storage of electronic records that:
 - (a) Prevents or unduly restricts the RAO from providing public records in accordance with M.G.L. c. 66;
 - (b) Relieves the Commission of its obligations under M.G.L. c. 66A or any governing regulations promulgated thereunder; or
 - (c) Omits provisions that are necessary to ensure compliance with M.G.L. c. 66A or any governing regulations promulgated thereunder.
- (4) The Commission shall implement safeguards to ensure the security and integrity of its databases, and to the extent otherwise provided, the confidentiality of such databases.
- (5) The Commission shall take reasonable steps to prevent misuse of any Commission database by any of the Commission's Commissioners, staff, vendors, contractors, or agents, which steps shall include, but need not be limited to:
 - (a) Prohibiting use and access to the database for purposes other than Commission-related business; and
 - (b) Prohibiting improper disclosure of confidential information.

8.08: Objections Concerning Data

- (1) An individual who is identified in data maintained by the Commission, or the individual's representative, may raise objections related to the accuracy, completeness, pertinence, timeliness, relevance, or dissemination of the data, or the denial of access to such data by filing a written petition for relief with the Executive Director, in a form prescribed by the Commission, at any time.
- (2) Upon receiving a petition filed pursuant to 555 CMR 8.08(1), the Executive Director shall promptly evaluate the petition, including by obtaining relevant information.
- (3) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is warranted, the Executive Director shall promptly:
 - (a) Take appropriate steps to grant such relief, or comparable relief;
 - (b) Make information concerning the action taken available to the Commissioners;
 - (c) Notify the petitioner of the status of the petition.
- (4) After the Executive Director takes the steps prescribed by 555 CMR 8.08(3):
 - (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
 - (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.
- (5) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is unwarranted, the Executive Director shall:
 - (a) Within a reasonable time, notify the petitioner in writing that such determination was made and that the petitioner shall have the opportunity to submit a statement reflecting the petitioner's position regarding the data;
 - (b) At or around the same time, make information concerning the determination available to the Commissioners; and
 - (c) Cause any such statement to be included with the data and with any subsequent disclosure or dissemination of the data.
- (6) After the Executive Director takes the steps prescribed by 555 CMR 8.08(5):
 - (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
 - (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.
- (7) Within 30 days of receiving a notification pursuant to 555 CMR 8.08(3)(c), (4)(b), 5(a), or 6(b), a petitioner may file a written request for further review with the Executive Director.
- (8) The Executive Director shall provide any request for further review made pursuant to 555 CMR 8.08(7) to the Chair promptly upon receiving it.
- (9) The Chair may take any action allowed by law with respect to a request for further review made pursuant to 555 CMR 8.08(7).
- (10) If the Commission has a good-faith, reasonable belief that an employee possesses a right to have information that is contained in a personnel record maintained by an employer corrected or expunged by an employer pursuant to M.G.L. c. 149, § 52C, the Commission shall not disclose such information without first giving the employee the opportunity to exercise the right, unless the law requires otherwise.

8.09: Privileged Information

- (1) Where information is protected by a privilege against disclosure recognized by law:
 - (a) If the Commission is the holder of the privilege, the privilege may be waived only through a vote of the Commissioners; and

8.09: continued

(b) If a person or entity other than the Commission is the holder of the privilege and the Commission is aware of the protection provided by the privilege, the Commission shall not disclose the information without first taking the following steps, unless the law requires otherwise:

1. Notifying the holder regarding its request; and
2. Making reasonable efforts to give the holder the opportunity to protect the information.

8.10: Compulsory Legal Process

(1) Except as provided in 555 CMR 8.10(2) or (3), when any person or entity seeks personal data maintained by the Commission through compulsory legal process, the Commission:

- (a) Shall notify the individual to whom the personal data refers in reasonable time that the individual may seek to have the process quashed; and
- (b) If appearing or filing any paper in court related to the process, shall notify the court of the requirement of M.G.L. c. 66A, § 2(k).

(2) The Commission need not provide the notification described in 555 CMR 8.10(1) if a court orders otherwise upon a finding that notice to the individual to whom the personal data refers would probably so prejudice the administration of justice that good cause exists to delay or dispense with such notice.

(3) If the MPTC is, by agreement, responsible for responding to compulsory legal process received by the Commission, the Commission shall refer the process to the MPTC, and ask the MPTC to respond to the process, or provide reasonable assistance to the Commission in responding to the process, in accordance with such agreement.

REGULATORY AUTHORITY

555 CMR 8.00: M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2): *Applicability*.