

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 8.00: DATABASES AND DISSEMINATION OF INFORMATION

Section

- 8.01: Authority
- 8.02: Scope
- 8.03: Definitions
- 8.04: Submission of Information by Agencies
- 8.05: Public Database
- 8.06: Maintenance of Databases and Electronic Recordkeeping Systems Generally
- 8.07: Objections Concerning Data
- 8.08: Receipt and Referral of Records Requests
- 8.09: Responses to Records Requests
- 8.10: Privileged Information
- 8.11: Fees for Producing Records
- 8.12: Compulsory Legal Process

8.01: Authority

- (1) 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).

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 8.12;
 - (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.
- (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 request for records, 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, 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:

Certification. Certification or recertification of a law enforcement officer under M.G.L. c. 6E, §§ 3(a) and 4.

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

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.

Conclusion. The point at which the Commission has rendered its ultimate decision or action on a matter, no proceeding regarding the matter is pending before any court or agency, and no opportunity for further review in the normal course by any court or agency remains.

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.

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.

Municipal Police Training Committee and MPTC. The agency of the same name within the Executive Office of Public Safety and Security, as established in M.G.L. c. 6, § 116.

Personal Data. Personal data under M.G.L. c. 66A, including any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual, provided that such information is not contained in a public record, as defined in M.G.L. c. 4, § 7, cl. 26, and is not intelligence information, evaluative information, or criminal offender record information, as defined in M.G.L. c. 6, § 167.

Records Access Officer and RAO. The individual designated by the Commission to perform the duties of records access officer described in M.G.L. c. 66 and 950 CMR 32.00, or that person's designee.

Record, Information, and Data. Any form of document, written material, or data, regardless of whether it constitutes a "public record" under M.G.L. c. 4, § 7, cl. 26 or "personal data" under 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.

Requester. Any person or entity that tenders a records request to the Commission.

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 Agencies

- (1) When an agency supplies information concerning an officer to the Commission, the agency:

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

- (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 seven 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: Public Database

- (1) The Commission shall maintain a public database of information concerning officers who are certified or conditionally certified; officers whose certifications are pending, restricted, limited, or suspended; and officers who have been decertified or not recertified.
- (2) The public database must be searchable and accessible to the public through the Commission's official website.
- (3) In determining what information to include in the public database, the Commission shall consider the health and safety of officers, in accordance with M.G.L. c. 6E, § 4(j).
- (4) Except as provided in 555 CMR 8.05(5) or (6), the public database shall provide the following forms of information, to the extent that such forms of information are possessed by the Commission, in accordance with guidelines established by a vote of the Commissioners, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director:
 - (a) For each active officer:
 - 1. The officer's first name and surname;
 - 2. The officer's current certification status in Massachusetts;
 - 3. The dates on which the officer was first certified and was most recently certified in Massachusetts;
 - 4. All of the officer's employing law enforcement agencies in Massachusetts and elsewhere, and the dates of the officer's employment with such 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;
 - 10. A summary of the officer's disciplinary record, based on information provided by agencies that have employed the officer, excluding unsustained or unfounded complaints; and
 - 11. Information concerning any decision that reversed or vacated an action adverse to the officer, or that exonerated the officer in relation to a particular matter, where such action or matter is referenced in the database.
 - (b) To the extent reasonably feasible, aggregations of, or ways for public users to aggregate, information regarding the following:
 - 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 in a particular department; and
 - 5. The total number of complaints reportable to the Commission pursuant to 555 CMR 1.00.
- (5) The public database shall not include any of the following forms of information:
 - (a) Information relating to a preliminary inquiry, or initial staff review used to determine whether to initiate an inquiry, that is confidential under M.G.L. c. 6E, §

- 8(c)(2), or 555 CMR 1.03 or 1.07(2);
 - (b) Other information related to disciplinary proceedings that is confidential under 555 CMR 1.01(2)(d), 1.09(6)(c), or 1.10(4)(a);
 - (c) Personal contact information of public employees or members of their families that is generally non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (d) Criminal offender record information, criminal history information, or criminal history record information that cannot be communicated under M.G.L. c. 6, §§ 168 or 178, 803 CMR 2.19(1), or 803 CMR 7.10 through 7.14;
 - (e) Sealed or expunged records that are confidential or unavailable for inspection under M.G.L. c. 276, §§ 100L, 100O, or 100Q;
 - (f) 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.
 - (g) Police-log information pertaining to arrests of juveniles that is non-disclosable under M.G.L. c. 41, § 98F;
 - (h) Police-log information pertaining to handicapped individuals that is non-disclosable under M.G.L. c. 41, § 98F;
 - (i) Police-log information pertaining to alleged domestic violence or sex offenses that is non-disclosable under M.G.L. c. 41, § 98F;
 - (j) Reports of domestic violence or sex offenses, and associated communications, that are not public reports and are to be treated by police departments as confidential under M.G.L. c. 41, § 97D;
 - (k) Information in court and police records that identifies alleged victims of sex offenses or trafficking and is non-disclosable under M.G.L. c. 265, § 24C;
 - (l) Personal contact, employment, or educational information of victims of crimes or domestic violence, or members of their families, that is non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (m) Personal contact, employment, or educational information of victims, members of their families, or witnesses that is non-disclosable under M.G.L. c. 258B, §§ 3(h) and 3(w);
 - (n) Personal contact, employment, or educational information of family-planning personnel or members of their families that is non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (o) Personal data that is non-accessible under M.G.L. c. 66A and M.G.L. c. 214, § 3B;
 - (p) Forms of “personal information” referenced in M.G.L. c. 93H, § 1, other than the names of individuals;
 - (q) Data that the Commission is precluded from disclosing pursuant to a court order;
 - (r) Information the disclosure of which may constitute an unreasonable, substantial or serious interference with a person’s privacy under M.G.L. c. 214, § 1B; and
 - (s) Any other information that is non-disclosable under federal or Massachusetts law.
- (6) The public database also shall not include:
- (a) The following forms of information, the revelation of which could potentially impact officer health or safety, including by facilitating attempts to coerce officers or exploit any individual vulnerabilities:
 1. 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;
 2. Information concerning an officer’s personal finances that is not otherwise publicly available;
 3. 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;
 4. Information concerning an officer’s medical or psychological condition;
 5. Assessments 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), made pursuant to 555 CMR 7.05 or 7.06(9) or otherwise;
 6. Information concerning an officer’s conduct as a juvenile;

7. Information concerning any firearm, or firearms license or permit, that an officer currently possesses in a personal capacity;
8. Law enforcement information, including information concerning the following subjects, if disclosure could compromise law enforcement or security measures:
 - a. Undercover operations;
 - b. Confidential informants;
 - c. Clandestine surveillance;
 - d. Secretive investigative techniques;
 - e. Passwords and codes;
 - f. The details of security being provided to a person or place; or
 - g. Subjects of comparable sensitivity.
9. Information concerning a disciplinary matter before the Commission that has not reached a conclusion; and
10. Any other information that could readily be used in an attempt to coerce action or inaction, or exploit individual vulnerabilities, of an officer.

- (b) Agency data that is subject to an ongoing audit by the Commission pursuant to M.G.L. c. 6E, §§ 3(a)(9), 3(a)(21), and 8(d);
- (c) Records associated with Commission meetings that may be withheld under M.G.L. c. 30A, § 22;
- (d) Personal data that an individual has the ability to have corrected or amended under M.G.L. c. 66A, § 2(j) or 555 CMR 8.07.
- (e) Information in a personnel record that an employee has the right to have corrected or expunged pursuant to M.G.L. c. 149, § 52C;
- (f) Information that is subject to a privilege held by the Commission;
- (g) Information that is subject to a privilege held by a person or entity other than the Commission;
- (h) Data that is non-disclosable under any formal agreement or memorandum of understanding between the Commission and any other unit of the government of the Commonwealth, including, but not limited to, any Commonwealth of Massachusetts Data Sharing Memorandum of Understanding, and any Data Use License Agreement between the Commission and the MPTC;
- (i) Information that a court has expunged, placed under seal, impounded, or relieved the Commission of having to disclose;
- (j) Information the confidentiality of which is the subject of dispute in litigation or an administrative proceeding; and
- (k) Information that otherwise does not constitute a public record under M.G.L. c. 4, § 7, cl. 26.

(7) For purposes of determining whether a matter is ongoing, as that question relates to the applicability of exemptions under M.G.L. c 4, § 7, cl. 26 or other provisions or doctrines, the following guidelines shall apply.

- (a) A certification matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:
 1. The Commission's receipt of an application for certification on behalf of an officer, including one made pursuant to M.G.L. c. 6E, § 4, M.G.L. c. 30A, § 13, or 555 CMR 7.03; or
 2. An agency's receipt from an officer of an application for certification or any materials required for the agency to complete an application for certification on the officer's behalf.
- (b) A certification matter should be deemed no longer ongoing upon the conclusion of the matter.
- (c) A disciplinary matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:
 1. The Commission's receipt of a complaint or information warranting a determination of whether to initiate a preliminary inquiry under M.G.L. c. 6E, § 8; or
 2. An agency's receipt of a complaint that must or will be reported to the Commission under 555 CMR 1.01.
- (d) A disciplinary matter should be deemed no longer ongoing upon the earliest of the following:
 1. The conclusion of the matter;
 2. The point at which all entities that the Commission knows to have

- been investigating the matter have decided not to pursue any associated disciplinary or legal action; or
3. An officer's communication to the Commission of a decision not to challenge any disciplinary action.

(8) To the extent allowed by law, the Commission may include in the public database, or exclude from the public database, other forms of information not specifically referenced in 555 CMR 8.05(4), (5), or (6), in accordance with guidelines established by a vote of the Commissioners, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director.

8.06: Maintenance of Databases and Electronic Recordkeeping Systems Generally

- (1) 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 that, to the extent feasible, any electronic recordkeeping system or database that the Commission maintains is capable of providing data in a commonly available electronic, machine readable format.
- (2) To the extent feasible, any database should allow for 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.

8.07: 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 8.07(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 8.07(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 8.07(3):
 - (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.07(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 8.07(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; and
 - (b) Cause any such statement to be included with the data and with any subsequent disclosure or dissemination of the data.

- (6) Within thirty days of receiving a notification pursuant to 555 CMR 8.07(5)(a), a petitioner may file a written request for further review with the Executive Director.
- (7) The Executive Director shall provide any request for further review made pursuant to 555 CMR 8.07(6) to the Chair promptly upon receiving it.
- (8) The Chair may take any action allowed by law with respect to a request for further review made pursuant to 555 CMR 8.07(6).
- (9) If the Commission has a good-faith, reasonable belief that a public employee may possess a right to have data in a personnel record that is maintained by an employer corrected or expunged pursuant to M.G.L. c. 149, § 52C, the Commission shall make reasonable efforts to give the employee the opportunity to exercise the right.

8:08: Receipt and Referral of Records Requests

- (1) The Commission may decline to accept records requests by telephone, pursuant to 950 CMR 32.06(1)(a).
- (2) If the Commission receives a records request and determines that the MPTC is the data owner as to all responsive materials, the Commission shall refer the records request to the MPTC and request that the MPTC respond in accordance with any Data Use License Agreement between the Commission the MPTC, and the Commission may presume that the MPTC will assume responsibility for responding.
- (3) If the Commission receives a records request, it may consult with a law enforcement agency to determine if similar requests have been received by the agency.
- (4) The Commission may establish a policy providing for agencies that receive records requests for documents that are also held by the Commission to be required to provide the Commission with timely notice of the records request, a copy of any response to the records request, and copies of any documents produced.

8:09: Responses to Records Requests

- (1) Except as provided in 555 CMR 8.09(2), (3), or (4), a record requested through a records request shall be provided in accordance with M.G.L. c. 66 and 950 CMR 32.00.
- (2) If a record includes information identified in 555 CMR 8.05(5), such information shall not be disclosed;
- (3) If a record includes information identified in 555 CMR 8.05(6), taking into account the provisions of 555 CMR 8.05(7), such information shall not be disclosed, unless:
 - (a) Disclosure is required under M.G.L. c. 66A, § 2 or any other source of federal or Massachusetts law; or
 - (b) Disclosure:
 1. Is not prohibited by federal or Massachusetts law;
 2. Will not jeopardize any law enforcement efforts or the security of any person or entity; and
 - a. Will be made to the person or entity who is the subject of the information;
 - b. Will be made to a law enforcement agency or a criminal justice agency in Massachusetts or elsewhere;
 - c. Is warranted by public interests that are substantially greater than any interests in non-disclosure; or
 - d. Has previously been made publicly by the officer at issue or the Commission in litigation.
- (4) If a record constitutes a public record and is made available on a public website pursuant to M.G.L. c. 66, § 19(b), M.G.L. c. 7, § 14C, 555 CMR 8.05, or any other appropriately indexed and searchable public website, the RAO may furnish the record by providing reasonable assistance in locating it on the public website, pursuant to M.G.L. c. 66,

§ 6A(d).

8:10: Privileged Information

- (1) Where information that is responsive to a records request is subject to a privilege 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
 - (b) If a person or entity other than the Commission is the holder of the privilege, the Commission shall:
 1. Notify the holder regarding the records request; and
 2. Make reasonable efforts to give the holder the opportunity to protect the information.

8:11: Fees for Producing Records

- (1) In response to any records request that does not address the requester's eligibility for a waiver of fees under M.G.L. c. 66, § 10(c)(v) and 950 CMR 32.07(2)(k), the Commission may seek information from the requester regarding the purpose of the records request, in accordance with M.G.L. c. 66, § 10(d)(viii) and 950 CMR 32.06(2)(h).
- (2) Where a requester requests records that are substantially similar to information available through the public database prescribed by 555 CMR 8.05, the Commission shall direct the requester to the database and, if that does not satisfy the requester, then decline to provide records without payment of the maximum fee permitted by law, notwithstanding the provisions of M.G.L. c. 66, § 10(c)(v) and 950 CMR 32.07(2)(k).
- (3) Where the Commission has determined that records are not to be provided without payment of a fee:
 - (a) The requester shall not be obligated to pay any fee without having agreed to do so;
 - (b) The Commission may decline to continue assembling or reviewing potentially responsive documents until the full fee has been paid; and
 - (c) The Commission shall not provide documents until the full fee has been paid.

8:12: Compulsory Legal Process

- (1) When any person or entity seeks personal data maintained by the Commission through compulsory legal process, the Commission, except as provided in 555 CMR 8.12(2):
 - (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 8.12(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.

REGULATORY AUTHORITY

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

