

801 CMR 8.00: COLLECTION OF PERSONAL IDENTIFYING INFORMATION BY GOVERNMENT AGENCIES

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8.01: General Provisions

Scope. 801 CMR 8.00 governs the collection of personal identifying information by Government Agencies to ensure consistent collection of demographic information across Government Agencies.

8.02: Definitions

As used in 801 CMR 8.00, unless the context requires otherwise, the following terms have the following meanings:

Government Agency. A legal entity of state government established by the general court or by executive order as an agency, board, bureau, commission, council, department, office, or division within the executive branch of the commonwealth with a specific mission and which is subject to the control of the governor or a quasi-public entity.

Personal Identifying Information. Information:

- (a) that directly identifies an individual, including name, address, social security number or other identifying number or code;
- (b) by which an agency intends to identify specific individuals in conjunction with other data elements, which shall include indirect identification that may compile an identity, such as a combination of gender, race, birth date, geographic indicator and other descriptors; or
- (c) that permits the physical or online contacting of a specific individual.

Secretary. The Secretary of the Executive Office for Administration and Finance.

8.03: Demographic Collection

(1) Every Government Agency that collects demographic data as to the race or ethnicity of residents of the commonwealth shall use separate collection and tabulations for such groups as are identified in guidance issued by the Secretary, which shall include but not be limited to:

- (a) each major Asian group, as reported by the United States Census Bureau, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Laotian, Cambodian, Bangladeshi, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, Nepalese, Burmese, Tibetan and Thai;
- (b) each major Pacific Islander group, as reported by the United States Census Bureau, including, but not limited to, Native Hawaiian, Guamanian, Samoan, Fijian and Tongan;
- (c) each other Asian or Pacific Islander group not listed in clause (i) or (ii);
- (d) each major Black or African American group, as reported by the United States Census Bureau, including, but not limited to, African American, Jamaican, Haitian, Nigerian, Ethiopian, Cape Verdean and Somali;
- (e) each major Latino group, as reported by the United States Census Bureau, including, but not limited to, Mexican, Puerto Rican, Cuban, Salvadoran, Dominican and Colombian;
- (f) each major white or Caucasian group, as reported by the United States Census Bureau, including, but not limited to, German, Irish, English, Italian, Polish, Portuguese and French;
- (g) each group with origins in any of the original peoples of North, Central, and South America, including, but not limited to, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, and Maya; and

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- h. each Middle Eastern and North African group, including but not limited to, Lebanese, Iranian, Egyptian, Syrian, Iraqi, and Israeli.
- (2) Each Government Agency shall allow an individual to choose more than 1 group, write in their own group or choose the aggregate category.
- (3) No Government Agency shall fill out racial or ethnic information unless directed by the individual or required by state or federal law to fill out such information on the individual's behalf.
- (4) The Secretary may provide additional information on demographic data collected through guidance. The Secretary shall consider updating any such guidance at least every two years, or any time there is a change to U.S. Census Bureau standards, whichever is sooner.

8.04: Data Availability

- (1) Except for personal identifying information, which shall be deemed confidential, each Government Agency shall make the data available to the public in accordance with state and federal law. Data may be maintained in paper, electronic or other media form. At minimum, data will be made available upon request. Government Agencies are encouraged to the extent feasible to make data collected under 801 CMR 8.03 available on their website, such as with a data dashboard or downloadable file.
- (2) To prevent identification of individuals, the data may be aggregated into categories at a state, county, city, census tract or zip code level to facilitate comparisons, to identify disparities and to be included in studies and reports.
- (3) Each Government Agency shall take appropriate measures to ensure that no personal identifying information is publicly released.
- (4) Nothing provided in 801 CMR 8.04 shall be construed to prevent any other government agency from posting data collected on the agency's website in a manner prescribed in 801 CMR 8.04.
- (5) All data collected by Government Agencies under M.G.L. c. 6A, § 109 and 801 CMR 8.00 will be subject to state and federal privacy laws, including, but not limited to, Title 13 of the United States Code and M.G.L. c. 93H, § 2 as well as 801 CMR 3.00: *Privacy and Confidentiality*.

8.05: Standardized Information Collection Form

- (1) Each Government Agency shall establish its own standardized information collection form, or forms to collect information that is appropriate to its programs.
- (2) To the extent feasible, each Government Agency will base its standardized collection form, or forms, on a model standardized information collection form provided by the Secretary. The form must:
  - (a) include all data required in 801 CMR 8.03, including each group identified in the guidance issued by the Secretary,
  - (b) allow for collating data throughout the Government Agency, and
  - (c) include a standardized written disclosure to the individual completing the form that information collection is voluntary and that nonparticipation in information collection will have no impact on an individual's eligibility for state services.
- (3) Any information collection form must include options to ensure that individuals are able to accurately self identify.
- (4) The Secretary will prescribe through guidance the format and organization by which data required in 801 CMR 8.03 be reported or provided under 801 CMR 8.04 to ensure standardized provision of data across Government Agencies.

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(5) Each Government Agency will also ensure that data collected and made available under 801 CMR 8.05 is updated at least annually.

8.06: Waiver Process

(1) A Government Agency may apply to the Secretary for a programmatic or partial waiver from the requirements of 801 CMR 8.00 if a Government Agency can demonstrate that:

- (a) there are contradictory obligations under another state or federal law;
- (b) the information cannot be collected without imposing a burden that significantly outweighs the benefits of collection; or
- (c) the information collected cannot be reported in a way that protects personal identifying information.

(2) The Secretary may provide a programmatic or partial waiver using a standard application form which will be time limited and may be renewable if the agency so requests.

(3) Any Government Agency requesting a waiver under 801 CMR 8.06 must submit to the Secretary all required information and attest that the information cannot be collected without imposing a burden that significantly outweighs the benefits of collection.

REGULATORY AUTHORITY

800 CMR 8.00: M.G.L. c. 6A, § 109.