

806 CMR: SECURITY AND PRIVACY COUNCIL

806 CMR 1.00: ADJUDICATORY PROCEEDINGS

Section

1.01: Conduct of Hearings

1.02: Pre-Hearing Conferences

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1.01: Conduct of Hearings

(1) When it has been determined under 806 CMR 2.03(2) a that *prima facie* basis for the complaint exists, the Council shall schedule a hearing and shall inform the complainant and the agency or individual complained against of the hearing and their rights to appear and to be represented by counsel. Pursuant to M.G.L. c. 30A, § 12, the Council (acting through its counsel or the presiding officer) may on its own motion and shall upon request of any party issue subpoenas to require attendance and testimony of witnesses or the production of relevant documents.

(2) The hearing shall be conducted as an adversary proceeding in which each party shall be permitted to make an opening statement, to present motions, to present affirmative witnesses and cross-examine opposing witnesses. The Chair or a member designated by him or her shall be the chief hearing officer and shall preside over such hearings. The chief hearing officer may admit any evidence which is reliable. Decisions of the hearing officer concerning the admissibility of evidence may be overridden by a vote of the hearing panel.

(3) The hearing required to be held under 806 CMR 1.00 may be held before three or more members of the Council rather than the full Council, provided that the Council so approves by majority vote, which vote may be conducted by a telephone polling of the members of the Council. If the hearing is held before less than majority of the Council, a decision shall be made only after:

(a) a tentative or proposed decision is delivered or mailed to the parties containing a statement of reasons and including determinations of each issue of fact or law necessary to the tentative proposed decision; and

(b) an opportunity is afforded each party adversely affected to file objections and to present argument, either orally or in writing as the Council may order, to a majority of the Council.

Except as otherwise provided by 806 CMR 1.00 or other regulations which may be adopted by the Council, M.G.L. c. 30A, §§ 11 and 12 shall govern the conduct of such hearings.

1.02: Pre-Hearing Conferences.

(1) When the Council determines that a *prima facie* basis for a complaint exists, the Council may direct all interested parties, by written notice, to attend one or more pre-hearing conferences for the purpose of attempting to resolve the dispute, formulating the issues in the proceedings and determining any other matters to aid in its disposition. The following are some of the matters which may be considered:

(a) simplification of the issues;

(b) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(c) limitation on the number of witnesses;

(d) the procedure at the hearing;

(e) the distribution to the parties prior to the hearing of written testimony and exhibits;

(f) consolidation of the examination of witnesses by counsel; and;

(g) such other matters as may aid in the disposition of the proceedings.

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1.02: continued

(2) When the Council determines that a pre-hearing conference is desirable, it shall appoint a conference officer to conduct the pre-hearing conference. The conference officer may be a member of the Council or of the Council's staff.

(3) The conference officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. The conference officer shall assume the responsibility of accomplishing the purposes of the notice of the pre-hearing conference so far as that may possible without prejudicing the rights of any party.

(4) During any hearing under 806 CMR 1.00, the Council may recess the hearing for an informal conference to carry out the purposes of 806 CMR 1.00.

1.03: Decisions of the Council.

The Council shall issue written findings within 60 days of receipt by the Council of the request for review. The findings shall include a statement of the reasons for the decision and any recommended adjustments of the contents, maintenance, or dissemination of the complainant's criminal offender record information. A copy of the decision shall be sent to the complainant.

Failure of the Council to issue timely findings shall be deemed a decision of the Council adverse to the complainant.

1.04: Notification to the Board of the Council's Decision.

The Council shall transmit all findings which uphold complainant's claims that the criminal offender record information is inaccurate, incomplete, misleading, or improperly maintained or disseminated, to the Criminal History Systems Board together with its recommendations for action by the Board.

REGULATORY AUTHORITY

806 CMR 1.00: M.G.L. c. 6, §§ 170 and 175.