

806 CMR: SECURITY AND PRIVACY COUNCIL

806 CMR 2.00: RULES OF PROCEDURE

Section

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2.01: Meetings of the Council

(1) Regular Meetings. The Security and Privacy Council shall hold regular meetings at least once per month provided however, that in July and August meetings shall only be scheduled if necessary for the transaction of important pending business. Regular meetings shall be called by the chairman who shall use his best efforts to distribute an agenda for the meeting to the members at least one week before the meeting and shall properly notify the Secretary of State and the Commissioner of Administration pursuant to M.G. L. c. 30A, § 11A½.

(2) Special Meetings. Special meetings may be called from time to time by the Governor of the Commonwealth, the Chairman of the Council, or any three members. After such meetings are called, the person or persons calling the meeting shall use his or her best efforts to distribute an agenda for the meeting at least one week before the meeting if possible, and shall properly notify the Secretary of State and the Commissioner of Administration pursuant to M.G. L. c. 30A, § 11A½.

(3) Quorum and Voting. A majority of the members shall constitute a quorum for the conduct of business, and all action shall be decided by majority vote.

(4) Election of Chairman. The Chairman of the Council shall be elected by and from among the members of the Council to serve for a term of two years. The Chairman may be re-elected to serve for subsequent terms.

(5) Duties of the Chairman. The Chairman shall call regular meetings pursuant to 806 CMR 2.01(1) and may call special meetings pursuant to 806 CMR 2.01(2), shall preside at the meetings, and shall coordinate all activities of the Council. The Chairman shall designate one of the members of the Council to be a Vice-Chairman who shall preside in his absence and he may create such task forces and committees, as the Council shall determine to be necessary, by appointing the chairman and membership of such committees and task forces.

2.02: Activities of the Council

(1) Continuing Study of Privacy Issues; Inquiries and Investigations. The Council shall conduct a continuing study of all relevant issues of individual privacy and system security concerning the criminal justice systems of the Commonwealth of Massachusetts.

The Council may inquire into or investigate all relevant questions concerning individual privacy or system security which will assist it to carry out its statutory functions and may conduct such public hearings as may be relevant to assist its inquiries or investigations. Where such information is necessary to assist the Council, it may authorize its Chairman or others on its behalf to seek statistical data, reports, or other information from the Criminal History Systems Board, criminal justice agencies in the Commonwealth, and all state and local agencies having access to criminal justice information.

(2) Recommendations to the Criminal History Systems Board and the Criminal History System Advisory Council. The Council shall from time to time make recommendations to the Criminal History Systems Board or to the Criminal History System Advisory Committee concerning ways to improve methods for protecting personal privacy and insuring system security. Such recommendations may be in the form of written or oral advice presented to regular meetings of said Board or said Committee, at public hearings conducted by said bodies, or at such other forums as are proper for the transmittal of such recommendations.

2.02: continued

(3) Recommendations Concerning Access to the Criminal History System. The Council shall consider all applications for access to Criminal Offender Record Information and shall assign a representative to attend meetings of the Criminal History Systems Board when such applications are considered by the Board to present the Council's recommendations concerning such applications.

(4) Annual Report. The Council shall prepare an annual report to the Governor, which may include legislative recommendations, and shall file a copy of said report with the State Secretary, the Clerk of the House of Representatives and the Clerk of the Senate.

(5) Appointment of Members to Serve on Interstate Systems. The Council shall appoint one or more of its members to serve upon any similar organization which is involved with the exchange of criminal offender record information across state lines. Such appointees may participate in the activities of such system in such manner as they determine to be appropriate.

2.03: Consideration of Individual Complaints Concerning Allegedly Inaccurate, Incomplete, or Improperly Disseminated Criminal Offender Record Information

(1) Public Education Program. The Council shall from time to time conduct a program of public education to inform the citizens of the Commonwealth concerning their rights to bring complaints concerning their criminal histories pursuant to M.G.L. c. 6, § 175. Said program may take such form as the Council may determine.

(2) Review of Complaints and Determination of Prima Facie Basis. Whenever an individual brings a complaint to the attention of the Council, the Council shall review said complaint to determine whether a *prima facie* basis for the complaint has been established. Such determination shall be made by majority vote of the Council, which may be conducted by telephone polling of the members of the Council. In making this determination the results of any investigation conducted pursuant to 806 CMR 2.03(4) may be considered. If the Council determines that there is no *prima facie* basis for the complaint, the Council shall notify the complainant, in writing, of said determination and of his or her rights of appeal to the superior court for a *de novo* hearing under M.G.L. c. 6, § 176.

(3) Prima Facie Basis: Defined. A *prima facie* basis for complaint shall exist where:

- (a) the complaint asserts a violation of M.G.L. c. 6 §§ 167 through 178 or the regulations promulgated thereunder upon which relief may be granted and
- (b) it is not clear from common experience or shown by clear and convincing evidence obtained from a preliminary investigation that an essential allegation of the complaint is untrue.

(4) Investigations. The staff of the Council may investigate any complaint. The results of such investigation shall be made available to all parties to the complaint and may be considered by the Council in any of its deliberations.

2.04: Adoption and Amendment

(1) Adoption. These rules of procedure shall be effective upon their acceptance by the Council and shall remain in effect until repealed. With the exception of 806 CMR 2.03(3) which is adopted after compliance with M.G.L. c. 30A, § 2, they are adopted as regulations concerning only the internal management of the Council and are therefore not subject to M.G.L. c. 30A, § 2. See M.G.L. c. 6, § 170, as amended by St. 1973, c. 961, and M.G.L. c. 30A, § 1(5)(b).

(2) Amendment. These rules of procedure may be amended at any meeting of the Council by a vote of the Council as stipulated in 806 CMR 2.01(3), provided that the suggested amendments are distributed to the members of the Council at least one week before such a vote is taken.

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REGULATORY AUTHORITY

806 CMR 2.00: M.G.L. c. 6, § 170.