

840 CMR 6.00: STANDARD RULES FOR DISCLOSURE OF INFORMATION

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840 CMR 6.00 is the standard rule for disclosure of information promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, §§ 50(a) and 50(n). Except as otherwise provided by the Commission, by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 6.00 shall govern the release of all records in the custody of any retirement board in the Commonwealth. The release of records in the custody of retirement boards subject to M.G.L. c. 66A shall be governed by M.G.L. c. 66A, 801 CMR 2.00 and 3.00 and 840 CMR 6.00.

6.01: Definitions

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 6.00 shall have the meanings assigned them by M.G.L. c. 4, § 7(26), M.G.L. c. 30A, §§ 11A and 11A½, M.G.L. c. 32, M.G.L. c. 34, §§ 9F and 9G, M.G.L. c. 39, §§ 23A and 23B, and M.G.L. c. 66A, § 1, and if no meaning is so assigned, they shall have their ordinary meanings.

6.02: Purpose of Standard Rules

The purpose of 840 CMR 6.00 is to establish uniform standards and procedures to be applied by retirement boards in maintaining and disclosing records, particularly records containing personal data. A retirement board shall provide access to public records as required by M.G.L. c. 66, § 10 and shall protect personal data which it holds as required by M.G.L. c. 66A and 840 CMR 6.00.

6.03: Privacy Standards

(1) Without the written consent of the data subject or his or her authorized representative, no retirement board shall disclose to any person outside of the board any personal information contained in a personnel or medical file which may be identified or associated with the data subject or other materials or data pertaining to a specifically named individual if such disclosure may constitute an unwarranted invasion of personal privacy unless such disclosure is required by Federal or State statute or regulation.

(2) In determining whether personal information other than that contained in a personnel or medical file is a public record, a retirement board shall balance the seriousness of any invasion of privacy which release of the record may cause against the public's right to know about the contents of the record, and shall consider whether the public interest in obtaining the information substantially outweighs the seriousness of any potential invasion of privacy.

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- (3) In general, the determination whether release of materials or data may constitute an unwarranted invasion of personal privacy must be made on a case by case basis. However, the board shall not release records containing intimate details of a highly personal nature, such as information related to alcohol or drug problems, mental health problems, or the like, without the written consent of the data subject or an order of a court of competent jurisdiction.
- (4) In making the determination whether the privacy exemption to the public records law limits disclosure of information a retirement board shall observe the following principles:
  - (a) Information relating to a member's name, address, and type of retirement (e.g. superannuation, ordinary disability, accidental disability, veteran status, etc.) is generally a public record;
  - (b) Medical files or information relating to a specifically named individual, including, the medical reason for a disability retirement, shall not be considered a public record;
  - (c) Other material or data relating to a specifically named individual is generally not a public record if the information contained in the record relates to intimate details of a highly personal nature.
- (5) Any record pertaining to meetings of a retirement board including records pertaining to the financial operation of the board shall be presumed to be a public record unless the record is exempt from disclosure by 840 CMR 6.12.
- (6) If a record contains both public and non-public information, the retirement board shall release as a public record any segregable portion of such record which is an independent public record.
- (7) Retirement board studies and reports based upon personal data held by the board may be disclosed if all personal identifiers have been removed and no data subject can otherwise be identified by the nature, content or context of such studies or reports.

6.04: Custodian; Designation; Duties and Responsibilities; Fees

- (1) Designation. Each retirement board shall designate a person to serve as Custodian of all records which the retirement board holds.
- (2) Duties and Responsibilities. The Custodian shall:
  - (a) maintain custody of and control over all records held by the retirement board;
  - (b) take all reasonable precautions to protect the records from fire, theft, flood, natural disaster, unauthorized removal or other security hazard;
  - (c) inform members and staff of the retirement board of the provisions of 840 CMR 6.00;
  - (d) insure that the number of duplicate retirement files is maintained at an absolute minimum and that any such duplicate files are maintained consistent with the requirements of 840 CMR 6.00;
  - (e) develop and implement a plan for the expungement of obsolete records with approval, where applicable, of the Records Conservation Board established by M.G.L. c. 30, § 42, and the Supervisor of Public Records pursuant to M.G.L. c. 66, § 8;
  - (f) maintain to the maximum extent feasible a complete and accurate record, which shall be deemed part of the data to which it relates for all purposes under 840 CMR 6.00, of every access to or use of a member's retirement file, including the identity of all persons and organizations to whom such access has been granted, except that no record need be maintained of any such access to or use by members or staff of the retirement board, medical panel members, or representatives of the Public Employee Retirement Administration Commission;
  - (g) make the initial determination as to whether any record requested is a public record and as to whether access to the record requested is mandated by M.G.L. c. 4, § 7(26), or by other applicable law or regulation;

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- (h) assess and collect fees as provided in 840 CMR 6.04(3);
- (i) receive objections as provided in 840 CMR 6.14;
- (j) answer questions; and
- (k) make available on request copies of M.G.L. c. 4, § 7(26), M.G.L. c. 66, § 10 (the Massachusetts Freedom of Information Act), applicable provisions of M.G.L. c. 66A (the Massachusetts Fair Information Practices Act), and 801 CMR 2.00 and 3.00, applicable provisions of M.G.L. c. 30A, §§ 11A and 11A½ (the Open Meeting Law governing state agencies), M.G.L. c. 34, §§ 9F and 9G (the Open Meeting Law governing county agencies), and M.G.L. c. 39, §§ 23A and 23B (the Open Meeting Law governing municipal agencies) and 840 CMR 6.00.

(3) Fees. The Custodian may charge a reasonable fee for copies of any record consistent with the fee schedule issued by the Supervisor of Public Records pursuant to 950 CMR 32.02(5). A fee reasonably related to cost may also be charged for making a search for the requested record provided that no charge may be made for a search requiring less than 20 minutes to complete. The retirement board may waive the reproduction fee or the search fee if, in its judgment, such waiver would be in the public interest.

6.05: Notice and Report to the Public Employee Retirement Administration Commission

The retirement board shall upon any establishment, termination, or change in character of a retirement file system submit a report to the Public Employee Retirement Administration Commission regarding the retirement file system it operates. Such report shall include, but not necessarily be limited to the following information:

- (1) The name of the system and the name and address of the Retirement Board;
- (2) The nature and purpose of the system;
- (3) The identification of the types, categories, uses and sources of data held in the system;
- (4) The approximate number of individuals about whom data are held in the system;
- (5) Whether and to what extent the data are held in computerized form;
- (6) A description of each person and organization having access to the system;
- (7) A description of the policies and practices of the board with regard to data maintenance, retention, and disposal;
- (8) A description of the manner in which any individual, who believes that data about him are held in the system, may have a search made, and, if such data are so held, may inspect, copy, and object to it as provided in 840 CMR 6.00;
- (9) A description of other actions taken to comply with 840 CMR 6.00; and
- (10) A statement that this report is available to the public upon request.

6.06: Access to Personal Data in Retirement Files by the Public Employee Retirement Administration Commission, Retirement Boards, Medical Panel Physicians and the Office of the Attorney General

- (1) The Commission, staff and representatives of the Public Employee Retirement Administration Commission, members and staff of the retirement board, and medical panel physicians shall have access to personal data in retirement files to the extent that their duties require such access.

6.06: continued

(2) Whenever a data subject files or threatens to file a complaint against the Commonwealth, including executive offices, agencies, or departments, or against any employee or officer of the Commonwealth, concerning a matter within the scope of the office or employment with the Commonwealth, any personal data concerning the data subject that is in the possession of the retirement board or the Public Employee Retirement Administration Commission that is relevant to the determination of the issues in dispute shall be provided to the Office of the Attorney General upon request. Such requests must be in writing and contain a clear description of the data sought, the reason for the request and the intended use of the data. In supplying such data, the retirement board or the Commission must redact any data concerning non-parties. Any personal data indicating a violation of law may be referred to the Office of the Attorney General for investigation and enforcement. Any assistant attorney general may further disclose the personal data to the extent deemed necessary to defend the Commonwealth, officer or employee effectively against the data subject's claim. No data may be released where prohibited by statute.

6.07: Access to Personal Data in Retirement Files by Members

(1) Request for Notification of Holding. The Custodian, upon request of a member or his or her authorized representative, shall inform the member in writing, within 20 days of receipt of a request, whether the retirement board holds, or has held within the previous 24 months, any personal data concerning the member.

(2) Access to Personal Data. A member or his or her authorized representative shall be granted access to all personal data in the member's retirement file except where prohibited by law or judicial order and except as provided in 840 CMR 6.07(3). In making any disclosure of personal data to a member pursuant to 840 CMR 6.07, the Custodian may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the member is not. The Custodian shall not rely on any exception contained in M.G.L. c. 4, § 7(26) to withhold from a member personal data otherwise accessible to him or her under 840 CMR 6.00.

(3) Investigative Data. Except as specifically authorized by the Custodian with the approval of the retirement board, a member or his or her authorized representative shall not be granted access to any information in the member's retirement file which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. Such information may be withheld for the time it takes the investigatory agency to complete its investigation and commence an administrative or judicial proceeding on its basis. 840 CMR 6.07(3) shall not affect any rights to access the member may have under administrative or judicial discovery procedures.

(4) Notification of Denial of Access. If access to personal data is denied, the Custodian shall notify the member in writing of such denial, shall state the reasons for such denial, and shall describe the right to appeal provided in 840 CMR 6.14(2).

6.08: Access to Retirement Files by Employers

(1) An employer may be granted access to personal data in a member's retirement file bearing on the member's present, former or prospective employment by the employer.

(2) An employer desiring such access shall make a request on the appropriate form stipulating that the employer shall not disseminate any personal data received except as permitted by M.G.L. c. 66A, where applicable, or 840 CMR 6.00.

(3) If access to personal data is denied, the Custodian shall notify the employer in writing of such denial, the reasons therefor, and the right to appeal as provided in 840 CMR 6.14(2).

6.09: Access to Retirement Files by Legal Process

Unless otherwise prohibited by law or judicial order, upon receipt of a subpoena duces tecum, or other order of a court or administrative agency of competent jurisdiction directing the retirement board to produce personal data in a member's retirement file, the Custodian shall notify the member of the demand no later than the next business day following the day on which the subpoena or other document is served and shall not produce any records in response to the demand unless the member has been notified in reasonable time to seek to have the process quashed. If the member is properly notified and if the process is not quashed, the Custodian shall produce a copy of the requested records as ordered by the Court or agency, and shall advise the Court or agency of the requirements of 840 CMR 6.00.

6.10: Access to Personal Data in Retirement Files by the General Public

- (1) Any person may request access to public records in a member's retirement file pursuant to the procedures provided in 840 CMR 6.11 and M.G.L. c. 66, § 10.
- (2) If the custodian determines that data requested are not a public record, he or she shall deny access unless such dissemination of the record is:
  - (a) authorized by a statute or regulation consistent with the purposes of M.G.L. c. 66A or 840 CMR 6.00;
  - (b) requested by an employer consenting to observe the provisions of M.G.L. c. 66A applicable to holders of personal data as provided in 840 CMR 6.08;
  - (c) approved in writing by the member, and the member has a right to access to the requested records by law or 840 CMR 6.00; or
  - (d) requested by a physician treating a data subject during a medical or psychiatric emergency which precludes the data subject from approving disclosure; provided that notice of disclosure shall be given to the data subject upon termination of the emergency.
- (3) Any person seeking access to personal data that is not subject to release in a member's file pursuant to 840 CMR 6.10(1)(c) shall submit a written request to the Custodian stating the name of the member and specifying the information sought. Upon receipt of a request, the Custodian shall send a letter to the member describing these procedures, explaining that the member is under no legal obligation to consent to the release of the information, and enclosing the request. If the member consents in writing to the requested access, the custodian shall grant access as requested. If the member does not respond, or does not so consent, the Custodian shall deny access. The Custodian shall furnish the member, upon request, a copy of any personal data that has been disclosed.

6.11: Access to Public Records; Promptness of Access; Requests for Public Records

- (1) Access to Public Records. The Custodian shall, at reasonable times and without unreasonable delay, permit any public record under his or her custody to be inspected and examined by any person, under such supervision as may be appropriate, and shall furnish one copy thereof upon payment of a reasonable fee as set forth in 840 CMR 6.04(3). The Custodian shall also permit any person to search the public records of the retirement board in a reasonable manner that does not interfere with the normal functions of the board.
- (2) Promptness of Access. The Custodian shall establish and maintain routine procedures for prompt production of public records to persons requesting them. The Custodian shall respond to every request for a public record within ten days and, if the request is granted, produce copies of the public records requested. If the request is denied, the Custodian shall inform the person requesting the record of the reasons for such denial in writing and the right to appeal provided in 840 CMR 6.14, M.G.L. c. 66, § 10(b), and 950 CMR 32.04.

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(3) Request for Public Records. A person may request records either orally or in writing. A retirement board shall require a written request for records only when there is a substantial doubt as to whether the record requested is a public record, and shall not require such a written request merely to delay production. The Custodian shall provide forms for requesting records but any written request is sufficient as long as the record is adequately described therein. Any person seeking access to a public record shall provide a reasonable description that enables the Custodian to identify and locate the record promptly. Superior knowledge of the contents of retirement board files on the part of the Custodian shall be used to facilitate rather than hinder compliance with requests for public records.

6.12: Records of Retirement Board Meeting

(1) The minutes and other records of each retirement board meeting shall be a public record and shall be available upon request as provided herein; provided, however, that the records of any executive session may remain secret as long as disclosure may defeat the lawful purposes for which the session was closed, but no longer.

(2) The retirement board shall periodically review its records of executive sessions to determine whether such records must remain secret. When the retirement board decides that a previously secret executive session record or portion thereof need no longer remain secret, it shall note such decision in the minutes of the retirement board meeting at which such decision is made.

6.13: Advisory Opinions

Supervisor of Public Records. The Custodian or retirement board may seek an advisory opinion from the Supervisor of Public Records with respect to any question concerning the application of M.G.L. c. 4, § 7(26) or of M.G.L. c. 66, by sending a written request to the Supervisor of Public Records, Office of the State Secretary, One Ashburton Place, Room 1701, Boston, MA 02108, as provided in 950 CMR 32.03.

6.14: Objections and Administrative Appeals

(1) Objection to Custodian. Any member or his or her authorized representative who objects to the collection, maintenance, dissemination, use, accuracy, completeness, type of, or denial of access to, personal data in his or her retirement file, may file an objection thereto with the Custodian. Upon receipt of such objection, the Custodian shall investigate the validity of the objection. If, after the investigation, the objection is found to be meritorious, the Custodian shall correct the contents of the data or the methods for holding or the use of such data. If the objection is found to lack merit, the Custodian shall provide the member the opportunity to have a statement reflecting his or her views recorded and disseminated with the data in question. In either event, the Custodian shall notify the member in writing of his or her decision within 30 days following receipt of the objection.

(2) Appeals to the Supervisor of Public Records. In the event any Custodian denies access to a record claimed to be a public record, the person making the request may appeal the matter to the Supervisor of Public Records as provided by M.G.L. c. 66, § 10(b) and 950 CMR 32.04.

(3) Judicial Relief. The administrative remedies provided in 840 CMR 6.14 shall not limit administrative or judicial remedies provided in M.G.L. c. 66, § 10, M.G.L. c. 214, § 3B, or any other statute or regulation.

REGULATORY AUTHORITY

840 CMR 6.00: M.G.L. c. 7, § 50; M.G.L. c. 32, § 21.