940 CMR 11.00: FAIR INFORMATION PRACTICES ACT

Section

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11.01: General Provisions

(1) Application. 940 CMR 11.00 shall apply to the Attorney General and the Department of the Attorney General, the governmental entity created by M.G.L. c. 12, § 1 (collectively the "AGO").

(2) Scope. 940 CMR 11.00 shall govern the collection, maintenance, and dissemination of personal data contained in the personal data systems of the AGO.

(3) Severability. If any section of 940 CMR 11.00 is finally determined to be unlawful or invalid, the other sections shall continue in effect and shall be enforceable.

11.02: Meaning of Terms

Consistent with the purposes of M.G.L. c. 66A and the definitions as set forth in M.G.L. c. 66A, § 1, the following terms shall have the following additional meanings:

Compulsory Legal Process shall mean a demand for personal data that is issued by or through a federal or state court or administrative agency or party to any such litigation, including through summons; subpoena; discovery request; or other demand.

Criminal Offender Record Information (CORI) shall have the same meaning as set forth in M.G.L. c. 6, § 167. Pursuant to the definition contained within M.G.L. c. 66A, § 1, CORI is not "personal data".

Data Subject shall have the same meaning as set forth in M.G.L. c. 66A, § 1. In addition, "similar entities" excluded from 940 CMR 11.02: Data Subject shall include sole proprietorships or other businesses, and not-for-profit or charitable entities.

Evaluative Information shall have the same meaning as set forth in M.G.L. c. 6, § 167. Pursuant to the definition contained within M.G.L. c. 66A, § 1, evaluative information is not "personal data".

Intelligence Information shall have the same meaning as set forth in M.G.L. c. 6, § 167. Pursuant to the definition contained within M.G.L. c. 66A, § 1, intelligence information is not "personal data".

Personal Data shall mean any information concerning an individual which, because of name, identifying number, mark, description, or other such personal identifiers, 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, clause Twenty-sixth. Personal data shall not include the following:

(a) intelligence information, evaluative information, or criminal offender record information;

(b) the government employees' or contractors' analysis of personal data (including mental impressions or opinions of, or conclusions, recommendations, or advice based on, or attorney-client privileged communications regarding, such personal data), where such analysis is not, or is not contained in, a public record;

(c) information that is protected by statute and/or protective order; or

(d) proprietary or financial records or data collected by the AGO from corporations, partnerships, sole proprietorships, trusts, or other business entities.

11.03: Receipt, Collection, and Maintenance of Personal Data

(1) General Rules regarding Personal Data.
(a) The AGO shall not collect or maintain more personal data than is reasonably necessary for the performance of its functions;
(b) The AGO shall take reasonable precautions to protect personal data from dangers of fire, identity theft, theft, flood, natural disaster, or other physical threat;
(c) The AGO may receive, collect, and maintain personal data from other persons or entities, including but not limited to agencies, public officials, and employees the AGO represents in civil litigation; and
(d) The AGO may receive, collect, and maintain personal data from other persons or entities, including but not limited to federal, state, or local governmental entities, including the courts, for law enforcement purposes or other AGO functions, purposes, services, or initiatives not specified above.

(2) Personnel Requirements.
(a) Training. The AGO shall inform all of its employees who have responsibilities or functions involving the design, development, operation, or maintenance of a personal data system, or the use of personal data therein, of the provisions of 940 CMR 11.00, the AGO obligations regarding such data, and of the civil remedies available to individuals whose rights under M.G.L. c. 66A are allegedly violated.
(b) Information Officer Designation. For each personal data system it maintains, the AGO shall designate an Information Officer to serve as the responsible individual under M.G.L. c. 66A, § 2(a). Such individual should be one with familiarity in the operation of the system and have unlimited access to the data within. A single employee or designee may serve as the Information Officer for more than one such system.
(c) Record of Access. The AGO shall maintain complete and accurate records which show any access to or use of personal data the AGO holds; provided, however, that access or use by employees within the AGO or its contractors need not be recorded. These records shall include every disclosure of personal data, including the identity of all persons and organizations to which such access or use has been granted. To the extent feasible, these records shall be made part of the data to which they relate for all purposes under 940 CMR 11.00.
(d) Notice and Report to the Secretary of the Commonwealth. The AGO shall, upon the establishment, termination, or substantial change in character of a personal data system, file a report with the Secretary of the Commonwealth regarding each such personal data system, as required by M.G.L. c. 30, § 63.
(e) Sanctions Against Employees. Any employee of the AGO found in violation of 940 CMR 11.00 shall be subject to reprimand, suspension, dismissal, or other disciplinary actions consistent with the AGO Employee Manual and any applicable Collective Bargaining Agreement that is in place, and may be denied future contact with personal data and removed from holding responsibility relative to such data.

11.04: Access to Personal Data by Persons Other than the Data Subject

(1) General Rules regarding Access to Personal Data.
(a) Access to Personal Data. Except as provided in 940 CMR 11.04, the AGO shall not allow any other agency or individual not employed or contracted by the AGO to have access to personal data unless such access is authorized by law, or is approved by the data subject if the data subject is entitled to access under M.G.L. c. 66A, § 2(i) and 940 CMR 11.00.
(b) Response to Public Records Requests. Any information concerning an individual which, because of name, identifying number, mark, description, or other such personal identifiers, can be readily associated with a particular individual, that is contained in a public record as defined by M.G.L. c. 4, § 7, clause Twenty-sixth, is not "personal data" and therefore, public records containing such information may be disseminated to any person making such request, provided that any personal information as defined by M.G.L. c. 93H is redacted prior to dissemination. As illustration, and without limitation, the following records received and maintained by the AGO may be considered "public records".
1. open meeting law complaints, excluding the complainant's personal contact information such as their residential address, personal telephone and/or email address;

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2. public records requests;
3. responses to AGO solicitation for public comment; and
4. records that have already been filed with, and are available to the public through, any state or federal court.

(2) Allowable Dissemination of Personal Data. Consistent with the purposes of M.G.L. c. 66A and 940 CMR 11.00, the AGO may disseminate personal data to persons other than the data subject as follows:

(a) The AGO may disseminate personal data if such dissemination is authorized in writing by the data subject;

(b) The AGO may disseminate personal data in response to compulsory legal process, provided that the procedures required by M.G.L. c. 66A, § 2(k) are followed;

(c) The AGO may disseminate personal data to another federal, state, or local governmental entity for criminal or civil law enforcement purposes, including multi-state investigations, provided the AGO and any such entity have an agreement or protective order in place to keep the personal data confidential;

(d) The AGO may disseminate personal data where such dissemination is necessary to make a good faith effort to settle a case in which the AGO is or represents a party in the course of litigation, or to resolve, settle, or mediate a matter which would otherwise be necessary to litigate, or which otherwise could not be resolved;

(e) The AGO may disseminate personal data to a national or multi-state public or private entity that collects such data for statistical purposes, provided that the entity and the AGO have an agreement in place that preserves the anonymity of the individuals to whom the personal data relates;

(f) The AGO may disseminate personal data to the entity or individual that originally provided the AGO with such data;

(g) The AGO may disseminate personal data for any other purpose not explicitly set forth in M.G.L. c. 66A, § 2(c), provided that such dissemination is not inconsistent with the purposes of M.G.L. c. 66A, *i.e.*, the purpose(s) for which the information was originally collected, and with other applicable laws;

(h) The AGO may disseminate personal data asrequired by an order of a court of competent jurisdiction; and

(i) The AGO may disseminate personal data as required by Mass. R. Crim. P. 14.

11.05: Access to Personal Data by Data Subjects

(1) General Rules Regarding Access to Personal Data.

(a) Data Subject Inquiry. The data subject may request, in writing, that the AGO perform a search to locate the subject's own personal data held within the personal data systems maintained by the AGO. Such search shall be considered compliant with M.G.L. c. 66A, § 2 if the name of the data subject is used to search for any such personal data within all personal data systems.

(b) Request of Data Subject for Notification of Holding. Where required by law, the AGO shall, within 20 days of receipt of a request, inform any data subject in writing whether the AGO maintains any personal data concerning such individual within its personal data systems.

(c) Notification of Denial of Access to Data. If access is denied, the AGO shall, within 20 days of receipt of a request, notify in writing a data subject of its denial of the request for access.

(d) Right of Data Subject to Access. Where access is required by law, the AGO shall, in a timely manner, grant a data subject access to the subject's own personal data within the personal data systems maintained by the AGO to which the data subject is entitled in accordance with 940 CMR 11.05.

(e) Modes of Access. The AGO may, at its discretion, provide a data subject with the subject's own personal data by either creating a compilation of the data that is contained within the personal data systems maintained by the AGO, or reproducing the records that contain personal data.

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(f) Payment of Fees. The AGO may charge fees in accordance with 940 CMR 11.05 when a data subject requests that a search for personal data be made, and for the inspection, creation, or copying of any record containing the personal data to which access is granted, according to the fee schedule set forth in 940 CMR 11.05(1)(g). The AGO may require prepayment of fees or may waive such requirement.

(g) Fee Schedule. The AGO may charge the following fees for responding to a request under M.G.L. c. 66A:

1. The labor cost to search a system of records for personal data, and, if found, to remove third-party identifiers (redaction), if applicable, and to prepare the personal data, or the records containing the personal data, for inspection or photocopying will be $15.00 per hour;
2. The cost to provide a copy of the personal data, or the records containing personal data, will be $.25 per page, which may be adjusted from time to time according to the Consumer Price Index. Notice of any such adjustment will be provided to the requesting party before any copies are made;
3. Where the records containing personal data cannot be simply photocopied or printed from a computer, the actual cost to reproduce the personal data may be assessed; and
4. For requests entailing less than one hour of search and redaction time, and resulting in no more than 50 pages of records, a flat fee of $15.00 may be assessed; a flat fee of $15.00 may also be assessed for requests requiring the creation of a compilation in order to more efficiently provide the personal data to the data subject.

(h) Known Personal Data. A request by a data subject for a copy of the records containing all of the subject's own personal data submitted to the AGO by the data subject, or a copy of all records containing personal data already provided to the data subject by the AGO, shall not be considered a request for personal data under M.G.L. c. 66A. The AGO, in its discretion and in compliance with records retention policies, may copy or return such records after receipt from the requester of a flat fee of $20.00.

(2) Objections by Data Subjects.

(a) A data subject who objects to the accuracy, completeness, pertinence, timeliness, relevance, dissemination, or denial of access to the subject's own personal data that is maintained in the personal data system(s) of the AGO, may, individually or through a duly authorized representative, file an objection with the Information Officer Designee responsible for the personal data system in question.

(b) The Information Officer Designee responsible for such personal data system shall, within 30 days of the receipt of an objection:

1. Investigate the validity of the objection; and
2. If the objection is found to be meritorious after investigation, alter the contents of, or the methods for holding, or the dissemination or use of such personal data, or grant access to it; or
3. If the objection is found to lack merit after investigation, provide the data subject the opportunity to have a statement reflecting the individual's views maintained and disseminated with the data in question; and
4. Notify the data subject in writing of any AGO decision regarding the individual's objection.

REGULATORY AUTHORITY

940 CMR 11.00: M.G.L. c. 66A, § 3.

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