

940 CMR 37.00: REGULATIONS AUTHORIZING DISCLOSURE OF MASSACHUSETTS LICENSE OR LEARNER'S PERMIT APPLICANT OR HOLDER INFORMATION

Section

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37.01: Purpose

The Attorney General promulgates 940 CMR 37.00, relating to the public records status and disclosure by the Registrar of Motor Vehicles of information relating to applicants and holders of Massachusetts licenses and learner's permits, pursuant to her authority in St. 2022, c. 81, § 7: *An Act Relative to Work and Family Mobility*.

37.02: Definitions

As used in 940 CMR 37.00, the following terms when capitalized shall, unless the context clearly requires otherwise, have the following meanings:

Applicant. An individual who files an application by mail or otherwise to the Registrar of Motor Vehicles or any agent designated by them for the purpose.

Registrar. The Massachusetts Department of Transportation's Registrar of Motor Vehicles established pursuant to M.G.L. c. 6C, § 56, or the Registrar's officer, employee, agent, or contractor, including the members of the Fraud Unit of the Massachusetts State Police pursuant to M.G.L. c. 22C and St. 1991, c. 412, as well as any and all AAA employees who provide Registry of Motor Vehicles-related services at AAA locations in Massachusetts.

37.03: Scope

- (1) 940 CMR 37.00 applies only to the following, as defined in St. 2022, c. 81, § 7:
  - (a) any information provided by or relating to an applicant for a Massachusetts license under M.G.L. c. 90, § 8;
  - (b) any information provided by or relating to an applicant for a learner's permit under M.G.L. c. 90, § 8B;
  - (c) any information provided by or relating to the holder of a Massachusetts license issued under M.G.L. c. 90, § 8; and
  - (d) any information provided by or relating to the holder of a learner's permit issued under M.G.L. c. 90, § 8B.
- (2) Such information includes, but is not limited to, personally identifying information, documents, and communications between the applicant or holder of a Massachusetts license or learner's permit and the Registrar. Furthermore, such information includes, but is not limited to, failure to provide proof of lawful presence as defined in M.G.L. c. 90, § 1. For purposes of 940 CMR 37.00, "personally identifying information" shall include, but not be limited to, "personal information" and "highly restricted personal information" as those terms are defined in 18 U.S.C. § 2725.
- (3) The Registrar is authorized to disclose such information unless prohibited by 940 CMR 37.04 or federal law.
- (4) Nothing in 940 CMR 37.00 shall prohibit an individual, or their attorney, from obtaining a copy of their own records, provided they furnish the Registrar with sufficient documentation.

37.04: Requirements for Disclosure

(1) Any information or record disclosed pursuant to St. 2022, c. 81, § 7 may only be disclosed consistent with the Registrar's functions under federal and state law and not for the purpose of enforcing federal immigration law or provided to an agency that primarily enforces immigration law, unless the Registrar is provided with a lawful court order or judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, a federal grand jury or trial subpoena, or as otherwise required by federal law. When responding to such an order, warrant, or subpoena, the Registrar may only disclose those records or information specifically requested in the order, warrant, or subpoena.

Upon the Registrar's receipt of a lawful court order, judicial warrant, or subpoena, the Registrar shall, prior to disclosing the records or information and no later than three business days after receipt of such request, make reasonable efforts to notify the individual about whom such information was requested, informing such individual of the request and the identity of the agency that made such request, unless disclosure would impede a criminal investigation.

(2) For purposes of 940 CMR 37.04, the term "agency that primarily enforces immigration law" shall include, but not be limited to, United States Immigration and Customs Enforcement and United States Customs and Border Protection, and any successor agencies having similar duties. Enforcing federal immigration law includes, but is not limited to, investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws and 8 U.S.C. §§ 1325 or 1326.

(3) Except as required by federal law and in the specific circumstances delineated in 940 CMR 37.04(3)(a) and (b), the Registrar shall under no circumstances disclose any documents used to prove identity, date of birth, social security status, or Massachusetts residency submitted with an application for either a Massachusetts license pursuant to M.G.L. c. 90, § 8 or a learner's permit pursuant to M.G.L. c. 90, § 8B, nor identify as part of any disclosure which such documents were submitted as part of any such application.

(a) Where the Registrar determines there are indicia of criminal fraud, the Registrar may disclose such documents or information to state or local law enforcement officials when needed to conduct a criminal investigation of said fraud.

(b) The Registrar may, pursuant to a memorandum of understanding under M.G.L. c. 51, § 42G½, disclose to the State Secretary such documents or information to the extent necessary to identify eligible voters.

(4) Except as required by federal law, or to local and state law enforcement where the Registrar determines there are indicia of criminal fraud, the Registrar shall under no circumstances disclose information pertaining to whether an Applicant has submitted a social security denial letter or affidavit of no social security number as part of their application for a Massachusetts license or a learner's permit, including any subsequent renewal application. Except as required by federal law, and in the specific circumstances delineated in 940 CMR 37.04(4)(a), (b) and (c), the Registrar shall under no circumstances disclose an Applicant's social security number, information pertaining to whether an Applicant has submitted a social security number, or information pertaining to or that otherwise may reveal whether an Applicant is eligible for a social security number.

(a) The Registrar may provide such information to state or local law enforcement where the Registrar determines there are indicia of criminal fraud.

(b) The Registrar may provide an individual's social security number to a state agency where the state agency has a legitimate state governmental purpose requiring use of that individual's social security number.

(c) The Registrar may provide an individual's social security number to the administrator of the Driver License Compact, entered into pursuant to M.G.L. c. 90, § 30B, including for use within the state-to-state verification system and any subsequent or similar multi-state data sharing program used in connection with matters related to motor vehicle or driver safety, or status of motor vehicle or driver credentials.

37.04: continued

(5) Except as specified in 940 CMR 37.04(7), (8), (9), (10), (11) and (13), the Registrar shall require any person or entity that receives or has access to records or information from the Registrar pursuant to 940 CMR 37.04, including through a database or automated network, to certify under penalty of perjury to the Registrar, before such receipt or access, and as a condition of renewal of any agreement for such receipt or access, that such person or entity shall not:

- (a) use or disclose such records or information for the purpose of enforcing federal immigration law; or
- (b) disclose such records or information to any agency that primarily enforces immigration law or to any employee or agent of any such agency, unless provided with a lawful court order or judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, a federal grand jury or trial subpoena, or as otherwise required by federal law.

(6) Violation of 940 CMR 37.00, including the certification requirement of 940 CMR 37.04(5) and the written agreement requirements of 940 CMR 37.04(7) and (8) shall be unlawful. The Registrar shall immediately revoke access to information to any individual or entity that the Registrar has reason to believe has violated or will violate 940 CMR 37.00, including by violating agreements or certifications made pursuant to 940 CMR 37.04(5), (7) or (8).

(7) Notwithstanding 940 CMR 37.04(5)(b), the Registrar may disclose records and information to the Department of Criminal Justice Information Services and state and local law enforcement agencies pursuant to certifications from such entities that permit these entities to provide records or information to the United States Department of Homeland Security, Homeland Security Investigations (HSI), provided that HSI agrees in writing to use the information only to investigate alleged crimes and not to enforce civil immigration laws or 8 U.S.C. §§ 1325 and 1326, and that any such written agreement is provided to the Registrar and renewed at least annually.

(8) Notwithstanding 940 CMR 37.04(5)(b), the Registrar may disclose records and information to the Department of Criminal Justice Information Services and state and local law enforcement agencies pursuant to certifications from such entities that permit these entities to provide records or information to the United States Department of Homeland Security, Customs and Border Protection (CBP), provided that CBP agrees in writing to use the information only as necessary for an individual who is seeking acceptance into a trusted traveler program or trusted worker program, seeking to participate in CBP's employee and applicant suitability process, or seeking to obtain temporary and permanent waivers of inadmissibility, and not to enforce civil immigration laws or 8 U.S.C. §§ 1325 and 1326, and that any such written agreement is provided to the Registrar and renewed at least annually.

(9) Notwithstanding 940 CMR 37.04(5), if the Massachusetts Bay Transit Authority or any Massachusetts city or town fails to certify, the Registrar may provide an extension of 30 business days after the deadline before revoking access related to transit operations, traffic enforcement or tax collection purposes.

(10) Subject to the limitations set forth in 940 CMR 37.04(1), (3) and (4), the Registrar may provide Registry and Merit Rating Board records and information without the certification requirement contained in 940 CMR 37.04(5) to:

- (a) any Court, inclusive of its agents and employees, for the purpose of carrying out its functions;
- (b) any state Department of Motor Vehicles or state agency responsible for toll management, inclusive of their agents, for use in connection with matters relating to motor vehicle or driver safety, status of driver credentials, or the operation of toll transportation facilities; or
- (c) any individual who is conducting a motor vehicle transaction, including but not limited to a registration or a title transaction, and presents a completed application for such transaction, provided, however, that the individual presenting the completed application may not receive any personally identifiable information other than what is contained in the completed application. For the purpose of 940 CMR 37.04, a motor vehicle transaction does not include any commercial or passenger license or permit transactions.

37.04: continued

(11) The Registry may provide Registry and/or Merit Rating Board records or information without the certification requirement contained in 940 CMR 37.04(5) to the extent necessary to defend itself in litigation or respond to an appeal under M.G.L. c. 90, § 28 to a court or the Division of Insurance's Board of Appeal on Motor Vehicle Liability Policies and Bonds.

(12) Nothing in 940 CMR 37.00 shall be interpreted to authorize the designation as a public record of any information provided by or relating to:

- (a) the applicant for a Massachusetts license;
- (b) the applicant for a learner's permit;
- (c) the holder of a Massachusetts license; or
- (d) the holder of a learner's permit.

(13) Notwithstanding 940 CMR 37.04(12), the Registrar may release the following Registry and Merit Rating Board data as a public record, provided that all personal information and highly restricted personal information, as defined in 18 U.S.C. § 2725, and all information required to be shielded under M.G.L. c. 90, § 30, have been redacted;

- (a) vehicle information, such as vehicle inspection data, titles, VIN numbers, and license plate numbers, provided that the data does not, through ordinary means, identify a license or permit applicant, or a license or permit holder; and
- (b) documents provided to the Registrar by state or local government agencies, so long as these documents would have been considered public records before they were provided to the Registrar.

37.05: Severability

If any provision of 940 CMR 37.00 or the application of any provision of a regulation to any person or circumstance is held to be invalid, the validity of the remainder of 940 CMR 37.00 and the applicability of such provision to other persons or circumstances will not be affected.

REGULATORY AUTHORITY

940 CMR 37.00: St. 2022, c. 81, § 7.