

**MASSACHUSETTS CIVIL SERVICE COMMISSION**  
**PRIVACY PROTOCOLS, STANDARDS AND NOTES**

**UPDATED: DECEMBER 12, 2023**

**PROTOCOLS**

The Massachusetts Civil Service Commission (CSC or Commission) is an independent state agency charged with adjudicating appeals brought by public employees and applicants under the protection of Massachusetts civil service law. *See* G.L. c. 31, §§ 1 *et seq.* CSC’s mission is to ensure that all individuals receive fair and impartial treatment in public employment, and that personnel decisions are based on merit, free of personal bias or political considerations. *Id.* at § 1. The Commission is also responsible for conducting investigations into alleged violations of civil service law, *id.* at § 2, and reviewing requests for reclassification filed by state employees and managers. *See* G.L. c. 30, §§ 45-49.

Due to the nature of the matters handled by CSC, highly sensitive personal information routinely arises during appeals and investigations. The Commission makes all reasonable efforts to protect privacy in the course of appeals and investigations, but it is a public agency that supports transparency in government and recognizes that all parties before it typically are public servants or applicants for taxpayer-funded positions. CSC constantly seeks to balance individual privacy interests with its statutory obligation to provide the public with a transparent record of its review process and an interpretation of civil service law based on uniquely relevant facts. *See* G.L. c. 30A, §§ 11(8), 14(4); G.L. c. 66, § 19.

**Mandatory Steps Required of All Parties to Comply with CSC Privacy Protocols**

Prior to submitting documents to the Commission, the parties are responsible for redacting the following information, unless otherwise authorized by the hearing officer:

- Social Security number
- Taxpayer ID number
- Numbers of credit cards, bank accounts and other financial accounts
- Driver’s license number
- State-issued identification card number
- Passport number
- Date of birth
- Phone number
- Residential address (if relevant to the case, redact all but the city or town)
- A person’s parent’s birth surname, including maiden name, if it is identified as such (e.g., “mother’s maiden name: XXX”)
- Name of a minor child and school he or she attends
- Name of victim of a crime

## **Additional Steps That May Be Taken to Comply with CSC's Privacy Protocol**

Where feasible, the Commission may take other measures to avoid unwarranted invasions of privacy, such as:

- Authorizing a protective order or impounding certain records
- Closing a portion of a hearing to protect witness privacy
- Withholding immaterial details and speaking in general terms wherever possible
- Use of pseudonyms

The Commission considers additional measures on a case-by-case basis, weighing “the seriousness of any invasion of privacy” against “the public right to know.” See *Att’y Gen. v. Collector of Lynn*, 377 Mass. 151, 156 (1979); *Doe v. Massachusetts Inst. of Tech.*, 46 F.4th 61, 72 (1st Cir. 2022); *Globe Newspaper Co. v. Police Comm’r of Boston*, 419 Mass. 852, 858 (1995); *Hastings & Sons Pub. Co. v. City Treasurer of Lynn*, 374 Mass. 812, 818 n.8 (1978). For more information regarding the Commission’s position on privacy measures in the context of public proceedings and civil service employees, please see appended Notes Regarding CSC Privacy Protocols.

As stated on its website, the Commission presumes that certain topics will trigger heightened attention and consideration of privacy-protecting measures. Other typically confidential or sensitive information not central to disposition of an appeal but invasive of privacy, or with the potential to aggravate identity theft risks, shall be redacted from any documents submitted to the Commission. The following is a non-exhaustive list of such topics:

- Medical data; mental illness/mental health history; substance abuse/addiction
- Adoption status; conservatorship or guardianship; paternity test results
- Parental neglect; child abuse
- Juvenile delinquency or truancy
- Acceptance of or eligibility for government assistance for low-income individuals
- Sealed or subsequently expunged criminal records
- Intimate details of a highly personal nature, especially where disclosure would result in personal embarrassment to an individual of normal sensibilities or be highly offensive to a reasonable person, and the information is not of legitimate concern to the public.
- Identification of voluntary witnesses, whistleblowers, etc., especially where disclosure would likely deter other individuals from providing important information to law enforcement or investigatory agencies (including CSC) in future investigations.
- Any other encroachment upon legitimate privacy interests where disclosure would likely result in specific, severe harm to the subject.

## **STANDARDS**

Whenever the Civil Service Commission posts an order, report, or decision on its website that adjudicates the rights of an individual with a medical, physical, or intellectual disability or “handicap”, as defined in G.L. c. 31, § 1, including a mental health condition, the Commission shall redact or otherwise shield from public disclosure any “personal data,” as that term is defined in G.L. c. 66A, § 1, reflecting such disability, handicap, or condition if its publication likely would expose the individual to stigma, or cause shame or embarrassment to a reasonable person, or undermine the individual’s current employment situation or the potential for future employment; provided, however, that where the personal data contained in the order, report, or decision has already been made public, or where public disclosure of the identity of a party before the Civil Service Commission is vital to maintaining public safety or accountability, or resolving allegations of misconduct against potential or incumbent civil service employees, then the Commission may exercise sound discretion in including in its public documents only such personal data as is necessary to fulfill its responsibilities. In other circumstances, where the inclusion of sensitive personal data in an order, report, or decision is necessary to understand its basis or rationale, such information as would enable members of the general public to ascertain a party’s identity shall be redacted.

## NOTES

Massachusetts' public records law "was enacted 'to give the public broad access to government documents.'" *Georgiou v. Comm'r of Dep't of Indus. Accidents*, 67 Mass. App. Ct. 428, 431 (2006), quoting *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749 (2006). Under G.L. c. 66, § 19(b), "[e]very agency shall provide on a searchable website electronic copies" of various records, including "final opinions, **decisions**, orders, or votes from agency proceedings . . . ." In addition, Massachusetts administrative procedure law requires that "[e]very agency decision . . . shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision." G.L. c. 30A, § 11(8). When an administrative decision is appealed to court for judicial review, the court needs to see all material facts laid out in the decision, and the agency must file a certified copy of the complete administrative record unless the agency and both parties stipulate otherwise. *See* G.L. c. 30A, § 14(4).

The Civil Service Commission (CSC) respects the strong presumption against pseudonymity inherent in American jurisprudence. *See* Eugene Volokh, *The Law of Pseudonymous Litigation*, 73 Hastings L.J. 1353, 1367 (2022). The public has a legitimate interest in knowing all the salient facts determining the outcome of CSC proceedings, usually including the identities of the parties. These proceedings all involve governmental respondents and either applicants for, or incumbents in, public positions, and appeals typically include claims to relief that implicate the use of public funds. The Commission respects that "the public certainly has a valid interest in knowing how [tax] revenues are spent," especially when appellants accuse public officials of misconduct or vice versa. *See id.* at 1392 ("The public has a strong interest in knowing the accusations against its tax-funded entities as well as the identities of the individuals making those accusations."). In this context, the public interest weighs heavily against pseudonymity.

As the Supreme Judicial Court of Massachusetts has recognized, "[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner." *Globe Newspaper Co.*, 419 Mass. at 858, quoting *Collector of Lynn*, 377 Mass. at 158; *see also New Bedford Standard-Times Publishing Co. v. Clerk of the Third Dist. Ct. of Bristol*, 377 Mass. 404, 417 (1979) (Abrams, J., concurring) ("[G]reater access to information about the actions of public officers and institutions is increasingly recognized as an essential ingredient of public confidence in government.").

Thus, for public employees, the Commission believes that privacy interests are at their zenith with respect to "matters of personal life unrelated to any acts done by them in their public capacity." *See Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 457 (1977). Privacy interests are often diminished, however, in cases involving law enforcement personnel, given the role of a police (or parole or correction) officer "as a public servant who must be accountable to public review." *See King v. Conde*, 121 F.R.D. 180, 191 (E.D.N.Y. 1988) ("[E]ven disclosures having some effect on individual liberty or privacy because of their personal nature are permissible when disclosure serves important public concerns.").

Montana's highest state court aptly stated:

[I]t is not good public policy to recognize an expectation of privacy in protecting the identity of a law enforcement officer whose conduct is sufficiently reprehensible to merit discipline . . . . Whatever privacy interest the officers have in the release of their names as having been disciplined, it is not one which society recognizes as a strong right.

*Great Falls Tribune Co. v. Cascade Cty. Sheriff*, 775 P.2d 1267, 1269 (Mont. 1989).

Even in civil litigation between private parties, the First Circuit has made clear that “there is a ‘strong presumption against the use of pseudonyms . . . .’” *Doe v. Massachusetts Inst. of Tech.*, 46 F.4th 61, 67 (1st Cir. 2022),<sup>1</sup> quoting *Does 1-3 v. Mills*, 39 F.4th 20, 25 (1st Cir. 2022).

The First Circuit identified four categories of cases where pseudonymity is typically warranted:

- 1) cases involving “a would-be Doe who reasonably fears that coming out of the shadows will cause him unusually severe harm (either physical or psychological)”;
- 2) “cases in which identifying the would-be Doe would harm innocent non-parties”;
- 3) “cases in which anonymity is necessary to forestall a chilling effect on future litigants who may be similarly situated”;
- 4) “suits that are bound up with a prior proceeding made confidential by law.”

*Massachusetts Inst. of Tech.*, 46 F.4th at 71.

In general, there must be a “balancing between the seriousness of any invasion of privacy and the public right to know. . . . Where the public interest in obtaining information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield to the public interest.” *Att’y Gen. v. Collector of Lynn*, 377 Mass. 151, 156 (1979) (citations omitted); see *Doe v. MIT*, 46 F.4th at 72; *Globe Newspaper Co. v. Police Comm’r of Boston*, 419 Mass. 852, 858 (1995). The following factors are relevant in this balancing process: “whether disclosure would result in personal embarrassment to an individual of normal sensibilities; whether the materials sought contain intimate details of a highly personal nature; and whether the same information is available from other sources.” *Police Comm’r of Boston*, 419 Mass. at 858 (quotations and citations omitted); *Collector of Lynn*, 377 Mass. at 156-57 (“[T]he seriousness of any invasion of privacy resulting from disclosure of the records . . . is reduced [where] substantially the same information is available from other sources.”); *Hastings & Sons Pub. Co.*, 374 Mass. at 818. These factors, along with the specific circumstances of each case, are weighed against the public interest in disclosure. *Police Comm’r of Boston*, 419 Mass. at 858.

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<sup>1</sup> The First Circuit has noted:

Secrecy breeds suspicion. Some may believe that a party’s name was masked as a means of suppressing inconvenient facts and that the court was either asleep at the wheel or complicit in the cover up. . . . A judicial system replete with Does and Roes invites cynicism and undermines public confidence in the courts’ work.

*Massachusetts Inst. of Tech.*, 46 F.4th at 69.

Accordingly, the Commission considers privacy interests on a case-by-case basis, weighing the seriousness of any invasion of privacy against the public right to know.