



Massachusetts POST Commission

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GUIDANCE TO LAW ENFORCEMENT AGENCIES AND PROSECUTING OFFICES REGARDING 555 CMR 1.00 AND 6.00

The Massachusetts Peace Officer Standards and Training Commission provides this clarification and guidance on the application of certain sections of 555 CMR 1.00: *Procedural Rules* and 555 CMR 6.00: *Use of Force by Law Enforcement Officers*. This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 1.00. It pertains only to matters in which the cited provisions of 555 CMR 1.00 and 6.00 should be applied, and should not necessarily be relied on in other contexts. The Guidance is intended to offer explanations and details that are consistent with the relevant statutes and regulations. The Commission reserves the ability to revise this Guidance in the future.¹

¹ As used in this Guidance:

- “Agency” refers to a “law enforcement agency” as defined in M.G.L. c. 6E, § 1;
- “Appointing agency” has the meaning set forth in M.G.L. c. 6E, § 1;
- “Commission” refers to the Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2;
- “Conviction” has the meaning set forth in M.G.L. c. 6E, § 1;
- “Deadly force” has the meaning set forth in M.G.L. c. 6E § 1;
- “Division of Police Standards” and “Division of Standards” refer to the Division of Police Standards established under M.G.L. c. 6E, § 8;
- “Executive Director” refers to the Executive Director of the Commission appointed under M.G.L. c. 6E, § 2;
- “Initial report” refers to a “report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, personnel at the agency, or any other source,” 555 CMR 1.01(1);
- “Law enforcement officer” and “Officer” refer to a “law enforcement officer” as defined in M.G.L. c. 6E, § 1;
- “Officer-involved injury or death” has the meaning set forth in 555 CMR 202;
- “Serious bodily injury” has the meaning set forth in 555 CMR 2.02; and
- “Untruthfulness” has the meaning set forth in M.G.L. c. 6E, § 1.

Agencies and Officers Subject to 555 CMR 1.00

555 CMR 1.00 includes various provisions governing “agencies” and “officers.”

1. Provisions governing agencies are inapplicable to entities that do not fall within the definition of “law enforcement agency” (or “agency”) in M.G.L. c. 6E, § 1.
2. Provisions governing officers are inapplicable to individuals who do not fall within the definition of “law enforcement officer” (or “officer”) in M.G.L. c. 6E, § 1.
3. Thus, for example, such provisions do not impose any obligations on civilian complaint review boards that are not subject to M.G.L. c. 6E.

Agency Action Within Two Business Days of Receiving a Credible Report Constituting a Complaint

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall” take certain steps “within two days of their receipt of a complaint, which is any credible report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, personnel at the agency, or any other source.” The regulation adds, among other provisions, that “[a]nonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.” 555 CMR 1.01(1)(c)1.

1. The term “two days” refers to two business days. See M.G.L. c. 6E, § 8(b)(1) (requiring transmittal of complaint “within 2 business days”); 555 CMR 2.03(2) (providing that, “[w]hen the time period [prescribed in a provision of 555 CMR] is seven days or less, intervening Saturdays, Sundays, and legal holidays shall be excluded in the computation”).
2. For these purposes, an agency is not in “receipt of a complaint” before the agency itself obtains it, regardless of whether it has come to the attention of another unit of the same government, such as a civilian complaint review board.
3. Under the regulatory definition above, an initial report does not constitute a “complaint” unless it is “credible.”
4. A “credible report” is one that is capable of being believed by a reasonable person and is not based solely on speculation or conjecture.
5. An agency will not be deemed to be in “receipt of a complaint,” and the two-business-day period will not begin to run, during such time as the agency is determining whether the initial report is “credible,” provided that the amount of time is reasonable under the circumstances.
6. An agency is encouraged to provide the Commission with a written explanation for the amount of time that the agency takes to assess the credibility of an initial report where the period of time exceeds three business days, and to maintain such explanation in the agency’s files, including the officer’s personnel file.

7. An agency may treat a complaint as anonymous in any circumstance where the agency, through no fault of its own, has not received the complainant's name.

Minor and Non-minor Matters

Under 555 CMR 1.01(1), the steps that an agency must take with respect to a complaint depend in part on whether the complaint relates to "minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions." And 555 CMR 1.01(1)(b) provides that, "if the complaint does not relate to minor matters," the agency must transmit certain information regarding the complaint to the Commission. Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which authorizes the Commission to "establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior."

1. For these purposes, an agency should treat a complaint that contains any allegation or evidence of a non-minor matter as one that "does not relate to minor matters."
2. "Basic work rule violations" are those that relate to the internal functioning of the agency and do not involve:
 - a. interactions with the public;
 - b. the handling of finances; or
 - c. violations of any code of ethics adopted by the agency.
3. Below is a non-exhaustive list of matters that an agency should treat as presumptively non-minor. Each has been found by the Legislature or the Commission to warrant a preliminary inquiry, disciplinary action, a referral to other authorities for investigation or possible prosecution, or special attention in reporting and recordkeeping, provided that applicable standards are satisfied:
 - a. criminal conduct, see M.G.L. c. 6E, §§ 1, 3(a)(18), (25), 8(c)(1)(ii), 8(c)(2), 9(a)(1)-(2), 9(a)(3), 10(a)(i), 10(b)(i); 555 CMR 1.02(3)(b), 1.03, 1.07(2), 1.08(1), 1.08(2)(a)-(b); see also M.G.L. c. 6E, §§ 10(a)(vi)-(ix), (xiii)-(xiv) (termination for certain conduct; submitting false timesheet; filing false statement; perjury; record tampering; hate crime; witness intimidation);
 - b. excessive, prohibited, or deadly force, see M.G.L. c. 6E, §§ 1, 8(b)(1), 8(c)(1)(iii), 8(e), 10(a)(x)-(xii), 10(d)(iii), 14, 16; 555 CMR 1.02(3)(a); 555 CMR 6.00;
 - c. a failure to intervene when there is a duty to do so, see M.G.L. c. 6E, §§ 8(c)(1)(iv), 10(a)(xv), 10(d)(viii), 15(a); 555 CMR 1.02(3)(c); 555 CMR 6.06;
 - d. an officer-involved injury or death, see M.G.L. c. 6E, §§ 8(b)(1), 8(c)(1)(i), 8(e), 10(a)(xi); 555 CMR 1.02(3)(a);
 - e. an agency head's recommendation for disciplinary action, see M.G.L. c. 6E, § 8(c)(1)(v); 555 CMR 1.02(3);
 - f. misrepresentation, fraud, or document falsification in connection with certification, see M.G.L. c. 6E, § 10(a)(iii)-(iv);
 - g. revocation of certification by another jurisdiction, see M.G.L. c. 6E, § 10(a)(v);
 - h. an appealed agency termination based on intentionally obtaining false confessions; making a false arrest; creating or using falsified evidence, including

- false testimony or destroying evidence to create a false impression; engaging in conduct constituting a hate crime; or directly or indirectly receiving a reward, gift, or gratuity on account of official services, see M.G.L. c. 6E, § 10(a)(vi);
- i. unfitness for duty and danger to the public, see M.G.L. c. 6E, § 10(a)(xvi);
 - j. racial profiling, see M.G.L. c. 6E, § 3(a)(29);
 - k. other “bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level,” see M.G.L. c. 6E, §§ 1, 8(b)(1), 8(e), 10(b)(ii), 10(d)(ii), 16; M.G.L. c. 12, § 11H;
 - l. untruthfulness, see M.G.L. c. 6E, §§ 1, 8(e), 10(d)(vi); see also 555 CMR 6.07(5);
 - m. failing to respond an incident according to established procedure, see M.G.L. c. 6E, § 10(d)(iv);
 - n. kettling, see 555 CMR 6.08(6);
 - o. failing to fulfil a duty regarding crowd-control planning or reporting a use of force, see M.G.L. 6E, §§ 8, 9(c), 14(e), 15(b); 555 CMR 6.07(4)-(5);
 - p. “harassment, intimidation, or retaliation against an officer who either intervened to prevent or stop an excessive force incident or made, intended to make, or [was] required to make a report regarding [a] witnessed excessive force incident,” see 555 CMR 6.07(7);
 - q. “[taking] adverse action against an officer or employee or threaten[ing] to take any such action for providing information to the commission or testifying in any commission proceeding,” see M.G.L. c. 6E, § 12; see also M.G.L. c. 6E, § 8(c)(2); 555 CMR 1.02(4);
 - r. repeated sustained internal affairs complaints, see M.G.L. c. 6E, § 10(b)(v);
 - s. an appealed agency suspension or termination for disciplinary reasons, see M.G.L. c. 6E, §§ 8(e), 10(b)(iv), 10(d)(vii);
 - t. a demonstration that the officer would benefit in job performance if retrained, see M.G.L. c. 6E, § 10(d)(ix);
 - u. “failing to act in accordance with a limitation or restriction on a certification,” see 555 CMR 9.10(8) (promulgation pending); and
 - v. executing an arrest or otherwise performing police duties and functions when prohibited, see 555 CMR 9.13(8) (promulgation pending);
 - w. other prohibited conduct, see M.G.L. c. 6E, § 8(c)(2); 555 CMR 1.02(4);
 - x. otherwise violating M.G.L. c. 6E; a Commission regulation, rule, or order; or a training or reporting requirement, see M.G.L. c. 6E, §§ 3(a)(18), (22), 4(f)(4), 8(e), 9(b)-(c), 10(d)(i); and
 - y. other unprofessional conduct, see M.G.L. c. 6E, §§ 8(b)(1), 8(e), 8(f), 10(b)(iii), 10(d)(v).
4. The Commission’s requests that agencies submit periodic reports summarizing officers’ disciplinary histories, and the guidelines accompanying those requests, are separate from, and have no bearing on, agencies’ obligations under 555 CMR 1.00.

Pattern of Complaints

Under 555 CMR 1.01(1)(c)3., “[a]n agency shall forward any pattern of complaints alleging the misconduct of an officer to the commission.”

1. The above requirement applies without regard to whether the complaints at issue relate to minor or non-minor matters, and without regard to the location or date of any complaint.
2. Where an agency forwards a pattern of complaints under 555 CMR 1.01(1)(c)3., the agency should:
 - a. describe the pattern it has identified; and
 - b. with respect to each such complaint, include all information prescribed by 555 CMR 1.01(1)(b), to the extent such information is available, even if the complaint or such information may have been previously submitted to the Commission.

Internal Complaint Resolution

Under 555 CMR 1.01(1), “[t]he head of an agency shall, within two [business] days of their receipt of a complaint” that “is related to minor matters” and “does not involve evidence or an allegation of” certain forms of “bias,” “force,” or “serious bodily injury or death”: “refer the complaint for resolution under the agency’s internal resolution policy, which shall comply with any minimum requirements established by the commission”; or maintain and furnish documentation regarding the complaint as provided in the regulation “if the agency does not have an internal resolution policy, if the agency’s internal resolution policy is not in compliance with the minimum requirements established by the commission, or if the matter cannot be resolved under [an internal resolution policy] for any other reason.” Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which, as noted above, allows the Commission to “establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.”

1. An agency’s “internal resolution policy” should, at a minimum, include adherence to the following provisions of 555 CMR 1.01(1)(a):
 - a. “[T]he agency shall maintain any documentation of the complaint, the name and commission certification identification number of the subject officer, a brief summary of the nature of the conduct that is the subject of the complaint, and any other documentation that the agency deems material to an understanding of the complaint and the agency’s handling of the complaint or that the commission directs the agency to maintain”; and
 - b. “[The agency shall] make any such complaint available to the commission upon request, or under any policy that may be established by the commission.”
2. Documentation maintained by an agency for these purposes should, at a minimum, be included in the officer’s personnel file and a central file or database for such information, maintained by the agency.
3. If an agency does not have an internal resolution policy, the agency head should refer the matter to an agency internal investigation unit or internal investigation officer for investigation and appropriate action.
4. The Commission is not bound by any agency determination regarding the allegations made in an initial report or the appropriate disposition.

Allegations of Unprofessional Conduct

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall, within two [business] days of their receipt of a complaint” that “does not relate to minor matters,” among other things, inform the Commission’s Division of Police Standards as to “whether the complainant alleges that the officer’s conduct . . . was unprofessional.”

1. For these purposes, a “complainant alleges that the officer’s conduct . . . was unprofessional” where a reasonable person would conclude that the form of conduct alleged would breach the rules or ethical code of the law enforcement profession or be unbecoming a member in good standing of such profession.
2. In reviewing officer conduct, sources that may be helpful include, but are not limited to, the first five paragraphs of the October 1957 Law Enforcement Code of Ethics adopted by the International Association of Chiefs of Police, and the July 2019 Standards of Conduct adopted by the same association.

Discretionary Forwarding of Complaints

555 CMR 1.01(1)(c) provides that, “notwithstanding [555 CMR 1.01(1)(a)-(b)], . . . [a]n agency may forward any complaint other than those set out in 555 CMR 1.01(1)(b) at the agency’s discretion.”

1. The above provision should not be understood to suggest that an agency has discretion concerning whether to forward a “pattern of complaints alleging the misconduct of an officer to the commission,” as the forwarding of such a pattern is required under 555 CMR 1.01(1)(c)3.
2. The Commission encourages an agency to include all information prescribed by 555 CMR 1.01(1)(b) when it forwards a complaint as an exercise of its discretion under 555 CMR 1.01(1)(c).

Confidentiality of Agency Investigations

Under 555 CMR 1.01(2), an agency’s “internal investigation of the subject matter of any complaint forwarded to the division of standards under 555 CMR 1.01(1)(b)” “shall be conducted confidentially to the extent permitted by law.”

1. The above provision does not restrict an agency’s ability to provide information to a prosecuting office.

Audio Recording of Interviews and Other Disciplinary Proceedings

555 CMR 1.01(2)(c) provides that an agency investigator’s “interviews of relevant witnesses” “should be audio recorded if feasible.”

1. The best practice is to record and retain interviews. Recording generally promotes accuracy and precision in the recitation of statements made by interviewees and in factual

determinations. It thus helps avoid misrepresentation and misunderstanding, and enhances the fairness of the process and the quality of decision-making.

2. Recording an interview ordinarily will be “feasible” unless such a step would make it impossible, or extremely or unreasonably difficult, to obtain an interview of the individual.
3. Agencies and officers should remain mindful of the fact that 555 CMR 1.01(c)(3) requires an agency head to submit, as part of an investigation report, “a list of any witnesses interviewed, whether each interview was recorded and if not, the reasons for not recording the interview, and a description of all evidence collected.” Where an interview has not been recorded: the Commission and others may have questions or concerns about the reason offered; they may draw inferences that are adverse to the person or entity that did not wish to have the interview recorded; and they may otherwise take into account the failure to record in making determinations of credibility and fact.
4. For the reasons offered above, the Commission additionally encourages agencies to make audio recordings of disciplinary proceedings other than interviews.

Deadlines for Completion of Agency Actions

Several provisions of 555 CMR 1.01(1) require agencies to provide items to the Commission within prescribed timeframes.

1. Such provisions must be read in conjunction with the following:
 - a. M.G.L. c. 6E, § 8(b), which requires certain actions to be taken by agencies within certain timeframes;
 - b. M.G.L. c. 6E, § 10(h), which governs the timing of, and interplay between, agency and Commission disciplinary proceedings; and
 - c. 555 CMR 2.00: *Construction; Application of Rules; Notice*, which, among other things: defines terms used in Commission regulations; provides that “[a]ny act that must be performed ‘immediately’ under a provision of 555 CMR or M.G.L. c. 6E shall be performed as soon as the exercise of reasonable diligence will enable such performance”; and establishes rules for computing time periods referenced in Commission regulations.
2. In light of the above statutory and regulatory provisions, the following time standards apply, barring any extension of time (the length of which cannot be inconsistent with the provision of M.G.L. c. 6E, § 10(h) that is referenced in point 2(f) below).
 - a. Within two business days after receiving a complaint, an agency head must take certain steps, including forwarding information regarding the complaint to the Commission where appropriate. M.G.L. c. 6E, § 8(b)(1); 555 CMR 1.01(1), 2.03(2).
 - b. Within fourteen calendar days after receiving a complaint as to which it has forwarded information to the Commission, an agency must commence an investigation. 555 CMR 1.01(2)(a), 2.03(2).
 - c. Where an officer under investigation resigns before the agency concludes its investigation or imposes discipline, the agency head must report the resignation as

soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(4); 555 CMR 1.01(5), 2.03(3).

- d. Within ninety calendar days after receiving a complaint, the agency must complete such an investigation. 555 CMR 1.01(2)(e), 2.03(2).
- e. Upon completing such an investigation, the agency head must transmit to the Division of Police Standards an investigation report as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(2); 555 CMR 1.01(3), 2.03(3).
- f. Within one year after receiving a complaint, or notice of a complaint from the Commission, an agency must issue a final disposition, an investigation having already been completed. M.G.L. c. 6E, § 10(h).
- g. Upon determining the final disposition and any final discipline to be imposed, the agency head must transmit a report to the Division of Police Standards as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(3); 555 CMR 1.01(4), 2.03(3).
- h. An agency has until the issuance of its final disposition or one year since the incident was reported to the Commission, whichever is earlier, before the Commission may institute a revocation or suspension hearing pursuant to M.G.L. c. 6E, § 10. M.G.L. c. 6E, § 10(h).
- i. Any time period that would end on weekend or legal holiday is extended to the end of the next business day. 555 CMR 2.03(2).

Agency Officials with Personal Conflicts

Multiple provisions of 555 CMR 1.01 call for certain actions to be taken by the “head of [an] agency,” consistent with M.G.L. c. 6E, § 8(b). Additionally, 555 CMR 1.01(2)(b) provides, in part, that an agency’s investigator “shall report, for the purpose of the investigation, directly to the head of the agency, or to a designated official immediately subordinate to the head of the agency, unless the head of the agency or immediate subordinate is the subject of, or implicated by, the complaint, or is otherwise unable to supervise the investigator due to conflicts of interest, or the potential for bias, prejudice, or self-interest whether apparent or perceived.”

- 1. Such provisions must be read in conjunction with 555 CMR 2.03(5), which provides that, “[i]n any instance in which an individual has a conflict precluding that person from exercising their authority under 555 CMR, their duties shall be exercised by the next most senior supervisor within the Agency, or if there is no such supervisor without a conflict of interest within the Agency, by an individual designated by the most senior disqualified individual’s appointing authority.”
- 2. If an agency head and an immediate subordinate are both disqualified from receiving investigative reports under 555 CMR 1.01(2)(b), an individual shall be designated pursuant to 555 CMR 2.03(5), and that individual should consult with the General Counsel of the Commission regarding the reporting process.

Reporting of Uses of Force, Injuries, and Deaths

555 CMR 1.00 in part governs the reporting by agencies of information alleging or evidencing officer misconduct, including forms involving uses of force, injuries, or deaths. 555 CMR 6.00: *Use of Force by Law Enforcement Officers* sets forth various requirements for agencies and

officers concerning uses of force, injuries, and deaths. With respect to the reporting of information, 555 CMR 6.07(1) provides in part that “agencies shall develop and implement a policy and procedure for reporting the use of force,” which “shall mandate reporting such incidents including, but not limited to, officer-involved injuries or deaths as described in [the regulations].” Similarly, 555 CMR 6.09 requires, in part, that “agencies shall develop and implement a policy and procedure for reporting a use of force that results in a death or serious bodily injury.” And 555 CMR 6.08(4) states, consistent with M.G.L. c. 6E, § 14(e), that, “[i]f a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber bullets, [conducted energy devices (CEDs)], [tear gas or other chemical weapons (CWs)], [electronic control weapons (ECWs)], or a dog against a crowd, the law enforcement officer’s appointing agency shall file a report with the Commission” with certain details.

1. 555 CMR 1.00 and 555 CMR 6.00 must be read in conjunction.
2. Neither set of regulations relieves agencies or officers of any obligations they may have under the other set.
3. The phrases “excessive, prohibited, or deadly force” and “improper use of force” in 555 CMR 1.00 should be construed by reference to the provisions of 555 CMR 6.00.
4. Agency policies and procedures shall provide for the reporting to the Commission of all serious bodily injuries, and officer-involved injuries and deaths, as those terms are defined in 555 CMR 6.03, regardless of whether the injury or death was suffered by an officer or a member of the public.

Location and Date of Alleged Incidents

555 CMR 1.01 in part governs the handling by agencies of initial reports that they receive.

1. The obligations in 555 CMR 1.01 apply without regard to whether an incident allegedly occurred within the agency’s jurisdiction and without regard to whether it allegedly occurred within Massachusetts.
2. The obligations in 555 CMR 1.01 do not apply to an initial report that an agency receives if: the initial report was addressed by the agency prior to the promulgation of 555 CMR 1.00 on June 24, 2022; or the initial report alleges only misconduct as to which both criminal and civil liability would be barred by applicable statutes of limitations.

Submissions by Members of the Public to the Commission

555 CMR 1.01 in part governs the handling by agencies of initial reports that they receive.

1. The regulations do not restrict or govern the public’s submission of initial reports directly to the Commission.
2. The Commission may receive and act on information from any source, as appropriate.

3. Members of the public may submit initial reports directly to the Commission by following the instructions found on the Commission's website, <https://policecomplaints.mass.gov/complaint>.
4. Members of the public are not precluded from submitting, and the Commission is not precluded from reviewing, matters involving alleged conduct predating the establishment of the Commission or as to which a criminal or civil action would be barred by a statute of limitations.
5. While the Commission will ordinarily forward an initial report to the employing agency or appointing authority of the officer involved, it will decide whether to do so on a case-by-case basis.
6. The Commission may render a determination regarding an initial report that differs from one reached by an agency or another person or entity.
7. The Commission's requests that agencies submit spreadsheets summarizing officers' disciplinary histories, and the guidelines accompanying those requests, are separate from, and have no bearing on, the manner in which the Commission may address any initial report that it receives.

Confidentiality of Information Regarding Commission Preliminary Inquiries

By statute, "[a]ll proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential." M.G.L. c. 6E, § 8(c)(2). However, "[t]he division of police standards shall notify any law enforcement officer who is the subject of the preliminary inquiry, the head of their collective bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry." M.G.L. c. 6E, § 8(c)(3). In addition, "the executive director may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding." M.G.L. c. 6E, § 8(c)(2). Similarly, the Commission is authorized to "refer cases for criminal prosecution to the appropriate federal, state or local authorities" and "refer patterns of racial profiling or the mishandling of complaints of unprofessional police conduct by a law enforcement agency for investigation and possible prosecution to the attorney general or the appropriate federal, state or local authorities." M.G.L. c. 6E, § 3(a).

Accordingly, the regulations at 555 CMR 1.00 provides that "[a]ll proceedings and records relating to a preliminary inquiry by the division of standards, including any internal review to determine whether there is sufficient credible evidence to initiate a preliminary inquiry, shall be kept strictly confidential pursuant to M.G.L. c. 6E, § 8(c)(2) and M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records." 555 CMR 1.03. Likewise, they state that "[t]he division of standards' report on its preliminary inquiry shall remain confidential to the extent permitted by law including, but not limited to, the redaction of certain information pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records." 555 CMR 1.07(2).

But the regulations add that “[t]he division of standards shall, within 30 [calendar] days of the commission’s vote to authorize a preliminary inquiry, notify the officer who is subject of the inquiry, the head of the agency, the head of the officer’s collective bargaining unit, and a district attorney of competent jurisdiction of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.” 555 CMR 1.04. They also provide that “[a]ny commission decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards shall be transmitted immediately” to the same individuals. 555 CMR 1.08(3).

Additionally, 555 CMR 1.04 states that “[n]othing [therein] shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue”; and 555 CMR 1.08(3) similarly indicates that “[n]othing [therein] shall prevent the commission from transmitting to any other prosecuting attorney, upon reasonable request, the commission’s decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards.” Also, 555 CMR 1.03 allows the Commission’s Executive Director to provide “evidence which may be used in a criminal proceeding or investigation” to the officials listed in M.G.L. c. 6E, § 8(c)(2), and 555 CMR 1.07(2) allows the Executive Director to provide “[t]he division of standards’ report on its preliminary inquiry” “for use in a criminal proceeding or investigation” to such an official.

1. 555 CMR 1.00 does not govern the conduct of the Offices of the Massachusetts Attorney General, the United States Attorney for the District of Massachusetts, or the Massachusetts District Attorneys.
2. The Commission requests that those who receive information regarding a preliminary inquiry that was prepared by, or provided by, the Commission:
 - a. Consider taking steps to maintain such information as confidential, such as seeking a court order or agreement providing for confidentiality, to the extent that any such steps are not inconsistent with any official, professional, legal, or ethical duties, and are otherwise appropriate and feasible; and
 - b. Notify the Commission before disclosing the information to others.
3. The Commission recommends that recipients of such information obtain case-specific legal guidance from their own counsel regarding the extent to which such information must be disclosed or used, or cannot be disclosed or used, under any source of law.

Duties of Agency Heads

555 CMR 1.01 requires agency heads to transmit certain information either to the Commission or within their own agencies.

1. An agency head may fulfill a duty under 555 CMR 1.01 to “refer [a] complaint for resolution under the agency’s internal resolution policy” or to transmit information to the Commission, other than a “recommendation . . . as to whether and how the commission should impose [certain] disciplinary action,” through another member of the agency acting on the agency head’s behalf.

2. In any event, an agency head remains responsible for whether and how the duties assigned to agency heads under 555 CMR 1.01 are fulfilled.

Notification by Agency to Officer

555 CMR 8.04 provides as follows: “When a law enforcement agency supplies information concerning an officer to the Commission, the law enforcement agency: (a) Must notify the officer that it has done so in accordance with any other provision of 555 CMR that requires notification; or (b) In the absence of any such provision, must notify the officer that it has done so within ten calendar days, unless such notification would compromise an ongoing investigation or the security of any person or entity, or would be precluded by federal or Massachusetts law.”

1. 555 CMR 8.04 must be read in conjunction with the reporting provisions of 555 CMR 1.00 and 555 CMR 6.00.
2. 555 CMR 8.04 applies to an agency’s reporting of information to the Commission pursuant to 555 CMR 1.00 and 6.00.
3. An agency’s notification to an officer regarding the submission of a complaint to the Commission should ordinarily include the complaint or describe its substance.

Issuing a Summons as a Form of De-Escalation

555 CMR 6.00 prohibits officers from using force without attempting to utilize de-escalation tactics in certain circumstances. 555 CMR 6.03 defines “De-escalation Tactics” as “[p]roactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person’s voluntary compliance and to reduce or eliminate the need to use force including, but not limited to,” certain actions and approaches listed therein; and concludes by stating that “[d]e-escalation shall include, but is not limited to, issuing a summons instead of executing an arrest where feasible.”

1. The definition of “De-escalation Tactics” does not require an officer to take any particular step. Rather, it generally defines the term and then offers a non-exhaustive list of possible actions, any one of which would constitute a de-escalation tactic.
2. In particular, the definition’s final statement does not compel an officer to issue a summons instead of executing an arrest in all circumstances or any particular ones. It simply highlights one possible approach that would be considered a form of de-escalation.