

MASSACHUSETTS

Workforce Investment Act

WIA Communication No. 05-76

☒ **Policy** ☐ **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Associate Directors
DCS Field Managers

cc: WIA State Partners

From: Jane C. Edmonds, Director
Department of Workforce Development

Susan V. Lawler, Commissioner
Division of Career Services

John P. O'Leary, Commissioner
Division of Unemployment Assistance

Date: October 19, 2005

Subject: **Policy to Protect Confidential Information**

Purpose: To provide guidance and instruction to all Local Workforce Investment Boards, One-Stop Career Center Operators and Workforce Investment Partners related to the protection of confidential job seeker, employer and wage information in carrying out official duties for the workforce investment system.

Background: As an important and inherent part of the services provided to customers, One-Stop Career Center staff and other workforce development partner staff must necessarily collect a wide variety of confidential personal information from customers. While the information collected as a matter of routine is often critical to effectively serving our customers and providing them with the best possible service, collection of personal data also brings with it a serious moral and statutory responsibility to safeguard customers' personal data from unauthorized use or disclosure. As various employees and workforce development partners have changed jobs or assumed new responsibilities, recent information requests have highlighted the need for all of us to revisit both how and on what legal basis employees and workforce development partners are accessing, and using job

seeker, employer information, and other data and information contained in UI databases, MOSES as well as other systems.

While the sharing of information, even the personal information of particular customers under appropriate circumstances, is critical to the seamless and effective delivery of services envisioned by the enactment of the Workforce Investment Act and vital to successfully carrying out the mission of the system's various partnering organizations, protecting the confidentiality of customer information accessed by staff in carrying out official functions of the workforce development/labor exchange system is imperative to its overall integrity.

Recent changes in staffing and organizational structure both on the state and local level make it both an appropriate and an opportune time for confidentiality policies and procedures governing our workforce system and its partners in the One-Stop Career Center system to be updated. In order to accomplish that goal, Director Jane Edmonds convened an internal working group to update confidentiality policies. In so doing, she also directed that policies and procedures regarding confidentiality and data access be updated in such a way as to ensure that all necessary and legally permissible data continue to be available to all staff and partner staff who are legally authorized to make use of the data in the discharge of their official duties. Where individual personal information or data may no longer be available, DWD will seek to create procedures that continue to meet legal requirements of protecting confidentiality, but that will also allow other important goals of the workforce development system and partners to be achieved. For example, while individual customer or employer contact information may not be available directly to some partners or parties outside the workforce system for certain outreach and marketing efforts, under appropriate circumstances DUA and/or DCS may assist by including information or flyers in direct mailings or other direct contacts of its own with these entities. This WIA Communication is the result of the workgroup's efforts and is intended as beginning, not the end, of a continuing dialogue on the subject of confidentiality and data access and sharing in the workforce development system.

A formalized policy relating to the use of information and data is necessitated by the existence of strong safeguards against the unauthorized and improper use of individual and business information as codified in Massachusetts state law.

Statutes ensuring the confidentiality of information related to activities associated with the workforce investment system include:

- Massachusetts General Laws (MGL) Chapter 23H, §6(b) - prohibits the unauthorized use and disclosure of employment service information
- MGL Chapter 151A, §46(a) and (e) - prohibits the unauthorized use and disclosure of any confidential unemployment insurance information.
- MGL Chapter 62E, §12 - authorizes the Massachusetts Department of Revenue to provide wage information to DUA and DCS.
- MGL Chapter 66A - prohibits the unauthorized access of personal data

Violation of either MGL 23H or 151A is punishable by a fine of up to \$100 (per offense) or by imprisonment for not more than six months, or both. Injunctive or non-monetary relief for violation of MGL 66A is covered under MGL Chapter 214, §3B and data subjects may claim damages under the Massachusetts Tort Claims Act. Violation of MGL Chapter 62E, §12 is punishable by a fine of \$100 (per offense).

Local practitioners of workforce investment services need to be aware that information and data included in the Massachusetts One-Stop Employment System (MOSES) database (as well as other information data sources available through DCS and DUA) is subject to the requirements of these confidentiality

statutes. Therefore, particular care must be taken to assure that the information and data accessible through the MOSES database, as well as other data and information sources accessible by workforce investment staff is protected and used appropriately.

Remember: Although an employee may be authorized to access this data, the employee may access the data *only in connection with the performance of his/her official duties*.

Permissible and Impermissible Uses of Information and Data

Employment Service Information/Data

Confidential employment service information covered under MGL Chapter 23H, §6(b) includes, but is not limited to:

- *job seeker's name and address*
- *job seeker's demographic characteristics*
- *job seeker's employment history*
- *employer's name and address*
- *specific job order information*

Examples of permissible uses include:

- *job order information where the employer has authorized disclosure*
- *referral of a job seeker to a job opening*
- *referral of a customer to an appropriate training program*

Examples of impermissible uses and unauthorized disclosure include:

- *providing a list of job seekers to a private placement agency*
- *providing a list of job seekers to a marketing company*
- *providing layoff information pertaining to a particular employer to a non-workforce development entity.*

Unemployment Insurance Information/Data

Confidential unemployment insurance information covered under MGL Chapter 151A, §46(a) and (e) includes, but is not limited to:

- *Name and address of claimant*
- *Claimant's weekly benefit amount, amount of benefit credit and amount of benefits received*
- *Amount of wages paid by a specific employer*
- *Number of employees reported by a specific employer*
- *Summary UI information at a level in which a claimant or employer would be identified*

Examples of permissible uses include:

- *Processing a claim for unemployment benefits*
- *Processing a claim under the Trade Act*
- *Applying for and administering a National Emergency Grant*
- *Providing claimants with Rapid Response services*

Examples of impermissible uses and unauthorized disclosure include:

- *Providing claims information to an outside entity*
- *Providing claims information to the Local Workforce Investment Board*
- *Providing claims information to the claimant's spouse or other relative*

Wage Record Data

Confidential wage information includes, but is not limited to:

- *Employee's name and social security number*
- *Employee wages*
- *Name of employee's employer*

Examples of permissible uses and authorized disclosure include:

- *Processing a claim for unemployment benefits*
- *Cross-matching of U.I. claimant information against wage records to detect claimants working and collecting*
- *Evaluating outcomes of Massachusetts workforce development programs by approved state-level staff*

Examples of impermissible uses and unauthorized disclosure are:

- *Accessing wage record information (QDOR) for non-U.I. related reasons*
- *Providing individual wage record information with personal identifiers to an administrator of a workforce development program (state or local level)*

Personal Data

Personal data is data which because of name, identifying number, mark or description can be readily associated with a particular individual. Access to this data requires specific authorization and is covered under the Fair Information Practices Act, MGL Chapter 66A. Such personal data includes:

- *Claimant and applicant data but not corporate data*
- *Personnel information such as employee work evaluations, disciplinary documents and medical records*

The same permissible and impermissible use and disclosure limitations that apply to both employment service and unemployment insurance data also apply to personal data.

Policy: All employees of the Department of Workforce Development, including those within the Division of Career Services (DCS) and the Division of Unemployment Assistance (DUA), and any employees of Local Workforce Investment Boards, One-Stop Career Centers, and other Career Center Partners and any subcontractors to each will maintain and protect the confidentiality of information and data in accordance with the policy and statutory requirements described, herein.

In conjunction with the aforementioned policy all employees of the Department of Workforce Development, including those within the Division of Career Services (DCS) and the Division of Unemployment Assistance (DUA), and any employees of Local Workforce Investment Boards, One-Stop Career Centers and other Career Center Partners and any subcontractors, who by virtue of their position may access any of the forms of information described above in carrying out their official duties must sign and submit the attached Confidentiality Policy form.

In addition, MOSES will be modified to include the same Confidentiality Policy form. All MOSES users must indicate their acceptance of the Confidentiality Policy on an annual basis to maintain their access to MOSES.

To help assure consistent implementation of this policy, an e-learning module has been developed that specifically covers the issues of information confidentiality and security. The module is currently available to workforce investment organizations and staff and may be accessed by going to the MassWorkforce website at www.massworkforce.org/ResourceCenter/Training/Policy.htm or the DCS/DUA website at http://intranet.detma.org/training/e-learning_page.htm. For those individuals who lack the technical capacity to access the training module via the internet, the training module is also available in CD format and may be requested through the local DCS Field Manager or directly from the DWD Training Department.

Action

Required: DCS Field Managers, working in conjunction with the local Workforce Investment Boards, One-Stop Career Center Operator(s), workforce investment partners and service providers, will be responsible for compiling a complete list of local workforce investment personnel (including staff of Local Workforce Investment Boards, One-Stop Career Center employees/staff and other local partnering organizations) who by virtue of their position must or may have access to the types of information described above. The list must identify:

- each individual,
- identify the workforce investment organization or service provider by whom the individual is either employed or to whom he/she is under contract, and
- identify the individual's primary worksite.

In addition to compiling the list of local personnel, the Field Manager will have overall responsibility for assuring that personnel of other local organizations that do not receive notice of the posting of the WIA Communication Series, but, by the nature of their job responsibilities, are subject to the requirements of this policy are informed of the content of this policy communication, the requirement to sign the Confidentiality Policy form and of the available training described above.

The DCS Field Manager will also be responsible for assuring that each individual completes the attached Confidentiality Policy form and forwarding completed forms to:

Director of Internal Control & Security
Charles F. Hurley Building, 4th Floor
Boston, MA 02114

All completed Confidentiality Policy forms must be received by the Director of Internal Control & Security no later than November 14, 2005.

Copies of each signed Confidentiality Policy form must be maintained by the DCS Field Manager and the file updated as new employees are hired and complete the Confidentiality Policy form.

Any employee having data access privileges who is terminated or ceases to be employed by a board, One-Stop Career Center or other workforce development partner or contractor must also be reported to the DCS Field Manager as soon as possible, not to exceed 24 hours after separation, in order to ensure the prompt termination of any potential continued access to confidential data.

All personnel hired after November 14, 2005 who meet the parameters described in this issuance must submit a signed Confidentiality Policy form within two weeks of their start date to the local DCS Field Manager. It will be the responsibility of the DCS Field Manager to assure that new employees of the local workforce investment system who are subject to the terms of this policy complete the Confidentiality Policy form. It will also be the responsibility of the local Field Manager to forward the completed forms to Lisa Soltero as cited above. If completed confidentiality forms are not received in a timely fashion, data access privileges for personnel who do not have a current Confidentiality Policy form on file with Internal Control & Security may be restricted or revoked.

Local Workforce Investment Boards, One-Stop Career Center Operators and local workforce development partners and service contractors must assure that appropriate procedures are in place to ensure that the data access and use privileges of employees and contractors are reviewed annually by appropriate management personnel.

The Director of Internal Control & Security will be responsible for ensuring that other state agency personnel who do not work at the local field level and who have access to information covered under this policy (MOSES users for example) complete and submit the Confidentiality Policy form.

Effective: Immediately

References: Massachusetts General Laws (MGL) Chapter 23H, §6(b);
MGL Chapter 151A, §46(a);
MGL Chapter 62E, §12.
MGL Chapter 66A

Inquiries: Please email all questions to PolicyQA@detma.org. Also, indicate Issuance number and description.

Filing: Please file this in your notebook of previously issued WIA Communication Series Issuances as #05-76.