



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

June 12, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

In accordance with [Sections 18-25 of Chapter 30A of the Massachusetts General Laws](#), and [Chapter 20 of the Acts of 2021](#), as amended by [Chapter 22 of the Acts of 2022](#), by [Chapter 107 of the Acts of 2022](#), and by [Chapter 2 of the Acts of 2023](#), notice is hereby given of a meeting of the Peace Officer Standards and Training Commission. The meeting will take place as noted below.

### NOTICE OF MEETING AND AGENDA

**Public Meeting #38**

**June 15, 2023**

**8:30 a.m.**

**Remote Participation via [Zoom](#)**

**Meeting ID: 99055974043**

- 1) Call to Order
- 2) Approval of minutes
  - a. May 11, 2023
- 3) Executive Director Report – Enrique Zuniga
  - a. Certification Update – Officer Addresses
  - b. Disciplinary Records Update
  - c. FY24 Budget & Administrative Update – CFAO Eric Rebello-Pradas
- 4) Legal Update – General Counsel Randall Ravitz
  - a. Draft Guidance to Law Enforcement Agencies and Prosecuting Offices Regarding 555 CMR 1.00 and 6.00
  - b. Public Hearing Overview - 555 CMR 9.00
- 5) Certificate of Appreciation to Commissioners West and Wynn
- 6) Matters not anticipated by the Chair at the time of posting
- 7) Executive Session in accordance with the following:

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct; and
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § 8(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, in anticipation of discussion regarding the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information.
- a. Division of Standards request for approval to conduct Preliminary Inquiries in the following cases:
- i) PI-2023-06-15-001
  - ii) PI-2023-06-15-002
  - iii) PI-2023-06-15-003
  - iv) PI-2023-06-15-004
- b. Update on the following Preliminary Inquiry matter:
- i) PI-2023-02-16-02
- c. Approval of commencement of revocation proceedings for the following cases:
- i) PI-2023-03-16-001
  - ii) PI-2023-03-16-003
  - iii) PI-2022-12-13-002
  - iv) PI-2023-04-13-012
  - v) PI-2023-04-13-014

2a.



# Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

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## MASSACHUSETTS PEACE OFFICER STANDARDS AND TRAINING COMMISSION PUBLIC MEETING MINUTES

**May 11, 2023**

**8:30 a.m.**

**Remote Participation**

### **Documents Distributed in Advance of Meeting**

- Public Meeting Minutes of March 16, 2023 and April 13, 2023 (Proposed)

### **In Attendance:**

- Commission Chair Margaret R. Hinkle
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- Commissioner Marsha V. Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Kimberly P. West
- Commissioner Michael J. Wynn

### **1. Call to Order**

- At 8:34 a.m., Chair Hinkle said the entire Commission was present and recognized a quorum. She called the meeting to order.

### **2. Approval of Minutes**

- Commissioner Kazarosian moved to approve the minutes of the March 16, 2023, meeting.
- Commissioner Bluestone seconded the motion.
- Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Luma – Yes
  - Commissioner West – Yes
  - Commissioner Wynn – Yes
  - Chair Hinkle – Yes
- Commissioner Chéry moved to approve the minutes of the April 13, 2023, meeting.

- Commissioner Luma seconded the motion.
  - Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
    - Commissioner Bluestone – Yes
    - Commissioner Calderone – Yes
    - Commissioner Chéry – Yes
    - Commissioner Ellison – Yes
    - Commissioner Kazarosian – Yes
    - Commissioner Luma – Yes
    - Commissioner West – Yes
    - Commissioner Wynn – Yes
    - Chair Hinkle – Yes
  - The Commissioners unanimously approved the minutes of April 13, 2023.
- 3. Executive Director Report – Executive Director Enrique A. Zuniga**
- a. Administrative Update**
- The Executive Director reported as follows.
    - The POST Commission website now includes a section called “Decisions and Orders.”
    - It lists certified, not certified, and suspended individuals. The most recent update was published May 8, 2023.
    - Going forward, these lists will be updated on the 20<sup>th</sup> of the month and published on the first day of the following month.
    - The lists will not be published until it is confirmed that all parties received proper notification.
    - Administrative suspensions:
      - 12/27/2022: There were approximately 200 officers who were non-compliant.
      - 3/16/2023: There were 46 officers who were non-compliant.
      - 4/10/2023: There were 7 officers who were non-compliant.
      - 5/4/2023: There were 2 officers administratively suspended and 1 officer with compliance in progress. Officers who are administratively suspended will be reinstated as soon as they complete this requirement.
  - Disciplinary records update:
    - Executive Director Zuniga reported there are 35 agencies with resubmissions still pending. Most of those agencies are small with few to no records to resubmit.
      - 8 of those 35 agencies are actively working on resubmission.
    - POST staff are reaching out individually to confirm if resubmission is needed.
    - There are currently 3,984 records of sustained complaints.
      - Of those records, 1,124 (~28%) require further validation.
      - It is estimated most of those errors could be validated in about 3-4 weeks.
      - The other set of validations will be more resource intensive, meaning they will require looking at each record individually.
    - Prior submission included 12,088 records of sustained complaints.
    - This difference is mostly due to complaints that were not reportable to POST.
    - A minority of this difference may be due to retirements.
    - POST will analyze this data and potentially supplement this resubmission.
  - Executive Director Zuniga asked the Commissioners a policy question. Should POST

release a partial list of records (that have been validated)? Or should POST continue validation efforts until confident it has most records due from most agencies?

- Commissioner Luma asked whether, if POST releases a partial list, other records would be released on a rolling basis, or would be released on a schedule as records are validated.
- ED Zuniga replied that they would likely be released on a schedule either every two weeks or every month.
- Commissioner Bluestone commented that the Commission should strike a balance between releasing records to the public and ensuring the accuracy of the data. The concern in releasing partial data is it could create misconceptions about the nature of the disciplinary actions across the state. She suggested the Commission consider a middle ground by using percentiles, like the 95<sup>th</sup> percentile. Once that level of validation is achieved, there is more likelihood that it would be an accurate sample.
- Commissioner Ellison asked for clarification of the 4,000 sustained complaints.
- ED Zuniga said the 4,000 figure is all the complaints in the queue that were resubmitted. He said this number may grow slightly if there are some agencies that have not resubmitted. Of those 4,000 complaints, there are about 1,000 that require validation.
- Commissioner Ellison inquired about the status of the new round of certifications.
- ED Zuniga said the Commission is on track and he will provide an update in the next part of the presentation.
- Commissioner Ellison asked whether members of the public or agencies that file complaints receive a receipt and follow up on their complaints.
- ED Zuniga replied that an automatic response is sent after a complaint is submitted.
- ED Zuniga asked if the Commissioners approved of Commissioner Bluestone's suggestion of waiting to release records until 95% of records are validated.
- Commissioner Kazarosian replied that for transparency to the public, the validated complaints should be released on a rolling basis.
- Chair Hinkle asked the Commissioners for comments on the two options presented by Commissioner Bluestone and Commissioner Kazarosian.
  - Commissioner Wynn replied that releasing the 3,000 validated records will create a disparity against the departments that are in compliance. The departments that did not submit their records on time are going to have another layer of protection, he said. He recommended waiting until more records are confirmed.
- ED Zuniga suggested reporting back to the Commission at the next meeting.
  - No Commissioner objected to this approach.
  - Chair Hinkle said this is the approach the Commission will use for ED Zuniga's policy question.
- Certification update:
  - The Commission is on track to release a new portal for agencies to submit Standards and Certification information. The portal will be launched in 2 stages for Standards and Certification. This will be a permanent platform the Commission will use to interface with agencies.
    - The portal is scheduled to be opened to agencies on May 22, 2023.

- Agencies will use the new portal to submit the recertification information of officers with last names I – P.
- This portal will also be used for the certification of new graduates.
- There are about 7,700 recertification requests expected for officers with last names I – P.
- Approximately 2,200 individuals are coming from the top eight agencies. These agencies will have the ability to enter officer information into a template and upload it to the portal.
- There are about 800 authorized users in the portal.
- POST is working with MPTC to ensure the review process for compliance with the training process is completed on time.
- Decision letters for officer recertification are expected to be released on August 1, 2023.
- Recertification documentation is available on the POST website. There will be a Complaint section for agencies to submit to the portal that will be available in late June.

**b. Law Enforcement Agency Portal – Chief Technology Officer Owen S. Mael**

- CTO Mael provided the following information.
  - Internal user acceptance for the portal is complete.
  - Limited review with 6 agencies started on May 10. Those agencies will be offered early access during the final configuration and internal training week.
  - All agencies have been notified to request portal access, and about 50% of them have responded.
  - Agency training will start next Tuesday, May 16, 2023. Training will run 3 days per week at various times for all agencies.
  - The website will also include instructions for obtaining credentials and logging into the portal.
  - Help files and videos will be released in the portal by the end of May 2023.
  - The portal is designed to streamline data collection. Users can select multiple records when answering questions. Records should be grouped in buckets based on officers that have the same answers to the questions.
  - Certification letters will be sent directly from the Commission. Agencies are tasked with providing missing officer information in the portal.
  - The Commissioners did not have any questions about the portal.

**c. Finance Update & Administrative Update – Chief Financial and Administrative Officer Eric Rebello-Pradas**

- CFAO Rebello-Pradas provided the following update.
  - The Legislature is currently debating the FY24 budget.
  - The Commission maintains the \$8.5 million in the final house budget.
  - The Senate Ways and Means Committee released its budget with the same \$8.5 million figure. If this is held through the Senate process and the final Senate gross budget is \$8.5 million, then the amount will be non-conferenceable, meaning it cannot be changed. This is notwithstanding potential vetoes.
- CFAO Rebello-Pradas provided the following update on the FY23 budget.
  - The Commission is tracking reversions, the amount of money that will go unspent this year. The number is about \$850,000, which was reported last month.

- In April, the Commission lowered spending forecasts for payroll, equipment, office lease space, and consulting costs.
  - Phases 1 and 2 of Salesforce development came in about \$100,000 under budget. The Commission has spent about \$1.4 million to date out of the \$2.5 million total cost.
  - The current hiring status of the Commission is 30 employees. The Commission is forecasted to have about 33-35 employees by June 30<sup>th</sup>. The Commission has onboarded 3 new part-time Hearing Officers to preside over officer hearings. The Hearing Officers are Hon. Judith A. Cowin (Ret.), Hon. Kenneth J. Fishman (Ret.), and Hon. Charles J. Hely (Ret.). The Commission will likely onboard more Hearing Officers as more hearings are scheduled.
  - The Commission welcomed Laura Martin, an Intake Coordinator for the Division of Police Standards.
  - There are 3 open positions: Enforcement Counsel for the Division of Police Standards, Compliance Agent, and Budget & Financial Operations Manager. The Commission has an accepted verbal offer for the Budget & Financial Operations Manager position.
  - The Commissioners did not have any questions.
- 4. Legal Update – General Counsel Randall E. Ravitz**
- a. Maintaining, Reporting, and Auditing of Law Enforcement Records and Information**
- General Counsel Ravitz provided the following information.
    - The Commission’s powers and duties regarding auditing agency records are mentioned in Chapter 6E, Sections 3(a) and 8.
    - Within Section 3(a), there is a general grant of powers to the Commission. It also grants the Commission the power to conduct audits and investigations.
    - Pursuant to Section 3(a) of the statute, there is a general grant of authority to audit and inspect papers and books of records of law enforcement agencies and a general unrestricted grant of power to promulgate regulations related to the Commission’s work under Chapter 6E.
    - While this one provision grants the authority to conduct audits and investigations pursuant to Section 8, there are surrounding provisions that grant authority more broadly.
    - Looking at Section 8(d), the Division of Police Standards can audit records of law enforcement agencies. That language focuses on complaints and investigative reports related to misconduct or unprofessionalism. This can include personnel records.
    - Section 8 specifically charges the Commission with promulgating rules and regulations establishing an audit procedure. At the same time, it provides that they shall not limit the ability of the Division of Police Standards to initiate an audit at any time and for any reason.
    - There is a specific identification of the type of audit the Division of Police Standards is authorized to conduct. There is no restriction on the ability to audit law enforcement agency records.
    - One objective in developing auditing regulations would be expressly authorizing the Division to undertake particular types of auditing activity.



UNAPPROVED DRAFT FOR DISCUSSION PURPOSES

- Another objective is allowing flexibility in developing auditing regulations, given the language of Sections 3(a) and 8(d), and the newness of the Commission. This will allow the Division of Police Standards to inspect records beyond those listed in Section 8(d).
- Another would be providing guidance to Commission auditors on best practices for conducting an audit.
- Another is to inform agencies of information they should be reporting and what to expect in an audit. This would require cooperation from agencies.
- These regulations could provide a structure for the Commission to ensure agencies are keeping and reporting certain types of information. Other objectives are standardizing the use of technology and how information is recorded and reported to the Commission; and ensuring the Commission is able to examine the recordkeeping and reporting of agencies, the nature of their policies, and the extent to which they are complying with requirements.
- Audits could be concluded with some recommendations for an agency on what to improve and provide a schedule for follow-up to ensure the recommendations have been implemented.
- These regulations would provide guidance on agency recordkeeping and the information they should provide. This might include information on basic employment, certification, complaints and discipline, uses of force, injuries and deaths, internal policies, *Brady* lists and notices, accreditation, and other proceedings such as prosecutions, civil litigation, arbitration, Civil Service review, and collective bargaining.
- The regulations would also give the Commission the ability to require agencies to maintain accurate records and correct any errors.
- The regulations could require agencies to designate a liaison to the Commission. They would act as a point person to communicate any Commission business and transmit the information to others within their agency.
  - The liaison would notify the Commission regarding matters such as events in criminal actions against officers, certain activity in other proceedings such as decisions, orders, and NDI placement. They would also update the Commission on matters such as changes in officer status, compliance with conditions of certification, suspension or retraining, and new developments related to action being pursued by the Commission.
- As the Commission develops guidelines for agency recordkeeping, it can focus on patterns of unprofessionalism, service of School Resource Officers and other juvenile matters, in-service training, and agency tolerance for intervention and reporting regarding apparent misconduct.
- The Commission might consult personnel from different parts of the agency, Massachusetts law enforcement officials, and other government agencies that accept government auditing standards.
- It will also consult other secondary sources and their authors on auditing in government, and particularly of law enforcement agencies, national organizations, and records obtained from agencies.
- General Counsel Ravitz invited questions from the Commissioners.
  - Commissioner Ellison asked General Counsel Ravitz to explain what a *Brady* list

is.

- General Counsel Ravitz said a *Brady* list is a list of officers who may have something in their background that might create issues about their credibility and so prosecutors should call attention to that in making disclosures to defense attorneys. There is ongoing discussion on what should cause an individual to be placed on the list, how the list should be maintained, and who should maintain it.
- Commissioner Ellison asked if there is a timeline for when audits should be completed.
- General Counsel Ravitz said there is no timeline in the statute for either promulgating the regulations or conducting audits.
- Chair Hinkle voiced concern about the Commission getting involved with the *Brady* list issue. The District Attorneys and Courts are currently addressing this in varying ways, she said.
- Commissioner Bluestone commented that auditing is helpful in highlighting progress and areas of success with goals and objectives the Commission is working towards. She suggested adding something to the regulations to show it also has a positive benefit.
- General Counsel Ravitz agreed with Commissioner Bluestone's comment and said audits are meant to be forward-looking and productive, not punitive.
- There were no other questions from the Commissioners.

**5. Matters Not Anticipated by the Chair at the Time of Posting**

- There were no matters not anticipated by Chair Hinkle at the time of posting.
- Chair Hinkle asked for a motion to enter into Executive Session in accordance with [M.G.L. c. 30, § 21\(a\)\(5\)](#) to approve conducting preliminary inquiries and recommendations by the Division of Police Standards to suspend the certification of individuals. She stated that it is anticipated that discussions will surround the investigation of criminal charges and criminal offender record information.
- Commissioner Luma moved to go into executive session.
- Commissioner Kazarosian seconded the motion.
- Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Commissioner West – Yes
  - Commissioner Wynn – Yes
  - Chair Hinkle – Yes
- The Commissioners unanimously approved the Chair's request to enter into Executive Session.
- Chair Hinkle announced to members of the public that the open session would not reconvene after the Executive Session.
- Chair Hinkle concluded the open meeting.
- The Commissioners took a 10-minute recess before moving into Executive Session.
- At 9:49 a.m., the public meeting was adjourned.

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# Executive Director Report

JUNE 15, 2023



# Agenda

## 1. Certification Update

- Progress on recertification I - P
- Officer information

## 2. Disciplinary Records Update

## 3. Finance Update

- FY24 Budget
- Administration Update

# Certification Update

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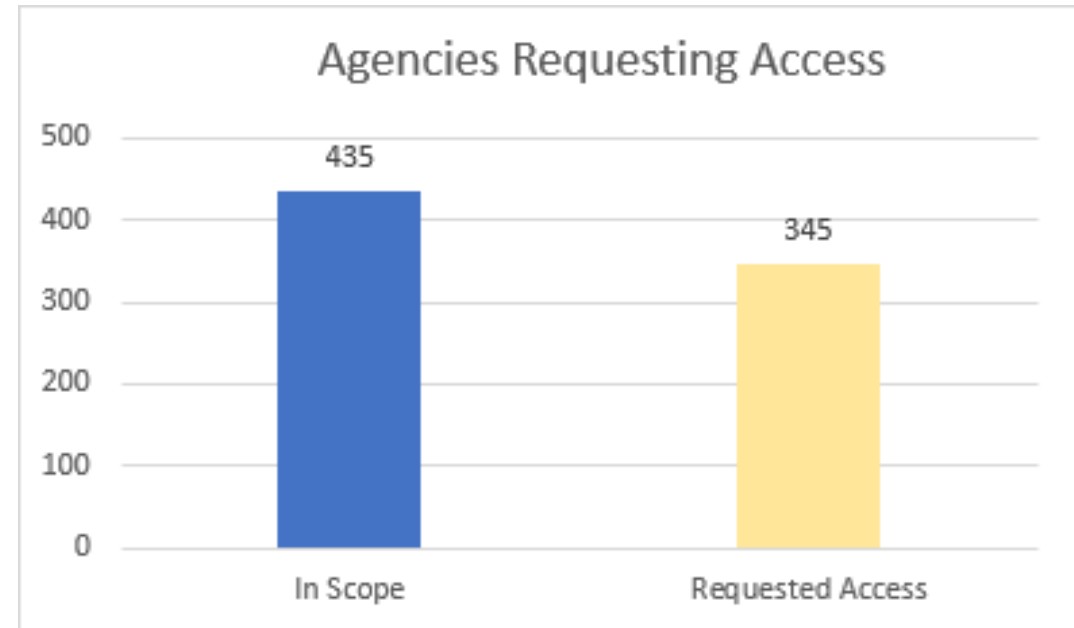
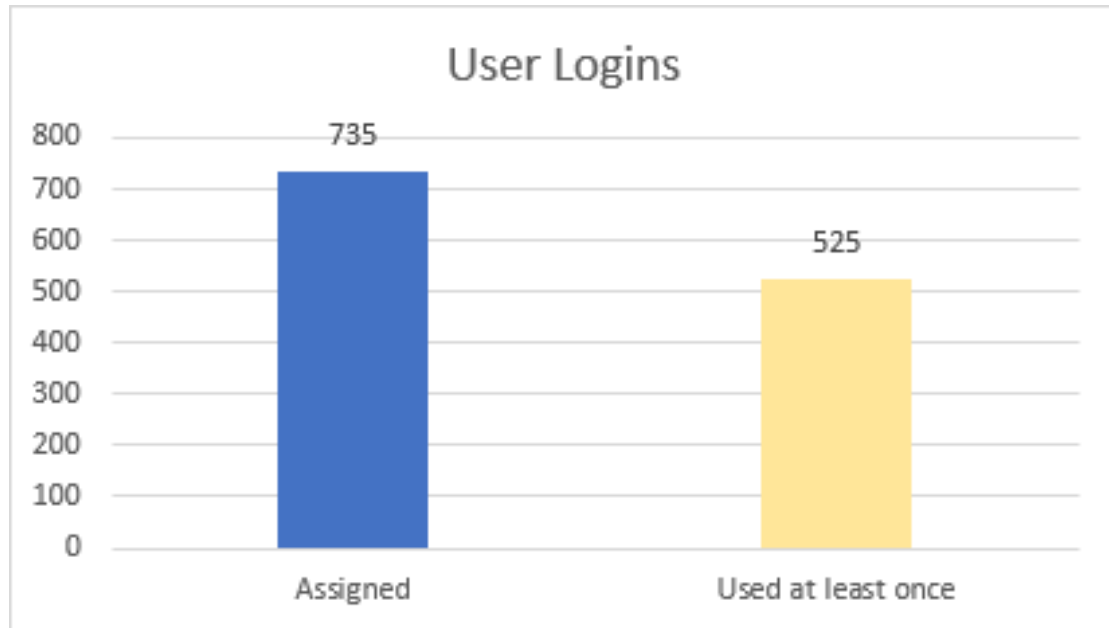
POST staff continue to train, grant access and support agencies in the submission of recertification information for officers I - P

- 735 assigned user log-ins
- 525 user log-ins used at least once
- 345 agencies requested access (out of 435 in-scope agencies)
- 210 agencies reported
- 1,768 officers submitted (out of ~7,700)
- No requests for extension received to date

# Certification Update



Majority of agencies requested & obtained log-in credentials



# Certification Update (continued)

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Majority of agencies have yet to enter officer information

	Expected	Actual	Actual %	Pending	Pending %
<b>Agencies Reporting</b>	435	210	48%	225	52%
Officers Processed	~ 7,700	1,768	23%	~ 5,935	77%

POST is communicating need to enter and submit information or request extensions given upcoming deadline (June 30)



# Certification Update (continued)

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## Policy Question: Should POST reconsider approach of collecting officer personal information or require agencies to serve notices?

- POST guidance: in addition to confirming officer work e-mail, provide one of two addresses: personal e-mail or physical address
- Concerns about public disclosure and/or unauthorized access to this information
- POST believes it is ultimately in officers' interest to have this information on file, does not consider this a public record, and has taken additional steps to safeguard the information
- Should burden of serving be imposed on, or be optional, to agency?

# Disciplinary Records Update

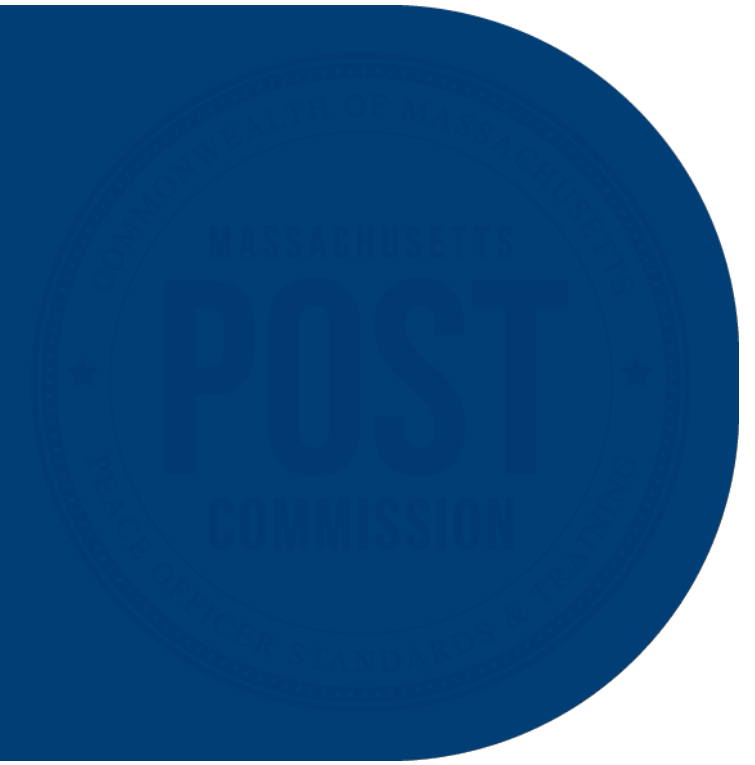
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## POST Staff has undertaken a great effort to validate disciplinary records

- 4,292 sustained disciplinary actions (records) have been validated and migrated to POST database
- 416 instances of errors that still need some form of validation. A record may include more than error, so the number of records requiring validation is smaller
- Will generate report to publish, but anticipate that there will be periodic updates to this dataset
- In a position to publish information in the coming days

# Finance & Administration Update



# FY 24 Budget Update



## FY24 Budget Progression

<b>FY24 Request</b>	<b>H1 Adjustment</b>	<b>FY24 H1</b>	<b>CCR Adjustment</b>	<b>FY24 CCR</b>	<b>PAC Adjustment</b>	<b>FY24 Request Restored</b>
<b>9,117,976</b>	<b>(3,967,976)</b>	<b>5,150,000</b>	<b>3,323,476</b>	<b>8,473,476</b>	<b>644,500</b>	<b>9,117,976</b>

- H1 did not allow for Employee Growth, Permanent Office Space, or IT Maintenance
- Legislature's Build-Back to \$8.5M Restored Major Areas of Growth
- Unspent Funds from FY23 will more than Fully Restore to our Original Request

# Finance & Administration Update

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## FY23 Budget Update

- Final Year-End Spending: \$7.1M
- Includes \$2.9M for IT Infrastructure (Salesforce)
- Forecast for Reversions: Still Holding at ~\$850K

## Hiring Update

- Currently at 30 Employees; 31 by June 30<sup>th</sup>
- Recently hired 2 Compliance Agents, 1 Budget & Financial Ops Manager, and 3 Legal Interns (Summer)
- Two Open Positions: Data Analyst (posted); Enforcement Counsel
- Reassessing Staffing Needs for FY24

# Administrative Update

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## MPTC In-Service Training – POST Overview

- As part of In-Service Training for TY24 (ending June 30, 2024), MPTC and POST collaborating to deliver a 2-hours virtual training
- Unique opportunity to present to all officers in the Commonwealth
- To provide an overview of POST and Police Reform
- Topics to include certification requirements, disciplinary process, adjudicatory proceedings, etc.



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Massachusetts Peace Officer Standards & Training  
POSTC-comments@mass.gov  
[www.mass.gov/orgs/post-commission](http://www.mass.gov/orgs/post-commission)  
617-701-8401

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3a.





## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

June 9, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

## MEMORANDUM

### CERTIFICATION UPDATE – COLLECTING OFFICER INFORMATION

During the last round of recertification, we encountered several instances in which some officers did not timely receive notices from POST. As I have previously reported, one of the goals for POST this recertification cycle is to notify and communicate directly with individual officers about their recertification and other status.

The reasons to directly notify officers include:

- a) Notify officers of their successful certification.
- b) Identify and correct errors, if any.
- c) Satisfy and track conditions to certification in a timely manner.
- d) Respond to a negative attestation by the head of the agency.
- e) Timely notify an officer of a POST proceeding (suspension, disciplinary action, adjudicatory proceeding, etc.)
- f) Allow an officer adequate time to appeal an adverse decision by the Division of Certification.

To communicate directly with officers, POST is asking agencies to verify and/or enter officer contact information. In addition to ensuring that the work e-mail address is properly reflected in the portal, POST has requested that agencies enter one of the following fields of information for each officer seeking recertification:

- A personal e-mail address, **or**
- A physical mailing address

While work e-mail information is suitable for notification in most cases, there are instances in which POST needs to notify officers who may be on leave and without timely access to work e-mail.

The request to capture personal information has generated some concern from members of the Law Enforcement Community. The concern arises out of the personal nature of this information (personal e-mail) which may be interpreted to include the home address. Some have asked whether POST would make

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

some of this information publicly available and whether this information will be protected from unauthorized access or use.

This memo intends to outline the approach by POST to address those questions and concerns.

### **Clarification Provided by POST**

**The physical address can but is not required to be the officer's home address.** Agencies can enter any valid physical address, including PO Boxes, or that of any other party *who agrees to timely notify the officer*.

When choosing which information to enter (personal e-mail, or physical address), the **officer agrees** that upon confirmation POST of such delivery, the officer has been officially notified by POST.

Therefore, if any agency (or any other party) agrees to ensure every officer is timely notified, agencies can enter the agency's physical address. This is also the case for any other party (an attorney, or a relative) who agrees to timely notify the officer (if an agency does not).

Notwithstanding the above clarification, we have received a request from a labor organization to instruct agencies that the agencies must enter the work address, if that is what the officer prefers. The difference would be a shift from giving the agencies the option to serve officers, to giving the officers the option to enter the work address (and thus requiring agencies to serve those officers).

### **Disclosure and Safeguarding of Information**

We have previously communicated to agencies that POST will resist making officers' e-mail addresses or home addresses public. POST understands officers' home addresses, home telephone numbers, and personal email addresses not to be public records and thus does not disclose them in response to public records requests. In support of that position, POST relies on M.G.L. c. 66, § 10B, M.G.L. c. 4, § 7, cl. 26(a), and M.G.L. c. 4, § 7, cl. 26(o)-(p).

POST also will continue taking great steps to safeguard such information and prevent non-authorized users from gaining access. We have planned added levels of security to safeguard officer personal information, consisting of segregating information into different databases. In addition, we will encrypt this information to be readable to a very limited number of internal users.

### **Policy question:**

Given the feedback and concerns from several agencies regarding collecting officer personal information in a systemic way, we come to ask the Commission whether the Commission feels we should reconsider the approach taken.

We feel that communicating directly with individual officers is ultimately in the officers' interest. Furthermore, we believe that having one additional address (e-mail or physical) does not generate an

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

undue risk to officers or their privacy, since each officer and agency has a choice as to what information to enter in these fields. A question remains as to whether POST wants to put the burden of serving officers on the agencies (something POST attempted last year with mixed results) versus requiring officers to submit information where they agree will be official way to be notified of POST proceedings.

In addition, POST will undertake additional security steps designed to safeguard this information and prevent unauthorized use or access.



GARY G. NOLAN, ESQ.  
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† ALSO ADMITTED IN NEW HAMPSHIRE  
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NEW HAMPSHIRE OFFICE: 603-921-9132

June 9, 2023  
VIA EMAIL ONLY

Randy Ravitz, General Counsel  
POST Commission  
100 Cambridge Street  
Boston, MA 02114

Re: New POST Requirement to Provide Personal Contact Information

Dear Randy:

We represent the New England Police Benevolent Association (NEPBA), which serves as the collective bargaining representative for thousands of police officers in bargaining units across the Commonwealth. We are following up on our phone discussion this afternoon, and our email communications with you and Director of Police Certification, Steven Smith, earlier today. Thanks for taking the time to go through this important issue with us.

As you and I discussed at length, our membership is extremely concerned about the recent directive from POST, advising agencies and officers that they must input personal contact information into the officer portal. Obviously, the home addresses of law enforcement officers are specifically exempt from public disclosure, and for very good reasons. Based on the dangerous and often unwelcome service performed by police officers, our members, their peers and their families are particularly susceptible to retaliation. The publication of their personal contact information – whether intentionally or by accident—could very easily put the safety and security of these folks at great risk. Publication of personal email addresses provides further potential for hacking and harassment. This danger, coupled with the accepted reality that any database connected to the internet can be hacked, causes grave concern within our membership that they or their loved ones will be subjected to irreparable harm.<sup>1</sup>

At this point, I want to clarify what is required of our membership (based on our phone discussion) and to also request that POST act to further refine its new rule in a way that is as

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<sup>1</sup> For instance, the City of Lowell's main server was recently breached, and the City is being extorted to pay millions of dollars in order to prevent the release of confidential personnel information. Some of such information has apparently already been released onto the dark web. The idea that POST will create a single database containing the personal contact information for all police offices in the state is frightening to our membership and their families.

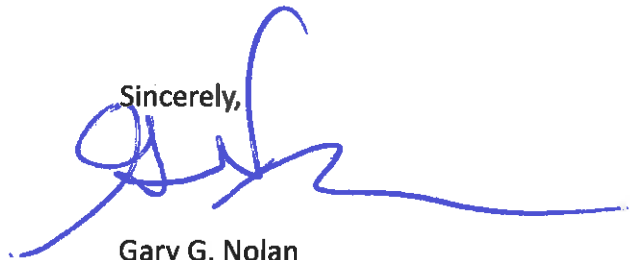


limited as possible, in order to protect our members, while at the same time addressing POST's interest of assuring timely communication. Based on my communication with you, members can be assured that home addresses DO NOT need to be provided. They have the option of providing either a personal email address or a physical address. The physical address can be any address, and need not be a home address (i.e. an officer can provide a union address, a lawyers address, etc.). In the event an officer opts to provide an email address (as opposed to a physical address), it need not be an email address currently being used, but instead officers can choose to simply create a new email address and provide it (i.e., a non-descript, generic "gmail" address). This, of course, presents the problem to the Officer who understandably may not check a new address (that they have obtained to maintain privacy) with the same frequency as a "regular" personal email.

You indicated that POST's primary concern is the ability to give notice to those officers that may be on leave or have separated from their agency. In our view, this concern can be addressed by allowing officers who have access to work email to continue to provide their work addresses and limiting any new requirement to those officers who no longer can be reached via work email/address. Accordingly, we think it would be reasonable to adopt a policy requiring officers who no longer have access to work email to provide either a mailing address or a personal email address to which notice could be sent. In this regard, a requirement could be introduced that calls for officers who become separated from their work email to provide alternative information upon a change in status (similar to requirements that require various types of licensees to update contact information upon moving, etc.). We sincerely hope the Board considers this modest amendment in light of the significant concerns and risks raised by the current requirement.

You indicated that the Commission will be discussing this matter in its upcoming meeting scheduled for next Thursday, June 15<sup>th</sup>, and that it is possible the rule may be amended further. We ask that you bring forward the concerns set forth by our NEPBA membership so that they can be considered by the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Gary G. Nolan', with a long horizontal flourish extending to the right.

Gary G. Nolan  
Peter J. Perroni

GGN/gal

3c.

# FY24 Budget Progression

Category	FY24 Request	H1 Adjustment	FY24 H1	Impact of Variance	CCR Adjustment	FY24 CCR	Adjustment Notes	PAC Adjustment	FY24 Request Restored
Payroll	5,331,107	(1,850,916)	3,480,191	Necessary FTE growth, especially with respect to Division of Standards	1,809,416	5,289,607	At lease for 2 CAs and 2 DAs; \$41,500 per month is savings; One month factored in here	41,500	5,331,107
Travel	25,000		25,000			25,000			25,000
Contractors	25,000	(25,000)	0	Hiring of Hearing Officers	25,000	25,000	Fully restored		25,000
Payroll Tax	98,625	(30,243)	68,382		30,243	98,625	Fully restored		98,625
Admin. Expenses	138,200	(63,225)	74,975	Outfitting officers with official certification credentials	63,225	138,200	Fully restored		138,200
Space Lease	837,740	(480,188)	357,552	Permanent office space lease	480,188	837,740	Fully restored		837,740
Consultants	435,000		435,000		(300,000)	135,000	Twelve months at \$10K per month = \$120K	300,000	435,000
Equipment	109,430	(84,430)	25,000	Agency vehicle for investigator use, as well as necessary office furnishings and copier lease	44,430	69,430	Remove vehicle = \$40K	40,000	109,430
Information Technology	2,117,874	(1,433,974)	683,900	Salesforce system maintenance and licensing; Data analytics tools; Website development	1,170,974	1,854,874	Remove contractor at \$175K and BAFO at \$88K	263,000	2,117,874
	<b>9,117,976</b>	<b>(3,967,976)</b>	<b>5,150,000</b>		<b>3,323,476</b>	<b>8,473,476</b>		<b>644,500</b>	<b>9,117,976</b>



4a.



# Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

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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*. Those sections include: 555 CMR 1.01: *Review of Complaints by Agency*; 555 CMR 1.03: *Confidentiality of Preliminary Inquiries*; and 555 CMR 1.07: *Reports Following Preliminary Inquiries*. This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 1.00. It pertains only to matter in which the cited provisions of 555 CMR 1.00 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.<sup>1</sup>

### **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

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<sup>1</sup> As used in this Guidance:

- “Agency” refers to a “law enforcement agency” as defined 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;
- “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;
- “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; and
- “Serious Bodily Injury” has the meaning set forth in 555 CMR 2.02.

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.”

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, a 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 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 a complaint where the period of time exceeds a few days, and to maintain such explanation in the agency’s files, including the officer’s personnel file.

**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. The “minor matters” category does not include any matter involving one of these subjects referenced in 555 CMR 1.01(1)(a):
  - a. “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”;
  - b. “excessive, prohibited, or deadly force”; or
  - c. “an action which resulted in serious bodily injury or death”.
4. Matters that ordinarily should be treated as non-minor include, but are not limited to, forms of officer misconduct involving:
  - a. Violation of a criminal law;
  - b. Physical or financial harm to another person;
  - c. Use of force; or an improper threat, by language or conduct, to use force;
  - d. Dishonesty;
  - e. Endangerment of another;
  - f. An arrest or other legal action, or a threat of arrest or other legal action, in retaliation for an individual’s bringing or expressing an intent to bring a complaint, or for any other improper purpose;
  - g. A determination by a government official, acting in an official capacity, of wrongdoing by the officer;
  - h. A similarity to inappropriate conduct that the officer was alleged by another individual to have committed, with respect to the same or another situation; and
  - i. An officer who has received an unusually high number of complaints, taking into account the nature of the officer’s work and the number of complaints against other officers performing comparable work.
5. 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,” ordinarily, among other things, “refer the complaint for resolution under the agency’s internal resolution policy, which shall comply with any minimum requirements established by the commission.” 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.
3. The Commission is not bound by any agency determination regarding the allegations made in a complaint 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.

### **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 that forwards a complaint as an exercise of its discretion under 555 CMR 1.01(1)(c) to include all information prescribed by 555 CMR 1.01(1)(b).

### **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.
2. 555 CMR 1.01(2) does not restrict a prosecuting office’s ability to provide information to a criminal defendant or the defendant’s attorney, or to otherwise use the information in connection with a criminal investigation or prosecution.
3. The Commission requests that, when a prosecuting office contemplates disseminating information of the type described in 555 CMR 1.01(2) in such a manner, it considers seeking a protective order or confidentiality agreement to the extent that may be appropriate.

### **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, 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.”

### **Uses of Force, Injuries, and Deaths**

555 CMR 1.00 in part governs the handling, investigation, and reporting by agencies of information alleging or evidencing officer misconduct, including those 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. In



particular, 555 CMR 6.07(1) provides, in part, that “agencies shall develop and implement a policy and procedure for reporting the use of force,” that “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. In particular, an agency is required to submit a report when an officer utilizes or orders the use of tear gas, or any other chemical weapon (CW), rubber bullets or pellets, a kinetic impact device, an electronic control weapon (ECW), a conducted energy device (CED), or a dog against a crowd, pursuant to M.G.L. c. 6E, § 14(e) and 555 CMR 6.08(4).
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 governs the handling by agencies of officer-misconduct complaints that they receive.

1. The obligations in 555 CMR 1.01 apply without regard to whether an alleged incident occurred within Massachusetts or outside its borders.
2. The obligations in 555 CMR 1.01 do not apply to a complaint that an agency receives if: the complaint was addressed by the agency prior to the promulgation of 555 CMR 1.00 on June 24, 2022; or the complaint alleges conduct as to which both criminal and civil liability would be barred by applicable statutes of limitations.

### **Complaints Submitted to the Commission**

555 CMR 1.01 governs the handling by agencies of officer-misconduct complaints that they receive.

1. The regulations do not restrict or govern the public’s submission of complaints directly to the Commission.
2. Members of the public may submit complaints directly to the Commission by following the instructions found on the Commission’s website, <https://policecomplaints.mass.gov/complaint>.
3. The Commission may address any complaint that it receives from any source in any lawful manner that it deems appropriate, including, but not limited to:
  - a. forwarding the complaint to an agency or prosecuting office for investigation or other action, as appropriate; and
  - b. rendering a determination that differs from one reached by an agency or another person or entity.
4. 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 complaint that it receives.

**Confidentiality of Information Regarding Commission Preliminary Inquiries**

555 CMR 1.03 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.” Likewise, 555 CMR 1.07(2) states 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.” However, 555 CMR 1.04 provides 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 adds 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.” Also, 555 CMR 1.03 and 1.07(2), consistent with M.G.L. c. 6E, §§ 3(a) and 8(c)(2), allow the Commission’s Executive Director to provide otherwise-confidential information “to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction” for possible use in a criminal investigation or prosecution.

1. Neither 555 CMR 1.03 nor 555 CMR 1.07(2) restricts a prosecuting office’s ability to provide information to a criminal defendant or the defendant’s attorney, or to otherwise use the information in connection with a criminal investigation or prosecution.

2. The Commission requests that, when a prosecuting office contemplates disseminating information of the type described in 555 CMR 1.03 or 555 CMR 1.07(2) in such a manner, it considers seeking a protective order or confidentiality agreement to the extent that may be appropriate.
3. The Commission requests that, in all other circumstances, the recipient of any information regarding a preliminary inquiry maintain its confidentiality.
4. The Commission recommends that those who contemplate disseminating information regarding a preliminary inquiry obtain case-specific legal guidance from its own counsel as to whether such dissemination may otherwise be unlawful.