

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 12.00: MAINTENANCE, REPORTING, AND AUDITS OF LAW ENFORCEMENT RECORDS AND INFORMATION

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12.01: Authority

- (1) The Commission promulgates 555 CMR 12.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 8(d).

12.02: Scope

- (1) 555 CMR 12.00 governs:
 - (a) The creation and maintenance of records by agencies and officers;
 - (b) The reporting of information by agencies and officers; and
 - (c) The auditing of agencies and officers by or on behalf of the Commission, pursuant to M.G.L. c. 6E, § 8(d) or otherwise.
- (2) Nothing in 555 CMR 12.00 is intended to:
 - (a) Limit any obligations that law enforcement agencies and officers otherwise have under M.G.L. c. 6E, 555 CMR, or another source of authority; or any practices that are consistent with generally accepted law enforcement or human resources standards;
 - (b) Limit the ability of the Commission to initiate an audit at any time and for any reason;
 - (c) Establish a standard of care or create any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection on the part of any other person or entity, except as expressly provided; or
 - (d) Otherwise waive or limit any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission.
- (3) Nothing in 555 CMR 12.00 is intended to require an agency or officer to furnish any item that is protected by a privilege against disclosure recognized by law and held by that agency or officer.

12.03: Definitions

- (1) 555 CMR 12.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 12.03(2).
- (2) For the purposes of 555 CMR 12.00, the following terms have the following meanings, unless the context requires otherwise:

Agency. A law enforcement agency as defined in M.G.L. c. 6E, § 1.

Audit. An audit of agency or officer records conducted by or on behalf of the Commission pursuant to M.G.L. c. 6E, §§ 3(a) and/or 8(d), or otherwise.

Body or Person of Authority. An officer's appointing authority or employer; the highest-ranking officer in the law enforcement agency; the Civil Service Commission; any arbitrator or other third-party neutral with decision-making power; and any court.

Certification. The certification of an individual as an officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, or pursuant to St. 2020, c. 253, § 102, either as an initial certification or a recertification, and regardless of whether it is subject to any condition, limitation, restriction, or suspension.

Commission. The Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, § 2, including its Commissioners and its staff.

Complaint. A complaint as defined in 555 CMR 1.01(1).

Constable. An individual who is elected or appointed as a constable pursuant to M.G.L. c. 41, §§ 1, 91, or 91A.

Compulsory Legal Process. A summons, subpoena, judicial order, administrative agency order, or civil investigative demand.

Executive Director. The Executive Director of the Commission appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes.

Include (or Including). Include (or including) without limitation.

Maintain. With respect to a record, to preserve all parts of the record, including those that are not easily visible, and to store it in a manner that will enable it to be easily retrieved.

Member. An officer, employee, or independent contractor.

MPTC. The Municipal Police Training Committee within the Executive Office of Public Safety and Security established pursuant to M.G.L. c. 6, § 116.

Officer. A law enforcement officer as defined in M.G.L. c. 6E, § 1, or an individual who possesses an officer certification.

Officer Certification. A certification of an individual as an officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, or pursuant to St. 2020, c. 253, § 102, regardless of whether it is subject to any condition, limitation, restriction, or suspension.

Official. Authorized or approved by a proper authority.

Policy. Any policy, rule, regulation, protocol, standard, guideline, operating procedures, other procedure, decree, directive, mandate, manual, handbook, guide, advisory, form of guidance, plan, mission statement or comparable statement, organizational chart, or memorandum of understanding that is duly approved by appropriate personnel and issued in writing.

Recertification. A type of certification involving a renewal of a previously granted certification.

Record. Any form of record, book, paper, document, written material, data, or information, regardless of whether it is a type of record referenced in M.G.L. c. 6E, § 8(d), and regardless of whether it is a "public record" under M.G.L. c. 4, § 7, cl. 26.

SRO. A school resource officer as defined in 555 CMR 10.03(2).

SRO Certification. An initial specialized certification of an individual as a school resource officer pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b), regardless of whether it is subject to any condition, limitation, restriction, or suspension.

Suspension. When referring to an officer certification or an SRO certification, a suspension of the certification, including an administrative suspension, pursuant to M.G.L. c. 6E, §§ 3, 9, and/or 10.

12.04: Agency Creation and Maintenance of Records

- (1) For each officer that an agency employs, the agency shall create and maintain the following records, with the officer identified by name, and if practicable, shall place an original or a copy of each record within the relevant officer's personnel file:
 - (a) A record reflecting each of the following forms of personnel information:
 1. The date of hiring;
 2. The date of any separation from employment and the nature of any separation, including suspension, resignation, retirement or termination;
 3. The reason for any separation from employment, including whether the separation was based on misconduct or whether the separation occurred while the appointing agency was conducting an investigation of the officer for a violation of an appointing agency's rules, policies, or procedures or for other misconduct or improper action;
 4. The date and nature of any leave time taken;
 5. Any professional award, achievement, or commendation;
 6. An email address that the Commission may use to correspond with the officer; and
 7. The name and an email address of the head of the officer's collective bargaining unit, if any;
 - (b) A record reflecting each of the following matters, with respect to officer certification:
 1. Information generated by any background check;
 2. Information resulting from any physical or psychological evaluation;
 3. A summary of any interview;
 4. Each response to any questionnaire question;
 5. Any agency determination of whether an individual possesses good moral character and fitness for employment in law enforcement;
 6. Any other determination of whether an individual satisfies a qualification for certification;
 7. Any letter of reference or endorsement;
 8. An officer's satisfaction or failure to satisfy the conditions attached to any conditional certification; and
 9. Any other information required by statute, regulation, or Commission policy related to certification;
 - (c) The following with respect to any SRO certification or service:
 1. A record reflecting each of the matters listed in 555 CMR 12.04(1)(b);
 2. Each memorandum of understanding, as defined in 555 CMR 10.03(2), that is required by law;
 3. Each set of operating procedures, as defined in 555 CMR 10.03(2), that is required by law; and
 4. A record reflecting the officer's places and dates of assignment as an SRO;
 - (d) A record reflecting each type of complaint against, investigation of, and discipline of the officer, including any and each:
 1. Complaint against the officer;
 2. Investigation of the officer by an internal affairs unit, an internal review board, a civilian oversight board, or a comparable body;

3. Discipline imposed on the officer, including any last chance agreement or separation agreement;
 4. Arrest of the officer;
 5. Criminal prosecution against the officer;
 6. Civil action against the officer that is related to the officer's service in law enforcement;
 7. Investigation or inquest arising from a fatality involving the officer;
 8. Civil Service Commission proceeding involving any allegation that the officer engaged in misconduct;
 9. Written reprimand of the officer;
 10. Suspension of the officer's employment or order that the officer take a leave from employment;
 11. Determination by a prosecutor's office's that the officer has engaged in, or has been accused of, misconduct that warrants not calling the officer as a witness in court or that must be disclosed to defendants; and
 12. Complaint, investigation, or disciplinary matter vacated or resolved in favor of the officer;
- (e) A record reflecting all in-service training and retraining that the officer completed, the officer's failure to complete any required in-service training or required retraining, and any mitigating factor or other explanation offered by the officer for any such failure;
- (f) The following records concerning uses of force, crowd control, injuries, and deaths:
1. All records, including all policies, procedures, forms, reports, statements, plans, communications, and notifications, that are required to be created pursuant to 555 CMR 6.00: *Use of Force by Law Enforcement Officers* or any Commission policy;
 2. A record reflecting each serious bodily injury and officer-involved injury or death, 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; and
 3. A record reflecting the full content of each report submitted to the National Use of Force Data Collection database maintained by the Federal Bureau of Investigation; and
- (g) All other records, or categories of records, designated by the Commission.

(2) For each individual that is appointed or elected to serve as a constable within an agency's area of jurisdiction, the agency shall create and maintain the following records, with the constable identified by name, and if practicable, shall place an original or a copy of each record within an individual file for the constable:

- (a) A record reflecting an address, telephone number, and email address for the constable; and
- (b) A record reflecting the beginning and end dates of the constable's term or terms of appointment or election.

(3) Each agency shall additionally maintain the following records, and if practicable, shall place an original or a copy of each record within the relevant officer's personnel file:

- (a) Each set of fingerprints of an agency member that the agency has obtained;
- (b) Each record pertaining to a type of complaint against, investigation of, or discipline of an agency officer, including each type listed in 555 CMR 12.04(1)(d);
- (c) Each agency policy, as defined in 555 CMR 12.03;
- (d) Each official communication by the agency to its personnel regarding its policies and applicable regulatory requirements;
- (e) Each final and official annual report or periodic report for the agency or one of its units;
- (f) Each final and official description of the duties, powers, or functions of the agency, or one of its units or members;
- (g) Each contract to which the agency is a party;

- (h) With respect to any audit, analysis, or evaluation of the agency's records, finances, budget, personnel, resources, performance, compliance with legal requirements, satisfaction of accreditation or other standards, by any internal or external auditor, analyst, evaluator, consultant, or accreditor:
 - 1. Each record exchanged between the agency and the auditor, analyst, evaluator, consultant, or accreditor; and
 - 2. Each final report resulting from the audit, analysis, or evaluation; and
 - (i) Any other records, or categories of records, designated by the Commission.
- (4) The Commission may require an agency to:
- (a) Employ certain terminology, incorporating Commission-prescribed definitions, regarding the disposition of complaints or other matters; and
 - (b) Employ certain recordkeeping practices.
- (5) Each agency head shall ensure that the agency complies with M.G.L. c. 149, § 52C.
- (6) Each agency head shall take adequate steps to ensure accuracy in representations made within agency records.

12.05: Agency Reporting of Information

- (1) Each agency shall report to the Commission regarding the following, without request, pursuant to 555 CMR 1.01 if that regulation is applicable, or otherwise immediately:
- (a) The satisfaction of conditions associated with an agency officer's conditional officer certification or conditional SRO certification;
 - (b) Each placement of an agency officer's name, or change of an agency officer's status or listing, on the National Decertification Index maintained by the International Association of Directors of Law Enforcement Standards and Training;
 - (c) The arrest of any agency officer or other agency member, lodging of any criminal charge against such an individual, or disposition of any criminal charge against such an individual;
 - (d) The assertion and disposition of any claim against any agency officer or other agency member in a civil action that relates to the member's service in law enforcement;
 - (e) The completion of in-service training required of an agency officer whose officer certification or SRO certification has been administratively suspended pursuant to M.G.L. c. 6E, §§ 3 and/or 9;
 - (f) The satisfaction of conditions required of an agency officer whose officer certification or SRO certification has been suspended, restricted, or limited pursuant to M.G.L. c. 6E, §§ 3, 9, and/or 10;
 - (g) The completion of retraining required of an agency officer pursuant to M.G.L. c. 6E, §§ 3 and/or 10(d); and
 - (h) Each material change in any circumstances, condition, or matter that provided the foundation for:
 - 1. Any agency recommendation that the Commission suspend or revoke an individual's officer certification or SRO certification;
 - 2. Any agency recommendation that the Commission order an officer to undergo retraining;
 - 3. Any action by the Commission or any part of the Commission to pursue a suspension or revocation of the officer certification or SRO certification of an agency officer; or
 - 4. Any order that an agency officer undergo retraining;
 - (i) Any change in:
 - (a) Contact information for the officer that has been provided to the Commission;
 - (b) The officer's place of employment;
 - (c) The officer's work status, including on-leave status; or
 - (d) The name of, or contact information for, the head of the officer's collective bargaining unit, if any.

- (2) Each agency shall additionally provide the following to the Commission, in accordance with Commission instructions:
 - (a) Records of completion of training by officers;
 - (b) Records concerning individuals elected or appointed to serve as constables within the agency's area of jurisdiction; and
 - (c) Any other records, or categories of records, designated by the Commission.
- (3) Each agency shall ensure accuracy in all representations it makes to the Commission.

12.06: Agency Liaison to Commission

- (1) Each agency shall designate one or more of its members to serve as a liaison to the Commission with respect to all areas in which information is exchanged between the agency and the Commission.
- (2) A liaison shall be responsible for taking the following steps, in accordance with Commission instructions:
 - (a) Providing the Commission with an email address that may be used for correspondence with the Commission;
 - (b) Regularly monitoring the mailbox associated with the email address provided;
 - (c) Ensuring that the agency makes required reports, and transmissions of information, to the Commission;
 - (d) Receiving information from the Commission;
 - (e) Ensuring that Commission policies, notices, and communications are transmitted to appropriate agency members;
 - (f) Ensuring accuracy in all agency representations to the Commission; and
 - (g) Any other steps required by the Commission or the agency.

12.07: Officer Maintenance and Reporting of Information

- (1) Each officer shall:
 - (a) Maintain all records listed in 555 CMR 12.04(1) that relate to, and come into the possession of, the officer;
 - (b) Provide the following to the officer's employing agency, or if the officer has no employing agency, to the Commission, in accordance with any Commission instructions:
 1. An email address that the Commission may use to correspond with the officer;
 2. The name and an email address of the head of the officer's collective bargaining unit, if any;
 3. Any change in:
 - a. Contact information for the officer that has been provided to the Commission;
 - b. The officer's place of employment;
 - c. The officer's work status, including on-leave status; or
 - d. The name of, or contact information for, the head of the officer's collective bargaining unit, if any;
 4. A report of each matter listed in 555 CMR 12.05(1) that relates to the officer, immediately and without request; and
 5. Records of completion of training;
 - (c) Regularly monitor the mailbox associated with the email address that is provided pursuant to 555 CMR 12.07(1)(b)1. for messages from the Commission;
 - (d) Ensure accuracy in all representations made:
 1. Within records related to the individual's service as an officer;
 2. To any body or person of authority; and
 3. To the Commission; and
 - (e) Take any other steps required by the Commission.

12.08: Procedures for Audits

(1) The Commission may, at any time, conduct, or cause to be conducted, an audit of the records referenced in M.G.L. c. 6E, § 8(d) or other records of an agency or an officer.

(2) Steps that may be taken in a Commission audit include the following, where not precluded by law:

(a) Requiring an agency auditee to:

1. Identify one or more members who have sufficient authority to ensure that required actions are taken and recommendations will be evaluated;
2. Identify one or more members who will be available to take administrative steps that may be required as part of the audit;
3. Direct agency personnel to comply with the audit;
4. Provide any auditor with sufficient access to the agency head;
5. Provide any auditor with sufficient access to agency records;
6. Provide any auditor with materials or information that sufficiently explain the structure and operation of the agency's electronic and non-electronic recordkeeping systems;
7. Provide any auditor with appropriate administrative and technical assistance;
8. Provide records in a designated electronic or non-electronic format;
9. Cooperate in developing and implementing an audit plan;
10. Ensure that appropriate personnel complete training necessary for the audit to be effective;
11. Provide written or unwritten responses to recommendations by an auditor;
12. Create or contribute to creating, and follow, a plan for future action, based on the audit;
13. Inform other government officials or members of the public of certain findings made by Commission auditors, to the extent appropriate; and
14. Take certain steps following the audit's conclusion, including filing reports with the Commission or complying with one or more subsequent audits;

(b) Requiring a member of an agency auditee to:

1. Participate in a recorded or an unrecorded interview; and
2. Complete a questionnaire or self-assessment;

(c) Requiring an officer auditee to:

1. Cooperate in developing and implementing an audit plan;
2. Provide any auditor with sufficient access to records of the auditee;
3. Participate in a recorded or an unrecorded interview;
4. Complete a questionnaire or self-assessment;
5. Provide written responses to recommendations by an auditor;
6. Create or contribute to creating, and follow, a plan for future action, based on the audit; and
7. Take steps following the conclusion of the audit, including filing reports with the Commission or complying with one or more subsequent audits;

(d) Reviewing any records referenced in 555 CMR 12.04 or other records;

(e) Obtaining relevant information from individuals and entities other than the auditee;

(f) Developing a plan for the auditee to follow, or a set of recommendations for the auditee, based on the audit;

(g) Informing other government officials or members of the public of certain findings made by Commission auditors, to the extent appropriate;

(h) Executing a confidentiality agreement, or otherwise maintaining confidentiality, with respect to the auditee's records and/or aspects of the audit, to the extent confidentiality is not precluded by law;

- (i) Publicizing progress, achievements, and commendable practices by agencies and officers, and offering information on such matters in informing others in law enforcement about best practices; and
 - (j) Taking any other step that is consistent with the Commission's authority, or with generally accepted government auditing standards.
- (3) Commission auditors may include individuals who are not Commission employees, but are retained by the Commission and subject to Commission oversight.
- (4) The Commission may also direct an agency to conduct an internal audit according to Commission guidelines.

12.09: Areas of Examination in Audits

- (1) In conducting an audit, the Commission may examine any areas related to the Commission's statutory charge, including:
- (a) Agency or officer functioning, generally or with respect to a particular matter, in the following areas:
 - 1. Recordkeeping or reporting of information, within the agency, to the Commission, and to other entities;
 - 2. Compliance with directives, sources of authority, policies, and standards related to law enforcement and agency management, including:
 - a. M.G.L. c. 6E;
 - b. 555 CMR;
 - c. Commission policies;
 - d. Commission certification conditions, restrictions, and limitations;
 - e. Commission-issued compulsory legal process;
 - f. Other Commission directives;
 - g. M.G.L. c. 6, §§ 167 through 178B;
 - h. Other statutes and regulations;
 - i. Court judgments, consent decrees, orders, or rules;
 - j. Decisions by other authorities;
 - k. Other compulsory legal process;
 - l. Agency policies; and
 - m. Generally accepted law enforcement standards;
 - 3. The adequacy of investigations and determinations, including:
 - a. The adequacy of background investigations concerning active and prospective agency members;
 - b. The adequacy of other investigations and analysis;
 - c. The accuracy and completeness of reports and factual recitations;
 - d. The adequacy of notifications to affected individuals;
 - e. The appropriateness of interview procedures;
 - f. The prevalence and adequacy of recordings and transcriptions;
 - g. The reliability of factfinding;
 - h. The appropriateness of the time devoted to processes;
 - i. The fairness of processes, and how they compare to those in comparable cases;
 - j. The sufficiency of documentation generated;
 - k. The honoring of individual rights; and
 - l. The equity and justness of results, and how they compare to those in comparable cases;
 - 4. Internal and external communication, including:
 - a. The communication of Commission and agency policies, and required notifications, to agency personnel;
 - b. The treatment of information that one agency member has reported to another;
 - c. Other communication and interaction with agency personnel;

- d. Communication and interaction with the Commission and other agencies; and
 - e. Communication and interaction with complainants, victims, witnesses, and other members of the public; and
 - 5. Other aspects of performance, including the sufficiency, fairness, equity, justness, soundness, timeliness, efficiency, and effectiveness of policies and activity; and
 - (b) Substantive information that may warrant analysis or aid the Commission in developing or recommending policies or informing the public.
- (2) A Commission audit may focus on subjects that are referenced in M.G.L. c. 6E, § 8(d) or are otherwise related to the Commission's statutory charge, including:
- (a) Officer certification;
 - (b) SRO certification, activity, memoranda of understanding, and operating standards;
 - (c) Agency certification, including standards concerning:
 - 1. Use of force and reporting of use of force;
 - 2. Officer code of conduct;
 - 3. Officer response procedures;
 - 4. Criminal investigation procedures;
 - 5. Juvenile operations;
 - 6. Internal affairs and officer complaint investigation procedures;
 - 7. Detainee transportation; and
 - 8. Collection and preservation of evidence;
 - (d) Complaints, investigations, disciplinary matters, and misconduct involving officers, including conduct involving improper:
 - 1. Racial profiling or other forms of bias;
 - 2. Violence or dangerousness;
 - 3. Dishonesty;
 - 4. Nonintervention;
 - 5. Harassment, intimidation, or retaliation;
 - 6. Unlawfulness or obstruction of justice; or
 - 7. Unprofessionalism;
 - (e) In-service training and retraining;
 - (f) Uses of force, crowd control, injuries, and deaths;
 - (g) The law concerning:
 - 1. The handling of evidence that may be exculpatory or otherwise relevant with respect to a criminal matter;
 - 2. Civil rights;
 - 3. Other aspects of criminal procedure;
 - 4. Labor and employment; and
 - 5. Public records, criminal record information, disclosure, and fair information practices;
 - (h) Other law enforcement activity;
 - (i) Patterns on the part of single individuals, multiple individuals within an agency, or multiple individuals in different agencies; and
 - (j) Any other area relevant to the development of public policy or another matter of public interest.

12.10: Verification of Information

- (1) The Commission, where not otherwise precluded by law, may require any agency or officer to furnish a statement, including one under the pains and penalties of perjury, addressing one or more of the following:
- (a) Whether certain information in a record is accurate;
 - (b) Whether a record is authentic;
 - (c) Whether a record is a true and accurate copy of another;
 - (d) The contents or disposition of an original record;
 - (e) The circumstances surrounding the making of the record or similar records;
 - (f) Efforts made to locate a record;
 - (g) How records are kept and maintained; and

- (h) Whether a record has certain characteristics that may have relevance to its authenticity or evidentiary admissibility.

12.11: Sufficiency of Notice

Notice by the Commission to an agency, an officer, or the head of a collective bargaining unit, in implementing any aspect of M.G.L. c. 6E, 555 CMR, or a Commission policy, shall be sufficient if provided using an email address or other address that was furnished to the Commission, by or on behalf of the addressee or officer at issue, for such purpose.

12.12: Enforcement and Disciplinary Action

(1) The Commission may take disciplinary action against an agency or an officer, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, 10, and/or 12, provided other applicable provisions of M.G.L. c. 6E and 555 CMR are satisfied, based on the following:

- (a) A failure to comply with 555 CMR 12.00, or with a Commission audit or directive thereunder;
- (b) A failure to be accurate in any recordkeeping or any representations to the Commission;
- (c) Harassment, intimidation, or retaliation against any individual for taking any step, or interference with one's taking of any step, that is required by M.G.L. c. 6E, 555 CMR, the Commission, or a Commission audit; or
- (d) Evidence of misconduct that is uncovered through a Commission audit.

(2) The Commission may, by a vote taken in accordance with M.G.L. c. 6E, § 2(e), levy and collect assessments, fees, and fines, and impose penalties and sanctions against an agency or an officer, pursuant to M.G.L. c. 6E, § 3(a), based on a ground listed in 555 CMR 12.12(1)(a) through (d).

(3) The Commission may refer information that it obtains through an audit to an appropriate government office for possible criminal or civil enforcement action, pursuant to M.G.L. c. 6E, §§ 3(a) and/or 8(c)(2).

REGULATORY AUTHORITY

555 CMR 12.00: M.G.L. c. 6E, §§ 3(a), 8(d).