



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

February 14, 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](#), and by [Chapter 107 of the Acts of 2022](#), 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 #33**

**February 16, 2023**

**1:00 p.m.**

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

**Meeting ID: 952 5765 2786**

- 1) Call to Order
- 2) Approval of Minutes
  - a. December 13, 2022
  - b. January 12, 2023
- 3) Executive Director Report – Enrique Zuniga
  - a. Disciplinary Records Update
  - b. Certification Update – List of Not Certified Officers
  - c. Annual Report – Draft
  - d. Personnel Update
    - i. Director of Standards Appointment – Matthew Landry
- 4) Regulations Update – General Counsel Randall Ravitz
  - a. Proposed regulations on Databases and Dissemination of Information (555 CMR 8.00)
  - b. Proposed regulations re: Regulatory Action and Advisory Opinions (555 CMR 11.00)
- 5) Finance Update – CFAO Eric Rebello-Pradas
  - a. FY24 Budget and Organizational Chart

100 Cambridge Street, 14th Floor  
Boston, Massachusetts 02114

TEL: 617.701.8401

[mass.gov/orgs/post-commission](https://mass.gov/orgs/post-commission)

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- 6) Matters not anticipated by the Chair at the time of posting
- 7) Executive Session in accordance with the following:
  - M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct;
  - 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; and
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 30A, §§ 22(f) and (g), in anticipation of discussion and approval of the minutes of prior Executive Sessions.
- a. Division of Standards request approval of conducting Preliminary Inquiries in the following cases:
  - i) PI-2023-02-16-001
  - ii) PI-2023-02-16-002
  - iii) PI-2023-02-16-003
- b. Approval of the minutes of the Executive Session of 1/12/23

2a.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

PUBLIC MEETING MINUTES

**December 13, 2022**

**8:30 AM**

**Remote Participation**

**Documents Distributed in Advance of Meeting:**

- Public Meeting Minutes of November 22, 2022 (Proposed)
- Authorization to Publish List of Suspended Officers on the Commission's Website (Proposed)
- Regulations 555 CMR 11.00: Regulatory Action and Advisory Opinions (Proposed Draft)
- Letter from the State Police Association of Massachusetts, re: Regulations 555 CMR 8.00: Database and Dissemination of Information (Proposed)
- Email from Laurene Spiess, Massachusetts Association of Campus Law Enforcement Administrators, dated December 5, 2022, re: Regulations 555 CMR 8.00: Database and Dissemination of Information (Proposed)
- Letter from the American Civil Liberties Union Massachusetts dated December 6, 2022, re: Regulations 555 CMR 8.00: Database and Dissemination of Information (Proposed)
- Committee for Public Counsel Services Summary Comments dated December 6, 2022, with redlined version of re: Regulations 555 CMR 8.00: Database and Dissemination of Information (Proposed)
- Letter from the Committee for Public Counsel Services (Rebecca Jacobstein) dated December 6, 2022, re: Regulations 555 CMR 8.00: Database and Dissemination of Information (Proposed)
- Letter from the Mental Health Legal Advisors Committee dated December 6, 2022, re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)
- Letter from the EdLaw Project dated December 6, 2022, re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)
- Letter from the Strategies for Youth (Lisa Thurau) dated December 6, 2022, re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)
- Letter from the Citizens for Juvenile Justice dated December 6, 2022, re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)
- Letter from the Strategies for Youth (W. David Walker), re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)
- Letter from Jay Blitzman (retired Juvenile Court Judge, Middlesex County) dated December 6, 2022, re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)

- Letter from the Strategies for Youth dated October 27, 2022, re: Regulations 555 CMR 10.00: Specialized Certification of School Resource Officers (Proposed)
- Memorandum, Re: Utilizing Hearing Officers in the Commission’s Adjudicatory Process
- Definitions of conviction (G.L. c. 6E, § 1, definition of conviction) and a continuance without a finding (Mass. Dist./Muni. Ct. R. for Probation Violation Proc., Rule 2); and statutory interpretation for adoption by the Commission.

**In Attendance:**

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

**1. Call to Order**

- The Chair recognized a quorum and called the meeting to order.

**2. Approval of Minutes**

- Commissioner Kazarosian moved to approve the minutes of the November 22, 2022 meeting. Commissioner Ellison seconded the motion.
- The Chair took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone - Yes
  - Commissioner Calderone - 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 the November 22, 2022 public meeting.

**3. Executive Director Report – Executive Director Enrique A. Zuniga**

**a. Officer Recertification Update (A-H) – Executive Director Zuniga**

- Executive Director Zuniga reported as follows.
  - On December 12, 2022, the POST Commission publicized the first installment of the officer database, which listed certified officers (last names beginning with A-H) on the POST Commission Website.

- As of December 12, 2022, 8,228 officers (last names beginning with A-H) have been certified (1,094 individuals are new graduates who still need to report or complete 2022 in-service training); 342 have been conditionally recertified; and 251 were not recertified. There are 14 suspensions and 12 potential inquiries/hearings which are not limited to officers with last names beginning with A-H.
- Officers have until June 30 annually to complete the in-service-training requirement, and agencies have until September 30 annually to report the officer's compliance with in-service training to the MPTC.
- The POST Commission will give officers additional time, maybe 30 days, to comply with the requirement of in-service training before facing an administrative suspension. The administrative suspension can be imposed by the Executive Director through the previously delegated authority from the Commission.
- The Commission will send a letter to the officer and their agency if they fail to comply with the in-service training, advising them that they are currently certified but will be administratively suspended if they do not comply within the allotted time period.
- Upon a decision to suspend an officer, the Commission will notify the officer, the head of the collective bargaining unit, and the head of the agency. The suspension is effective upon the earliest of receipt by the officer or head of the agency.
- The officer receiving the suspension letter may request a hearing within 5 days of receipt, and the agency must conduct the hearing within 10 days, unless the time limits are waived by the individual.
- The regulations presume that the hearings will be public, but the chair or presiding officer can decide to close the hearing. Deliberations are private.
- The Commission would hear information on the Dissemination of Information regulations, previously voted on by the Commission and subject to a public hearing. Guidelines have to be established for publishing information on the officers, and in the case of suspensions, the database should contain the beginning and the end date of that suspension and the reason for the suspension.

**b. Finance and Administrative Update**

- Executive Director Zuniga welcomed one new staff member: Tim Quinn, a Compliance Agent in the Division of Police Standards. A legal intern from Northeastern University is scheduled to start in January 2023. There are currently seven open positions: Paralegal; two Certifications Specialists; Product Manager; Technical Lead; Digital Communications Manager; and Director of the Division of Police Standards, the previous Director having been sworn in as a Superior Court judge.
- Executive Director Zuniga stated that the Commission is currently at 22 employees and forecasted that the total would reach 28 or more by June 30, 2023.
- Commissioner Ellison asked if there are any updates on the IT software purchase.
- Executive Director Zuniga answered that the first phase of Salesforce will be deployed internally that week, which is critical to the backbone of the infrastructure. The Commission is about sign the next task order, which is on a quarterly basis, to move the information on the previous platform, Jira, to Salesforce.

- Chair Hinkle asked for a motion to authorize the POST Commission to make a list of suspended officers public.
- Commissioner Bluestone moved to publish the list of suspended officers.
- Commissioner Luma seconded the motion.
- The Commissioners voted as follows:
  - Commissioner Bluestone - Yes
  - Commissioner Calderone - Yes
  - Commissioner Ellison - Yes
  - Commissioner Kazarosian - Yes
  - Commissioner Luma - Yes
  - Commissioner West - Yes
  - Commissioner Wynn - Yes
  - Chair Hinkle - Yes
- The motion was unanimously carried by those in attendance.

#### **4. Regulations Update – General Counsel Randall E. Ravitz**

##### **a. Proposed draft regulations re: Regulatory Action and Advisory Opinions – General Counsel Ravitz**

- General Counsel Ravitz presented proposed draft regulations regarding regulatory action and advisory opinions. He explained as follows.
  - These regulations are intended to respond to two different provisions of Chapter 30A.
  - One provision states, “Any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany [the] petition with such data, views and arguments as [the person] thinks pertinent. Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.”
  - The other provision of Chapter 30A states, “On request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by that agency.”
  - This set of regulations also addresses regulatory action and advisory opinions not requested by any petitioner. And for these purposes, advisory opinions are defined to include advisory rulings and other formal, written opinions.
  - These provisions do not obligate the Commission to issue or decline to issue any regulation or any advisory opinion. Also, they do not preclude the Commission from issuing other forms of guidance.
  - These provisions are drawn from similar regulations and other policies that have been promulgate by other State agencies.
  - Sections 555 CMR 11.04 and 11.05 concern petitions for regulatory action or an advisory opinion and list things a petitioner should do which would facilitate the processing of the petition, but they don’t require a person to do anything in particular in petitioning.
  - The regulations would require law enforcement agencies and officers to ensure accuracy in anything that they submit.

- Section 555 CMR 11.06 generally calls for notice to be provided at various stages to anyone who petitions for the regulatory action or is identified as being an opposing party in the petition. Certain procedural steps that normally take place in a public hearing are required to be taken. The Commission may make revisions after public comment and allow the staff to make minor revisions, not substantive, after the Commission votes, such as those related to typography and formatting.
- Section 555 CMR 11.07 includes a call for Commissioners to approve the general substance of an opinion before a formal written opinion is issued, notice to those who petition for the regulatory action and oppose it, and publication on the Commission's website.
- Section 555 CMR 11.08 concerns the validity of an opinion and a defense to individuals who relied on the provision in a proceeding before the Commission in circumstances that were not materially different.
- Section 555 CMR 11.09 provides that any action can be taken on a petitioner's behalf by an attorney and communications go through the attorney.
- Chair Hinkle asked for any questions, and there were none.

**b. Hearing update re: Regulations on Databases and Dissemination of Information (555 CMR 8.00)**

- General Counsel Ravitz reviewed suggestions for specific changes to the regulations.
  - First there were comments that the regulations should be fully extended to cover everything related to the databases in the statute, and that the information in the non-public database should also be added to the public database.
  - General Counsel Ravitz stated that some matters are treated as ongoing, pending before the Commission, and therefore excluded, as it also applies to the public records law.
  - Commentors stated that a matter should be treated as concluded at the end of the Commission's own proceedings, which would then make the information readily available in the database.
  - With regard to the provision that the Commission or the Executive Director can establish the details related to the database, one commenter stated that this should be formulated with public input. Another comment suggested eliminating the provision.
  - In determining what should go into the public database, one commenter stated active and former officers should be included.
  - As to a summary of the officer's disciplinary record's inclusion in the database, there were comments from law enforcement and advocacy groups to revise the language to account for different departments and the definition of certain terms, such as summary, unsustainable and unfounded.
- Commissioner Calderone raised concerns over the possibility of unfounded, pending or possibly false complaints being part of the public database.
- Commissioner Bluestone shared concerns regarding unfounded complaints and also inquired about how different agencies would be assessed if they act in different ways.
- General Counsel Ravitz stated that commenters added that decisions reversing an action against or in favor of an officer should be included in the database and that certain references to employees should apply to officers privately employed.



- Certain comments suggested that the Commission eliminate, replace, or clarify the exclusion concerning any information where its disclosure would implicate the state invasion of privacy statute.
- Some commenters identified that they wanted the provision excluding assessments of character and fitness removed.
- Other provisions outlined and commented on addressed the handling of public records requests, the definition of conclusion, and the collection of fees for public records requests.
- Commissioner West commented that someone recommended the removal of Section 6, Number 5 regarding whether or not an officer possesses good moral character, but she believed it should remain.
- Commissioners Ellison and Kazarosian agreed with that assessment.
- Commissioner Bluestone asked for background on why it was recommended that it be excluded from the database.
- General Counsel Ravitz explained that the original rationale was that such assessments can consist of personal information, opinions, etc. as opposed to straight facts. He pointed out that perhaps the final assessment made by the Commission, rather than the agency's initial assessment, can be published.
- Commissioner Bluestone suggested that perhaps the database could include the determination of good moral character, but not necessarily the detailed account of the assessor.
- General Counsel Ravitz stated that there are two assessments, one by the agency and one by the Commission.
- Executive Director Zuniga stated that maybe only the Commission's assessment is published, withholding the subjective assessment, and Commissioner Luma agreed.

**c. Hearing update re: Regulations on Specialized Certification of School Resource Officers (555 CMR 10.00)**

- General Counsel Ravitz reviewed suggestions for specific changes that were recommended in the regulations after providing a background summary of the memorandum of understanding and operating procedures governing the service of School Resource Officers ("SROs") and the history regarding the adoption and amendment of the SRO laws. He stated as follows.
  - There is a 22-member commission co-chaired by the Commissioner of the Department of Elementary and Secondary Education and the Secretary of the Executive Office of Public Safety and Security.
  - A statute assigns the MTPC the development of a training program for SROs.
  - An officer is required to have SRO certification if they fit into the definition based on the statutory language, including appointment by a police chief, and the definition refers to maintaining a positive school environment for all students, without elaboration on how that is to be achieved.
  - The Commission received comments on provisions concerning the definition of SRO, when certification is required, information gathering, specialized SRO training, other requirements for certification, conditional certification, publication of information, the appointment of SROs, and their role in schools.

- A commenter stated that obtaining information on discipline or misconduct for an SRO's past performance should be obligatory.
- Another commenter stated that the regulations should characterize the training that needs to be completed by the SRO and that the Commission should decline to grant certification unless it determines that the MPTC has developed certain training standards, including standards regarding implicit bias, child development, trauma, and disability related conduct.
- He had a desire to follow up with commenters to determine what they would like to see ideally with regard to issues of race, ethnicity, gender, disability, and mental and behavioral health.
- There were suggestions for SRO certification to be made public.
- Other comments suggested that the regulations should incorporate certain language in the model MOU and address who actually runs the school in terms of discipline.
- Commissioner Ellison pointed out that he works with the Boston Public Schools. Boston does not operate inside schools as other cities and towns do, while they comply with the required SRO training. There are still calls for service to the schools and the regulations will have to be worded in such a way to clarify that subject.
- Commissioner Bluestone saw this as a good opportunity to add clarifying language to the issues of what the necessary training should be and what it means to ask these officers to help to establish and maintain a positive school climate.
- Commissioner Wynn expressed concerns about a higher-education requirement and pointed out that some agencies might not be able to fill the SRO role.

## 5. General Counsel Update

### a. **The utilization of hearing officers in the Commission's adjudicatory process – Deputy General Counsel LaRonica Lightfoot**

- Deputy General Counsel Lightfoot offered a proposal for the Commissioners to grant the Chair of the Commission the authority to utilize the services of a hearing officer with matters and proceedings before the Single Commission and the full Commission. She explained as follows.
- The two general types of proceedings include mandatory suspensions and the denial of certification.
- The Commission has authority to grant the necessary powers through Chapter 6E, § 3(a) of the General Laws, which provides for the ability and power to pay for advisory services. Also, the Commission has the power to conduct adjudicatory proceedings in accordance with Chapter 30A.
- The delegation of authority to the Chair to appoint a hearing officer is also based on the ability of the Chair, within her discretion, to select a presiding officer in certain adjudicatory proceedings.
- The delegation does not remove the final decision-making authority that is vested with the Commissioners in the proceedings.
- The timeline for the Single Commissioner to hear a case involving suspensions is truncated, and therefore a hearing officer, appointed by the Chair, would be beneficial in starting the process and act similar to a magistrate in conducting the hearing.

- The hearing officer would issue a tentative decision, subject to adoption or revision by the Single Commissioner and full Commission.
- Commissioner West asked about how other agencies utilize hearing officers.
- Deputy General Counsel Lightfoot responded that some agencies use DALA, the Division of Administrative Law Appeals, and that requires a contractual obligation and more formalized policy by the Commission. The Division of Professional Licensure was also contacted with regard to their process and how they use documents, and to obtain documents.
- Deputy General Counsel Lightfoot stated the request for the use of hearing officers in the process was based on the limited timeframes imposed by the law to conduct the hearings.
- Commissioner Luma asked when the Commission anticipates developing a formal policy concerning the use of the hearing officer.
- Deputy General Counsel Lightfoot stated that the current focus was on the appeals presently before the Commission and those anticipated as a result of the denial of certifications and a more formalized plan would come after addressing those time-sensitive appeals, but a time could not be specified.
- General Counsel Ravitz stated that this has been identified as a priority and a more formalized plan will be produced as soon as possible.
- Commissioner Bluestone asked whether the procedure would be for the Chair to appoint a hearing officer who would be a former judge.
- Deputy General Counsel Lightfoot stated that the Chair would have the authority to appoint a Single Commissioner or a hearing officer. The Single Commissioner could still conduct hearing proceedings and would be privy to the evidence and recordings from the proceedings conducted by the hearing officer and made the basis of the hearing officer's tentative decision.
- Commissioner Bluestone questioned the power and influence of one person, in this case the Chair, to appoint a hearing officer and a Commissioner, which could have tremendous impact over the outcome of a hearing. She stated there should be randomness in the procedure for the selection of the individuals who hear the cases.
- Chair Hinkle stated that, as the current Chair, she agreed that the Commission should have a selection process in terms of the work of the Single Commissioner. The staff's request sought to deal with the help needed to facilitate the timing requirements due to the influx of cases and preparation of a decision that could be appealed to the Superior Court under Chapter 30A.
- Commissioner Kazarosian stated that the appointment of a hearing officer would not expand the powers of the Chair because the Chair already has the power to appoint a Single Commissioner to review cases. She also stated that she fully supported providing the Chair with authority to appoint retired trial court judges because they are familiar with the process under Chapter 30A.
- Commissioner Ellison asked if it is possible to comply with the timeframes imposed by law in the review process before the Commission, particularly given the other responsibilities of the Commissioners.
- Deputy General Counsel Lightfoot outlined the applicable time restrictions related to suspension appeals.

- Chair Hinkle stated that this underscores the need to utilize retired trial court judges at this point because the Commission is working within incredibly tight timeframes, noting the possibility of the officer waiving the timing under the statute.
- Executive Director Zuniga stated that the Commission has had at least two instances in which individuals waived the right to the prompt hearing requirement but the purpose of the proposal is to facilitate very short turnaround times.
- Commissioner Bluestone asked if the proposal could be a temporary policy.
- Commissioner Kazarosian stated that policies can be easily changed and things will always be evolving. Therefore, there is no need to label the policy as temporary.
- Chair Hinkle asked for a motion to authorize the Chair, in her discretion, to appoint as a hearing officer a former Massachusetts trial judge to hear adjudicatory proceedings before they come before the Single Commissioner or the full Commission.
- Commissioner Calderone moved to grant the Chair the authority.
- Commissioner Kazarosian seconded the motion.
- The Commissioners voted as follows:
  - Commissioner Bluestone - Yes
  - Commissioner Calderone - Yes
  - Commissioner Ellison - Yes
  - Commissioner Kazarosian - Yes
  - Commissioner Luma - Yes
  - Commissioner West - Yes
  - Commissioner Wynn - Yes
  - Chair Hinkle - Abstained
- The motion was carried.

**b. The definition of conviction for the purposes of Chapter 6E, § 1, and the treatment of Convictions Without a Finding (“CWO”) – Deputy General Counsel Pauline Nguyen**

- Deputy General Counsel Nguyen presented the Commission with the definition of conviction in General Laws Chapter 6E and the definition of CWO.
- Based on those two definitions and the statutory interpretation, Deputy General Counsel Nguyen asked the Commission to adopt the proposal that a CWO is a conviction when it is imposed and that, if the matter is dismissed, the CWO is no longer a conviction.
- Deputy General Counsel Nguyen stated that the Commission is prohibited from certifying anyone who has been convicted of a felony and the imposition of a CWO involving a felony would be a disqualifier until the matter is dismissed.
- Deputy General Counsel Nguyen stated that a felony likely calls for suspension during any investigation and subsequent adjudicatory proceeding and stated the scenarios in which the Commission could initiate a preliminary inquiry.
- Deputy General Counsel Nguyen asked the Commission for adoption of the statutory interpretations.
- Commissioner Kazarosian confirmed that the statute defines a CWO as a conviction and stated that the Commission does not have any discretion.

- Commissioner Calderone asked for clarification as to what the process is for an officer who is subject to a CWOFF during the period of his temporary suspension if he is found not guilty and after the matter is resolved as to a misdemeanor.
- Deputy General Counsel Nguyen stated that an officer is immediately suspended if a CWOFF is imposed in a felony matter, and if the case is later dismissed, the Commission would revisit the issue, reconsider the suspension, and potentially lift the suspension. The officer would need to inform the Commission that the terms of the CWOFF were fulfilled.
- Executive Director Zuniga stated that the severity of the matter raises more concern for initiating suspensions and, in the case of misdemeanors, the statute is permissive and does not require the Commission to act.
- Commissioner Ellison asked if the consideration of CWOFFs is retroactive.
- General Counsel Ravitz stated that, if the person has completed the terms of their probation and the matter has been dismissed, it is not treated as a conviction.
- Commissioner Kazarosian stated that the only time the Commission has to suspend immediately is for a conviction or a CWOFF on a felony, and a misdemeanor allows for discretion.
- Chair Hinkle asked if the request was for the Commissioners to vote on the definition of conviction for purposes of the underlying statute and the inclusion of the treatment of CWOFFs as they were described in the statutes.
- Commissioner Kazarosian stated that there was no need for the Commission to have a separate interpretation considering the clear language in the statute.
- Commissioner Calderone agreed with Commissioner Kazarosian.
- Commissioner Wynn agreed with Commissioners Kazarosian and Calderone and stated that, with regard to firearms, CWOFFs are not regarded as convictions and have to be dismissed.
- Commissioner Calderone moved to continue with the statutory interpretation under the General Laws.
- Commissioner Kazarosian seconded the motion.
- The Commissioners voted as follows:
  - Commissioner Bluestone - Yes
  - Commissioner Calderone - Yes
  - Commissioner Ellison - Yes
  - Commissioner Kazarosian - Yes
  - Commissioner Luma - Yes
  - Commissioner West - Yes
  - Commissioner Wynn - Yes
  - Chair Hinkle - Yes
- The motion was unanimously carried by those in attendance.

## **6. Commissioner Ellison – update on Executive Director’s Evaluation**

- Commissioner Ellison stated that the Executive Director had his performance evaluation and his compensation is in line with that of executive directors for other agencies.

## **7. Matters not anticipated by the Chair at the time of posting**

- There was no new business.
- Chair Hinkle asked for a motion to enter an Executive Session 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 Bluestone - Yes
  - Commissioner Calderone - 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 an 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.

2b.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

PUBLIC MEETING MINUTES

**January 12, 2023**

**8:30 AM**

**Remote Participation**

**Documents Distributed in Advance of Meeting:**

- Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed)
- Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed) (redlined version)
- Regulations 555 CMR 11.00: Regulatory Action and Advisory Opinions (Proposed)
- Memorandum, Re: Delegating Authority to the Executive Director to Conclude Suspensions
- Delegation of Authority to End Certain Administrative Suspensions of Certification (Proposed)
- FY23 2nd Quarter Activity
- Memorandum, Re: Finance & Administration Update
- Treasurer's Report
- FY23 Organizational Chart

**In Attendance:**

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

**1. Call to Order**

- The Chair recognized a quorum and called the meeting to order.

**2. Executive Director Report – Executive Director Enrique A. Zuniga**

**Dissemination of Information and Process – Executive Director Zuniga**

- Executive Director Zuniga explained that the minutes were not ready for approval for this meeting, but they would be included in the next meeting packet.



- Executive Director Zuniga reported as follows.
  - On January 3, 2023, the POST Commission published a list of 15 suspensions, and an additional three officers have been notified. The list will be periodically updated, monthly or bi-weekly. All individuals on the list were suspended per Chapter 6E, § 9(a)(1) because they were arrested, charged or indicted for a felony.
  - The officer can request a hearing when notified, and notifications are sent to the agency and head of the collective bargaining unit. There are 5 days to request and 10 more days to conduct a hearing, which can be waived. Some officers have waived their right to a hearing now but have asked for a hearing as soon as the matter (i.e., the charge, arrest or indictment) is resolved. Not every officer on the list has requested a hearing.
  - Suspensions are currently presumed to be in effect until the Commission lifts the suspension, which does not apply to administrative suspensions that the Executive Director has the discretion to impose.
  - As per the prior delegation, the Executive Director may issue an administrative suspension (i.e., for a failure to complete in-service training or a failure to report information to the POST Commission in accordance with Chapter 6E, § 8). The approach is to first inform individuals and agencies. That authority has not yet been exercised.
  - Two lists are on the POST Commission website, which include both certified and suspended officers.
  - Commissioner Ellison asked if there is a deadline for the officers who delay their potential hearing.
  - Executive Director Zuniga answered that there is not a deadline, but the individual will remain suspended until the matter is resolved. The individual would need to inform the POST Commission once the matter is resolved and cannot conduct certain functions during the time of suspension.
  - There was a significant increase in traffic to the website after publication of the suspension and certification of list, and agencies and individuals have contacted the POST Commission with several corrections.
  - The team is working diligently to publish the list of individuals who were not certified, and for whom the certification is deemed final. That leaves only individuals who are conditionally certified as the only group unpublished.

### **3. Regulations Update – General Counsel Randall E. Ravitz**

#### **Databases and Dissemination of Information – General Counsel Ravitz**

- General Counsel Ravitz presented revised draft regulations regarding databases and dissemination of information. The Commission approved the draft at an earlier meeting and then there was a period of public comment and a hearing. He explained as follows.
  - These regulations incorporate comments and suggestions from the public and highlight sections that the Commission might consider eliminating.
  - The public packet included a redlined version with changes and further changes were added thereafter.

- Changes were made to references to agencies and officers and to language regarding when a matter is concluded versus ongoing.
- 555 CMR 8.05 was added, addressing databases without stating that they must be public facing.
- This new 8.05 addresses the two statutory subsections that refer to databases without stating they must be public-facing.
- It provides for these databases to be established on a date set by the Commissioners.
- Subsections 8.06(1)-(3), which concern the development of a public database and what it must include, now provide for it to be established on a date set by the Commissioners; do not limit it to information on “active” officers; elaborate on what the summary of an officer’s disciplinary record is to include; provide for the inclusion of decisions reversing actions that were adverse to an officer; and provide for the inclusion of decisions reversing actions that were not adverse to an officer.
- Subsection (b), which provides for public users to obtain aggregated data now would specify that it can be aggregated by officer, by rank, by department, or statewide. It also provides for public users to obtain statistics on complaints decided adversely and those decided not adversely to an officer.
- Subsection 10, which concerns the inclusion of summaries of disciplinary records, was expanded to provide for the inclusion of information as to whether complaints were submitted anonymously and under the pains and penalties of perjury.
- 555 CMR 8.06(4) concerns exclusions to the public database, and includes revised provisions relating to matters such as privately employed officers, character and fitness determinations submitted to the POST Commission as part of the certification process, data that is non-disclosable under an agreement with a governmental agency, and certain witness protection regulations. It continues to provide that certain information will be excluded only to the extent required by the cited statute or regulation, and no further, by using restrictive clauses.
- Matters that were not resolved against an officer are excluded. There was an effort to reconcile the language by stating that matters not resolved adversely to the officer should be excluded unless the Commission finds that resolution to have been unwarranted. This is to address the inclusion of unsustained and unfounded complaints from the summary of disciplinary records and the different degree of thoroughness and practices in which agencies may engage in investigations.
- Subsection (j) excludes information concerning a disciplinary matter where the matter is pending before the Commission and has not been rendered final. The general rule is that it would be considered final at the end of the POST Commission’s own proceedings, but the POST Commission would have the ability to go beyond that by adopting a policy or on a case-by-case basis.
- Regarding the language concerning a conclusion of a matter, Commissioner Calderone asked if that means the Commission can do whatever they want at any time on a case.

- General Counsel Ravitz answered that it leaves the Commission with the latitude to view a matter as being ongoing (not ready) for inclusion into the database even after the Commission has made its own decision on the matter, based on the circumstances.
- Commissioner Calderone asked if this means the Commission can decide to include a finding in the database that has not reached a conclusion in the court. He stated it seems ambiguous that the Commission does not define a conclusion or whether to definitively include a complaint in the database.
- General Counsel Ravitz answered that it does mean it could appear in the database, but it is up for discussion by the Commission.
- Commissioner Kazarosian asked if there is a possibility to consider language that is more definitive as to what conclusion means and clarify the result when the decision is under appeal.
- Commissioner Bluestone pointed out that the Commission is trying to balance the prevention of data from going into a database that might be false or have a negative impact on an officer against the risk of not including data that the public is entitled to see and that might be relevant to the issue of the public trust. We could potentially open ourselves up to false negatives or false positives.
- Commissioner West pointed out that the decision the Commission makes is different than a decision by others (i.e., the district court, internal affairs at a police department), and the Commission's determination of whether an officer is morally fit to be certified is made from different standards and would stand on its own. The vote of the Commission to publicize the information could be based on a quorum rather than a majority. She stated that people do not want to wait until every possible appeal is concluded.
- Commissioner Calderone agreed with the statements on transparency but believed that it is unfair to an officer to have the Commission take a vote that will be public and may adversely affect the officer's case.
- Commissioner Kazarosian clarified that the topic at hand is dissemination to the public, and that any decision made by the Commission should be made public.
- Chair Hinkle suggested that the topic is left to the General Counsel to consider these remarks and provide language at the next meeting to address them and asked if there are any other comments that had not already been raised.
- Commissioner Bluestone stated that, if the Commission is making decisions and making them public, then the reliability of the data hinges on whether the Commission's decisions are correct or incorrect and on the information that the Commission has available relative to other procedures through the courts, and she questioned whether the Commission has enough information available to it to consider its decisions reliable?
- General Counsel Ravitz continued by stating that Subsection (5) now allows the Commission to eventually structure the database so that certain sensitive information is: included in the public database; made unavailable to the general public; and made available to certain individuals who are legally allowed to receive it.

- Comments from the public on subsection (6) raised issues concerning: agency provisions and guidelines regarding application of the public records law and the length of time until a conclusion is reached by the Commission.
- It was revised to make clearer that it is merely advisory, provides guidance regarding one discrete issue, does not resolve questions about the application of the public records law, and redefines the point when a certification or disciplinary matter is no longer active.
- General Counsel Ravitz stated that because this is merely advisory and public records determinations will be based on case-by-case applications of the relevant standards in full, the above provision regarding the conclusion of disciplinary matters, as revised, will rarely be applicable. Yet these provisions could not be changed without full promulgation procedures. Thus, perhaps they should be cut from these regulations, leaving the possibility that similar guidelines or principles could be adopted less formally.
- Commissioner Kazarosian recommended the release of information considered a public record be made into a policy as opposed to a regulation because regulations are difficult to change. She would accept adopting them as policy as opposed to regulations.
- General Counsel Ravitz continued that Section 8.06, drew comments that concern the development of a public database and what it must include and provide for it to be established through guidelines voted on by the Commissioners.
- General Counsel Ravitz stated that Section 8.07 concerns the design of databases and record-keeping and the security of the database. Sections 8.08 and 8.10 protect the ability of individuals to correct inaccurate information in personnel records for public and private employees. It is for the Commission to determine whether the public records matters should be included in regulations.
- Sections 8.09 and 8.10 concern handling records requests and charging of fees, and the revisions provide clarification in certain ways.
- Commissioner Kazarosian reiterated that it might be better to make these points policies rather than regulations.
- Commissioner Bluestone agreed with Commissioner Kazarosian's point about making policies as opposed to regulations.
- Commissioner Calderone asked if the General Counsel can define policies vs. regulations at the next meeting. He stated that he understood that a policy has very limited public input and is something that the Commission can do. He also stated that if the Commission is going to make major changes to the way it conducts itself there should be public input.
- Chair Hinkle agreed with the general recommendation that the particular section regarding public records request be eliminated in the next draft. Chair Hinkle explained that a policy could be changed more easily than a regulation.
- Chair Hinkle recommended that the Commission table item 3b. until the end of the meeting, time permitting.

#### **4. General Counsel Update – Deputy General Counsel LaRonica Lightfoot**

Deputy General Counsel Lightfoot presented a request for delegation of authority to the Executive Director to lift administrative suspensions. The Commission previously approved the delegation of authority for the Executive Director to impose three types of suspensions, two of which were administrative and one of which involved an arrest, charge or indictment for a felony (which is not included in the instant request). She explained as follows.

- The two types of suspensions that are administrative in nature include suspensions for a failure to complete in-service training and a failure to report information to the Commission that the officer had a duty to report.
- Nothing in a statute or regulation outlines the process for lifting the suspension and reinstating the certification.
- The two administrative suspensions are not punitive and only require that the officer comply by either completing the training or providing the information.
- Chair Hinkle asked for a motion for the Commission to delegate authority to the Executive Director to lift administrative suspensions when the officer has complied.
- Commissioner Calderone moved to grant the authority to the Executive Director to lift the two administrative suspensions.
- Commissioner Ellison seconded the motion.
- 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 motion was unanimously carried.

## **5. Finance Update – CFAO Eric Rebello-Pradas**

- CFAO Rebello-Pradas reported as follows.
- The POST Commission is trending under budget for fiscal year 2023. Payroll is under budget by about 9% due to fluctuation of hours of non-FTEs (POST Commission retirees).
- The Commission is aiming to have 31 positions filled by the end of June, but not having these filled as of yet has provided a savings.
- There is a shift in cost for legal services since our legal division is now staffed.
- The POST Commission will not move into the new facility on State Street until probably July 2023.
- Identifying savings in FY23 allows us to advance project completion and reduce the FY24 Budget.
- The largest areas of spending in the FY24 budget include: payroll, \$5M (including an additional 10 FTEs for a total of 41 employees); office space, \$838K; Information

Technology, \$4.1M (including the balance of salesforce development & enhancements, Salesforce Maintenance and Jira transition.)

- The POST Commission just finished the first task for Salesforce development, and project work should be completed sooner than anticipated because of other savings. IT numbers are fluid.
- The final FY24 budget number – as filed on March 1<sup>st</sup> – will range anywhere from \$9M (including IT revisions) to \$11M (submitted in November). There is a projection of 41 full-time employees. Last Call Media will no longer be needed, and therefore the cost for media services is reduced in the budget. The February meeting will include a vote on the budget.
- Commissioner Ellison asked if the COLA will be decided in time for the Commission to vote on that at the February meeting.
- CFAO Rebello-Pradas answered that would probably be presented later in the year, after the full budget is complete in June 2023.

#### **6. Matters not anticipated by the Chair at the time of posting**

- There was no new business.
- Chair Hinkle asked for a motion to enter an Executive Session 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 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 an 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.

3a.



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

February 3, 2023

### CHAIR

Margaret R. Hinkle

Chiefs and Sheriffs of Police Departments and Law Enforcement Agencies:

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

Thank you for your continued compliance with POST certification processes and reporting requirements. I am writing today to ask for your help in submitting **sustained disciplinary records** that were previously submitted to POST.

As you recall, we collected historical disciplinary records for active officers by December 31, 2021 and for transferred officers by January 31, 2022. After analyzing and aggregating this data, we realized that there were major questions of data integrity that required validation. The issues were as follows:

- 1) **POST regulations for submitting records became effective on June 24, 2022 (after the submission of these records).** This effectively meant that POST had in its possession many records that were not reportable to POST, and thus should not be published. We have no way of accurately identifying which records should be omitted. The instructions attached further clarify what records should be excluded from any submission to POST.
- 2) **We cannot confidently distinguish between records of officers with common names (officer ambiguity).** The initial template circulated in 2021 did not include a unique identifier for each officer (Acadis #, date of birth, or SSN). This resulted in the possibility of having officers with common names potentially having records wrongly attributed to them.
- 3) **There were multiple instances in which agencies entered multiple charges in different rows.** This resulted in challenges regarding attributing, aggregating and reporting on the information submitted. These discrepancies among agencies would likely generate the impression that some officers would have more incidents than their actual history. The new template addresses this concern by ensuring there is only one record per row (when an incident includes multiple charges), but allows capturing multiple charges if applicable.

Given these data integrity issues, and after exploring alternatives to validate this data, we concluded that the surest and safest way to validate the data is asking you to resubmit the information, using the attached template.

We have developed a new template that we believe will help ensure data accuracy, officer disambiguation, and accurate and better reporting. The template includes detailed instructions in both the header and the second tab. The template is designed to only allow the entries related to certain fields, but is flexible enough to allow copy/paste. There is also a data dictionary that explains the required and optional fields. Please find

100 Cambridge Street, 14th Floor  
Boston, Massachusetts 02114

TEL: 617.701.8401

[mass.gov/orgs/post-commission](https://mass.gov/orgs/post-commission)



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

the new template here: <https://www.mass.gov/info-details/post-commission-disciplinary-records>.

Please note that **we are only requesting that you submit sustained disciplinary records as part of this resubmission.** The instructions also include a set of specific examples (incidents or complaints) that are not reportable to POST (even when they may have been sustained). We are asking that you exclude all information not reportable to POST, as well as all records for complaints and incidents that were “Unsubstantiated” “Not sustained” “Unfounded” or “Exonerated.” POST will only publish “Sustained” records, and those are the ones that need to be validated at this point.

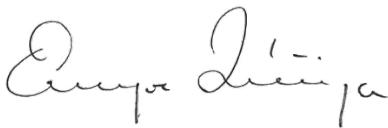
**We are asking that you submit this information by March 15, 2023.** We recognize this is an imposition on the time of your staff, and envision that this validation will only be necessary once. POST has a clear mandate and the strongest interest in ensuring that we do not publish information with the potential for integrity issues as described above.

POST is in the process of finalizing a permanent solution to the disciplinary record submission process. By this summer, POST will deploy a robust platform that will greatly help with the on-going task of submitting complaints and disciplinary information. This will result in a simpler way to submit information to POST. Until then you can continue to submit disciplinary records using the template attached, and following the instruction of what is reportable to POST.

If you have questions about this process, issues with the template or if you are unable to submit the information by March 15, 2023, please e-mail your request at [POSTCReports@mass.gov](mailto:POSTCReports@mass.gov)

Thank you very much for your collaboration, and patience with this process. I am always available to respond to your questions as we continue to build the POST Commission.

Sincerely,



Enrique Zuniga  
Executive Director

3c.

**MASSACHUSETTS POST COMMISSION**  
**ANNUAL REPORT 2022**  
**April 1, 2021 to December 31, 2022**

Massachusetts POST Commission

100 Cambridge Street, 14<sup>th</sup> floor

Boston, MA 02118

Phone: 617-701-8401

Email: [POSTC-comments@mass.gov](mailto:POSTC-comments@mass.gov)

<https://www.mass.gov/orgs/post-commission>

Maura Healey, Governor

Kim Driscoll, Lt. Governor

Publication date: March 2023

Enrique Zuniga, Executive Director, POST Commission

## **Table of Contents**

Massachusetts POST Commission Mission and Goals

Message from Commission Chair Hon. Margaret R. Hinkle (Ret.)

POST Commissioners

Executive Summary

Key Dates

Provisions of Police Reform Act of 2020

### **Division reports:**

Division of Certification

Division of Standards

Finance and Administration

Information Technology

Communications and Community Engagement

Legal Division

Advisories and Regulations

## Massachusetts POST Commission

### Mission and Goals

The Massachusetts Peace Officer Standards and Training (POST) Commission was established as part of the criminal justice reform legislation enacted in Chapter 253 of the Acts of 2020.

Mission Statement:

***To improve policing and enhance public confidence in law enforcement by implementing a fair process for mandatory certification, discipline, and training for all peace officers in the Commonwealth.***

Specific Goals Include:

- 1) Implement a mandatory certification process for police officers, including decertification, suspension of certification, or reprimand in the event of certain police misconduct.
- 2) Receive, investigate, and adjudicate officer misconduct complaints and improper use of force.
- 3) Maintain a public portal (database) of officer information, including certification status, suspensions, and disciplinary records.
- 4) Standardize practices throughout the Commonwealth by implementing a process for certifying agencies including regulations, model policies and best practices that address use of force, ensure bias-free policing, and enhance officer wellness.
- 5) Collaborate with the MPTC to standardize and implement best practices in training and ensure compliance with annual in-service requirements.
- 6) Build an effective and well-regarded diverse agency that fosters collaboration, professional excellence, and personal growth.

## **Message from Hon. Margaret R. Hinkle (Ret), Chair, POST Commission**

We are pleased to submit the first annual report of the POST Commission. This report includes activities from inception of the Commission (April 1, 2021) through December 31, 2022.

From the time that I and the other eight Commissioners were sworn in, we have focused on ensuring that POST and the 438 law enforcement agencies that come under its purview met the statutory obligations and deadlines included in the statute (Chapter 253 of the Acts of 2020). At the same time, we have been focusing on the critical tasks associated with building a new agency including the regulatory and technology infrastructure that will enable POST to further its mission.

The mission of POST as provided in the statute comes at a critical time and is both broad and ambitious. The tasks are critical because every one of the approximately 20,000 peace officers in the Commonwealth is in some form (large or small) affected by the work that POST undertakes.

This last year we greatly benefitted from the able and timely help of many individuals in other State agencies (The Executive Offices of Technology Services and Security, Public Safety, Administration and Finance, the Human Resources Division and the Comptroller's office). We are deeply grateful for their continuing help, patience, guidance and insight.

We have met and strongly believe we will continue to meet all our obligations under the statute, while building an effective and well-regarded agency. We are able to do so because of the strong partnership with the Municipal Police Training Committee (MPTC) and the crucial collaboration of the Law Enforcement Agencies in the Commonwealth. We know that this ongoing collaboration will be critical to our success.

Enhancing trust between law enforcement and the communities they serve is at the heart of our mission. Therefore, we are committed to doing our work diligently, in an objective and fair way and with the utmost transparency.

## **POST Commissioners**

The nine-member Commission is made up of appointees of the Governor, Attorney General, or both. The Commissioners have experience in law enforcement practice and training, criminal law, civil rights law, the criminal justice system, mental health, post-traumatic stress disorder, crisis intervention, de-escalation techniques, and social science fields related to race or bias.

While serving on the Commission, the Commissioners cannot hold, or be a candidate for elected office; hold an appointed office in government; or serve as an official in a political party. No more than 7 Commissioners shall be from the same political party.

Each Commissioner serves for a term of 5 years or until a successor is appointed, and are eligible for reappointment, but cannot serve more than 10 years.

### **Appointees of the Governor:**

**Hon. Margaret R. Hinkle** (Ret.) served from 1993 until 2011 as a Justice of the Superior Court of Massachusetts and serves as Chair of the POST Commission.

**Michael Wynn** has served since 2007 as Chief of the Pittsfield Police Department.

**Charlene Luma** is a licensed social worker who has served since 2019 as the Chief of the Victim Witness Assistance Program for the Suffolk County District Attorney's Office.

### **Appointees of the Attorney General:**

**Lawrence Calderone** is the Chair & President of the Massachusetts Law Enforcement Policy Group, and President of the Boston Police Patrolmen's Association.

**Larry Ellison** is a Detective in the Boston Police Department's School Unit, a position he has held since 2005.

**Marsha Kazarosian** is an experienced trial attorney who has been practicing in Massachusetts since 1982.

### **Joint Appointees of the Governor and Attorney General:**

**Dr. Hanya H. Bluestone** is a licensed psychologist who has served since 2016 as CEO of Labyrinth Psychological Services, PC, in Holden.

**Clementina M. Chéry** is an ordained senior chaplain and the Co-Founder and CEO of the Louis D. Brown Peace Institute in Boston, a center of healing, teaching and learning for families and communities impacted by homicide, trauma, grief and loss.

**Kimberly P. West** has served since 2019 as a Partner of Ashcroft Law Firm in Boston, where she represents clients in investigations involving federal and state agencies.

## Executive Summary

During the first year of operations, the Commission achieved important milestones as required by the statute (Chapter 253 of the Acts of 2020, also referred to as “Police Reform”). The major accomplishments can be summarized as follows:

- In June of 2021, jointly promulgated regulations on **Use of Force** with the Municipal Police Training Committee (MPTC). These regulations codify the prohibition of certain practices and clarify the use of certain tactics including the requirement for de-escalation in most encounters between law enforcement and the public. During the same month, the Commission issued guidance on alternative use of force and alternatives in dealing with minors.
- From September 2021 through January 2022, began collecting and aggregating **disciplinary records** of all officers in the Commonwealth. Agencies were required to submit a summary of all historical disciplinary records to POST for “Active Officers.” Similarly, agencies submitted records of officers no longer working in those agencies who are active in other agencies (“Transferred Officers”), to ensure that the Commission and the public have a complete view of the historical records of all officers. The Commission will continue to aggregate and validate this large dataset and is working to make most of the information available to the public in the coming months.
- On December 1, 2021 began **certifying graduates of new academies**. The certification process includes verifying that individuals meet certain statutory requirements outlined in section 4(f) of the statute. To date the Commission has certified approximately 1,200 new law enforcement officers.
- Promulgated regulations that govern the processes for receiving, investigation and adjudicating complaints regarding law enforcement officers, as well as regulations that govern the recertification process.
- Finally, on July 1, 2022 accepted, processed, **recertified and notified approximately 8,800 law enforcement officers**. The statute grandfathered the certification of officers whose last name begins with letters between A–H and this certification expired on June 30, 2022. The Commission has a high degree of confidence that most of those individuals met the requirements of the statute for re-certification. There is a small group of individuals that merited further review, some of whom will not be issued a re-certification.

Next year will bring additional progress that will build on the work done to date. The Commission will continue to receive complaints and disciplinary records; certify new academy graduates; recertify officers with last names I through P; investigate and adjudicate some disciplinary matters and publish key information regarding law enforcement officers as required by the statute.



## **Massachusetts POST Commission Key Dates**

### **December 2020 to December 2022**

#### December 2020

Chapter 253 of Acts of 2020 signed into law

#### April– June 2021

Commissioners appointed by Governor Charles Baker and Attorney General Maura Healey

Guidance on dealing with minors released

Use of force regulations released

#### September – December 2021

Commission appoints Executive Director

Collect disciplinary records of active officers

Begin certifying police academy graduates

Collect disciplinary records of active and transferred officers

Implement interim technology solution (JIRA)

#### January – March 2022

Formulate plan for recertification of officers

Hire positions in the Certification Division

Build interim technology solution to process certifications

Clarify In-Scope Agencies and Officers

Formulate plan for recertification (part 1 and 2)

#### April – June 2022

Litigation regarding recertification questionnaire

Draft and promulgate recertification regulations

Recertify approximately 8,800 officers with last names A-H

#### July – September 2022

Procurement and contracting for permanent technology software (Salesforce)

*Massachusetts POST Commission 2022 Annual Report*

Process certification exceptions

Process cases requiring “Further Review”

October – December 2022

Draft levels of review for Certification, Executive Director and Commission

Salesforce solution – first task order and release 1 (Law Enforcement Agencies and Officers)

Public complaint form debuts on POST website

Suspensions and Preliminary Inquiries started

Release data on certified officers A-H and new academy graduates

## **Provisions of the Police Reform Act of 2020**

Chapter 253 of the Acts of 2020 (“Police Reform”) established the POST Commission to create a mandatory certification process for police officers and for certifying law enforcement agencies, along with the following goals:

**1. Certify new and existing officers every three years.**

The statute outlines certain requirements for certification of new officers and recertification of existing officers. The law initially granted a certification to all active officers and requires new officers to be certified according to certain criteria. Further, the law requires that all officers be recertified every three years. To distribute the certification workload, the law outlined the expiration of said certification according to the last name of individuals: Officers with last names A-H were the first officers to be re-certified by POST on July 1, 2022. The next group of officers (with last names I-P) will be required to be recertified by POST on July 1, 2023, and the last group of officers (with last names Q-Z) by July 1, 2024. This process will continue.

**2. Investigate allegations of misconduct and create a process for retraining, condition, limit, discipline, or reprimand.**

The mission of POST includes creating a process for suspension of certification of a law enforcement officer. Such process is required to include procedures for hearings and adjudication. The Commission has the authority to suspend, limit, condition or revoke certifications, or order retraining of officers. This also includes the authority to “decertify” an officer in the event of certain prohibited conduct. In those instances, an officer will be listed in the National Decertification Index and prevented from working in law enforcement in the future.

As part of the investigatory process, the Commission is tasked with receiving complaints from both the public and law enforcement agencies within 2 business days. Agencies are also tasked with submitting reports and disciplinary disposition to POST when those tasks are completed. When investigating misconduct, the staff will evaluate information to detect patterns, as well as situations that may warrant referral to prosecuting agencies.

**3. Regulate officers and agencies to standardize training and best practices across the state.**

The mission includes the authority to certify law enforcement agencies and individuals to ensure that officers are well trained and adhere to high standards and sound policies, and to prevent and address excessive force and misconduct. The Commission endeavors to follow best practices, dictate minimum standards and require model policies for agencies with the overall goal of improving policing in the Commonwealth.

**4. Maintain and publicize information regarding officers.**

To further its mission and the important goal of enhancing public confidence and trust in policing, the Commission is tasked with maintaining a public facing database of officer information, including disciplinary records and complaint history. The statute also requires that the public information include the certification status of every officer in the Commonwealth.

## Division Reports

### Division of Certification

The Division of Certification establishes uniform policies and standards for the certification of all law enforcement officers. In addition, Division staff work in conjunction with the Municipal Police Training Committee (MPTC) to verify standards related to training.

All officers in the Commonwealth that fall within the scope of the statute are required to be recertified every three years. Officers who were active on July 1, 2021 were certified (grandfathered) by statute. The statute also provided that those initial certifications were to expire as follows:

Officers with last names A through H:	June 30, 2022
Officers with last names I through P:	June 30, 2023
Officers with last names Q through Z:	June 30, 2024

The Commission requires agencies to help verify certain requirements of the statute and submit information to renew the certification of officers A-H prior to the date of expiration. In addition, the statute requires that all new officers attending an academy training and graduating December 1, 2021 be certified by the Commission.

The certification standards for all officers include:

- (i) Attaining the age of 21;
- (ii) Successful completion of a high school education or equivalent, as determined by the Commission;
- (iii) Successful completion of the basic training program approved by the Municipal Police Training Committee;
- (iv) Successful completion of a physical and psychological fitness evaluation approved by the Commission;
- (v) Successful completion of a state and national background check, including, but not limited to, fingerprinting and a full employment history; provided, that if the applicant has been previously employed in law enforcement in any state or United States territory or by the federal government, the applicant's full employment record, including complaints and discipline, shall be evaluated in the background check;
- (vi) Passage of an examination approved by the Commission;
- (vii) Possession of current first aid and cardiopulmonary resuscitation certificates or the equivalent, as determined by the Commission;
- (viii) Successful completion of an oral interview administered by the Commission; and
- (ix) Being of good moral character and fit for employment in law enforcement, as determined by the Commission.

## Massachusetts POST Commission 2022 Annual Report

The Division of Certification, in consultation with the Division of Standards, is also tasked with creating and maintaining a database of records for each certified law enforcement officer. The division plans to publish searchable databases available to the public.

### Operations

In early 2022, the total number of law enforcement officers in the Commonwealth was estimated at 22,000. The total number of individuals with last names A-H was initially estimated at 10,000.

Last year the Division of Certification partnered with the Executive Office of Technology Services and Security (EOTSS) to build a technology solution to process and maintain all records while simultaneously completing the requirement to certify all officers by July 1, 2022. This very large undertaking required the creation of an algorithm to process a large amount of officer data and corroborate information submitted to the Commission. The Division relied on the representation and attestations of police chiefs for compliance with the requirements of the statute. Shortly after those submissions, the Commission undertook a process of review and quality assurance.

The certification team built an interim solution using the JIRA service management system to accept information from law enforcement agencies and complete the recertification of officers. The solution is a task-based application that was utilized to process requests and recertifications. While not intended to be the final technology platform, the technology was flexible enough to be deployed quickly, enabling the Division to process records expeditiously, given the short implementation timeline.

### Certification Status

As of December 31, 2022, the Division processed 8,838 officers for recertification and 1,207 new graduates of the MPTC Academies. As of the same date the status of officers are as follows:

<b>Certification Category</b>	<b>Number of Officers as of 12/31/22</b>
Certified (A-H)	8,269
Conditionally Certified (A-H)	231
Not Certified (A-H)	338
<b>Total (A-H)</b>	<b>8,838</b>
Certified New Graduates (since December 1, 2021) (A-Z)	1,207
Suspended Officers (A-Z)	15*

All suspended officers (fifteen officers as of December 31, 2022) were suspended in accordance with M.G.L. c. 6E § 9 (a)(1), which states that the Commission shall immediately suspend the certification of an officer who is arrested, charged or indicted for a felony.

The list of suspended officers is updated from time to time. For a list of suspended officers please visit: [Data and Reports | Mass.gov](#)

### Bridge Academy

The Police Reform Act of 2020 required standardization of training. Officers that had never attended a full-time academy (~800 hours) but were active and counted with policing experience, and/or had attended reserve training or were working part time, were given an opportunity to attend a “Bridge Academy” to meet the new standard.

The MPTC afforded an opportunity to sign up for the Bridge Academy to bring those part-time or reserve officers into compliance with the training requirement. The Bridge Academy is only available for the year that an officer’s statutory certification comes due (FY22 for officers A-H; FY23 for officers I-P and FY24 for officers Q-Z). The Bridge Academy training is coupled with certain work requirements hours (depending on the prior training and experience).

The opportunity to attend the Bridge Academy expires in 2024, and officers who do not sign up for the Bridge Academy, or sign up and fail to complete it, will be required to attend a full academy training in order to be certified as a law enforcement officer.

### Law Enforcement Agency Certification

In addition to policies and standards for officers, the Division of Certification is required to establish minimum certification standards for all law enforcement agencies that shall include, but shall not be limited to, the establishment and implementation of agency policies regarding: (i) use of force and reporting of use of force; (ii) officer code of conduct; (iii) officer response procedures; (iv) criminal investigation procedures; (v) juvenile operations; (vi) internal affairs and officer complaint investigation procedures; (vii) detainee transportation; and (viii) collection and preservation of evidence.

The Commission made important progress regarding the categories listed above, including the use of force, guidance in dealing with minors, and initial submission of officer disciplinary records. The Division of Certification has begun efforts to study standards and approach for future agency certification.

### Future goals

The Division of Certification plans to replace the interim solution with a robust system called Salesforce to manage both certification and complaints. This implementation is currently in process and will be fully operational by the end of the second quarter of 2023.

The Division anticipates the new technology will provide full functionality for the staff and agencies to interact. We have contracted to purchase Salesforce and consulting services to build a complete solution to manage the certification, reporting, and standards requirements.

Additionally, the Division continues to work closely with the MPTC to integrate the latest information regarding the training status of each officer from their database to the Commission's records management system.

The Division also plans to provide a reporting system for the public to search the certification status of each officer, in addition to disciplinary records.

## **Division of Standards**

The Division of Standards investigates allegations of police misconduct and makes disciplinary recommendations to the Commission.

The Division receives complaints regarding allegations of officer misconduct from law enforcement agencies and the public. For certain categories of misconduct, the Division begins an investigation (preliminary inquiry) into law enforcement officers upon the Commission's receipt of a sufficient complaint, report, or other evidence that: (1) an officer is involved in an incident that results in injury or death; (2) an officer commits a misdemeanor or felony; (3) an officer uses excessive force in violation of Mass. Gen. Laws Ch. 6E, § 14; (4) an officer observes another officer use excessive force in violation of Mass. Gen. Laws Ch. 6E, § 14, and does not intervene or report the incident; or (5) the head of the officer's appointing agency recommends that the Commission take disciplinary action in the form of retraining, suspension or revocation of an officer's certification. If an officer engages in other categories of prohibited conduct, the Division of Standards may, but is not required to, conduct a preliminary inquiry.

The Division of Standards, in connection with a preliminary inquiry hearing, may compel the attendance of witnesses and the production of materials pursuant to subpoenas. It may also administer oaths and require testimony under oath. As a result of a preliminary inquiry, the Commission may determine that retraining or a suspension or decertification of a law enforcement officer is appropriate.

### **Operations**

In addition to investigating police misconduct, the Division of Standards may audit all records related to complaints, investigations, and investigative reports of any law enforcement agency related to allegations of officer misconduct or unprofessionalism. By statute, the Division of Standards also must create and maintain a database that documents an officer's complaint history, allegations of untruthfulness, failure to complete training requirements, and records of discipline, including decertification, suspensions, and termination. If the Division of Standards detects a pattern in an officer's behavior based on the information contained in its database, it



may initiate an investigation into that officer, which could result in disciplinary action by the Commission.

### Database/Reporting Requirements

The Division of Standards also supports the Division of Certification in creating and maintaining a separate database containing various information regarding law enforcement officers, including officers' dates of certification and recertification, records relating to training, arrest, conviction, and disciplinary records, and any other information relevant to the Commission's business.

As required by statute, the Commission must maintain a separate publicly accessible database of the officers who are subject to retraining, suspension, or decertification because of the Commission's actions.

### Current Caseload for Fiscal Year 2023:

#### **Preliminary Inquiries**

As of December 31, 2022, the Division of Standards discussed 12 (twelve) cases with the Commission for a potential preliminary inquiry.

The case numbers are as follows:

- 1) PI-2022-11-22-001
- 2) PI-2022-11-22-002
- 3) PI-2022-11-22-003
- 4) PI-2022-11-22-004
- 5) PI-2022-11-22-005
- 6) PI-2022-11-22-006
- 7) PI-2022-12-13-001
- 8) PI-2022-12-13-002
- 9) PI-2022-12-13-003
- 10) PI-2022-12-13-004
- 11) PI-2022-12-13-005
- 12) PI-2022-12-13-006

As per Commission regulations 555 CMR 1.03, proceedings and records related to preliminary inquiries 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.

## Complaint Data Received by POST

The number of complaints concerning police officer conduct received by the Commission is as follows:

Source / Metric	# of Complaints (as of 12/31/22)
Complaints received via Law Enforcement Agency (LEA)	1,586
Citizen Complaints (submitted directly to POST)	117
Total Complaints Received	1,703
Total Complaints *	1,845

\* Staff responds to all who submit a complaint (some submit multiple complaints of same incident)

On November 12, 2022 POST deployed an on-line tool to streamline the process for submitting complaints and capturing data in a structured way. The online tool is available at:

[www.policecomplaints.mass.gov](http://www.policecomplaints.mass.gov) or [Police misconduct complaint form \(mass.gov\)](#)

## Suspended Officers:

The Commission immediately suspends the certification of an officer who is arrested, charged, or indicted for a felony. Further, the Commission may suspend the certification of an officer who is arrested, charged, or indicted for a misdemeanor.

The list below includes the names of individual officers who have been suspended by the Commission as of January 3, 2023:

Name	Department	Reason for Suspension
Bones, Devon	Holyoke Police Department	MGL c.6E §9 (a)(1)
Custadio, Bryan	Fall River Police Department	MGL c.6E §9 (a)(1)
Davis, Leon	Springfield Police Department	MGL c.6E §9 (a)(1)
Fontaine, Ernest	Fitchburg State University PD	MGL c.6E §9 (a)(1)
Forte, David	Needham Police Department	MGL c.6E §9 (a)(1)
Garneau, Kevin	Lowell Police Department	MGL c.6E §9 (a)(1)
Hoar, Nicholas	Fall River Police Department	MGL c.6E §9 (a)(1)
Morales, Thomas	Woburn Police Department	MGL c.6E §9 (a)(1)
O'Donnell, Keith	Somerville Police Department	MGL c.6E §9 (a)(1)
Pomeroy, Brian	West Springfield Police Department	MGL c.6E §9 (a)(1)
Quilty, James	Natick Police Department	MGL c.6E §9 (a)(1)
Rooney, Kevin	Watertown Police Department	MGL c.6E §9 (a)(1)
Sheehan, Matthew	Massachusetts State Police	MGL c.6E §9 (a)(1)
Turner, Colby	Worcester Police Department	MGL c.6E §9 (a)(1)

All officers included in the above list have been suspended in accordance with MGL c.6E §9 (a)(1) which states that “The Commission shall immediately suspend the certification of an officer who is arrested, charged or indicted for a felony.”

### Future goals

A primary goal of the Division of Standards for the upcoming year is to continue hiring attorneys, investigators, and other support staff to fulfill the Commission’s broad statutory mandate. Although most complaints are transmitted to Commission staff by law enforcement agencies, the Division projects that complaints submitted directly to the Commission will increase. Regardless of the way those complaints are submitted, the Division will address and prioritize complaint-related matters originating from both law enforcement agencies and civilians. Staff will identify matters for potential investigation and conduct preliminary inquiries when required or appropriate.

In addition to conducting preliminary inquiry hearings, Division of Standards personnel will assist the Executive Director and the Commission in addressing officers whose provisional certifications require further attention under 555 CMR 7.10 (possible actions following decisions declining to grant full recertification).

The Division of Standards works with the technology vendor to establish the interim and permanent technology platforms that will assist in standardizing and managing complaint and disciplinary information received from law enforcement agencies across the state. The Director of the Division of Standards and others have collaborated in the design of workflows with our vendor. This effort will necessitate consultation and coordination with law enforcement agencies to ensure efficiencies in the process of submitting complaints, reports, and other materials to the Commission.

The Division of Standards will take the necessary steps to satisfy its remaining statutory mandates, including monitoring information contained in POST databases to identify and address patterns of unprofessional police conduct.

## **Finance and Administration**

The Finance and Administration team manages all aspects of accounting, budgeting, financial reporting, payroll, and human resources administration. In addition, the group is responsible for maintaining the Commission’s Internal Control Plan and administrative policies and procedures, as well as overseeing contracting and procurement.

The legislature provided the Commission with start-up funding through Chapter 29 of the Acts of 2021 (FY21 supplemental budget). The full allocation of \$5 million was presumed to cover expenses for both the remaining of fiscal year 2021 and the full fiscal year of 2022.

Massachusetts POST Commission 2022 Annual Report

The following table exhibits actual expenditures for FY21-FY22, as well as estimated activity for the first half of FY23:

FY21-FY23 Activity

	FY21 Activity	FY22 Activity	FY23 Activity*
Beginning Balance	\$5,000,000	\$4,904,269	\$7,899,430
Expenditures	(\$95,731)	(\$1,989,257)	(\$3,119,976)
Ending Balance	\$4,904,269	\$2,915,012	\$4,779,454

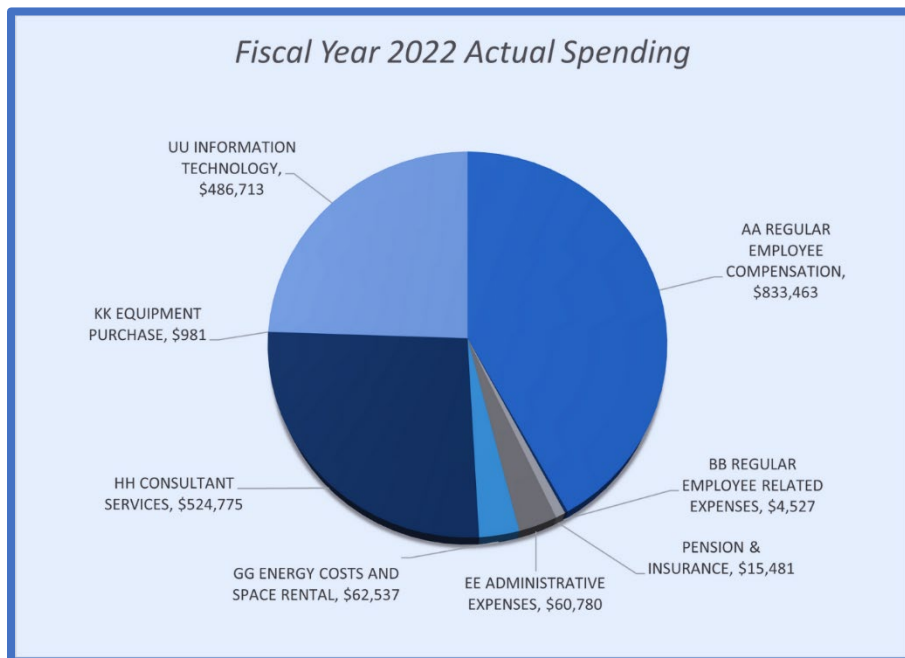
\*Represents estimated financial activity for the first six months of FY23. In particular, incurred expenses are included in expenditures.

Most of the unused portion of the original \$5 million allocation will be needed to finance the commission’s major IT solution – an extensive case management system designed to support mission-critical processes. Following an extensive procurement process, the Finance team began work on the IT solution at the end of August 2022. The work will continue over the next 2-3 years.

The FY23 figures reflect only estimated financial activity for the first half of the fiscal year (July 1, 2022 – December 31, 2022), while FY21 and FY22 reflect actual activity. The *Beginning Balance* of \$7.9 million for FY23 is inclusive of \$2.9 million in unused funds carried over from FY22. The *Expenditures* category for FY23 also includes any expenses which have been incurred as of December 31<sup>st</sup>. This includes \$1.02 million in funds under contract for the IT solution.

POST Commission Operating Expenses FY2022

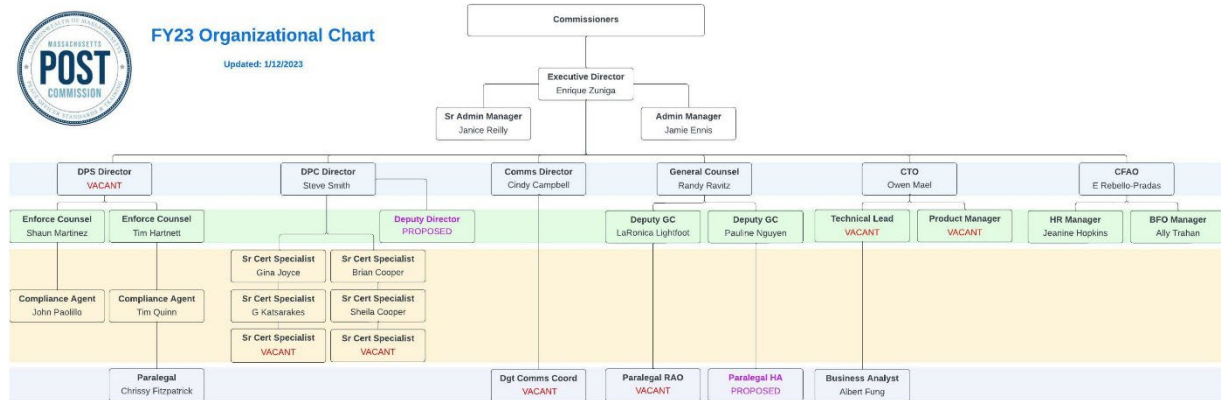
1599-1210 – Police Reform Reserve



Massachusetts POST Commission 2022 Annual Report

Consistent with most state agency budgets, most expenses for FY22 were concentrated in employee compensation. Notwithstanding the statutorily appointed nine commissioners, the Commission had 22 employees as of December 31<sup>st</sup>.

POST Commission Organization Chart as of December 31, 2022



**Executive Division**

Enrique Zuniga, Executive Director  
 Janice Reilly, Senior Administrative Manager  
 Jamie Ennis, Administrative Manager

**Police Standards Division**

Shaun Martinez, Enforcement Counsel  
 Tim Hartnett, Enforcement Counsel  
 John Paolillo, Compliance Agent  
 Tim Quinn, Compliance Agent  
 Chrissy Fitzpatrick, Paralegal

**Police Certification Division**

Steve Smith, Director  
 Gina Joyce, Senior Certification Specialist  
 Brian Cooper, Senior Certification Specialist  
 George Katsarakes, Senior Certification Specialist  
 Sheila Cooper, Senior Certification Specialist

**Communications Division**

Cindy Campbell, Director

**Legal Division**

Randall Ravitz, General Counsel

LaRonica Lightfoot, Deputy General Counsel  
Pauline Nguyen, Deputy General Counsel

### **Information Technology Division**

Owen Mael, Chief Technology Officer  
Albert Fung, Business Analyst

### **Finance & Administrative Division**

Eric Rebello-Pradas, Chief Financial & Administrative Officer  
Ally Trahan, Budget & Financial Operations Manager  
Jeanine Hopkins, Human Resources Manager

In 2022, the Finance & Administration Division conducted major procurement for the agency's Information Technology (IT) solution and commenced search for permanent office space for the POST Commission.

### **Future Goals**

Looking toward 2023, the Finance & Administration team will finalize written processes and procedures via the assemblage of the Commission's first *Internal Control Plan (ICP)*, and *Employee Manual*, develop the operating budget for FY24, and finalize the office space lease for the Commission's permanent headquarters.

## **Information Technology**

The Information Technology (IT) Division supports both internal and external business processes of the Commission and provides infrastructure, connectivity, hardware, software, as well as data management and security for the integrity and efficiency of the Commission's operations and its oversight of peace officer certifications throughout the Commonwealth.

### **Operations**

In 2022, the IT Division worked with the assistance of members from the Executive Office of Technology Services and Security (EOTSS), Mass Digital, and strategic management teams to configure and implement an interim software solution referred to as JIRA.

Starting in 2022, the POST Commission prepared for the move to its permanent database solution, Salesforce.

The development of this new solution is solidly underway with the first phase of the project which enabled complaint tracking to be managed within Salesforce starting in mid-December 2022. This phase also included building a centralized case management system and the migration of data from the former system. In February 2023, the online public complaint form previously posted to our website and was directly linked to Salesforce, which saved time and

effort for the Division of Standards team. Preliminary investigations are also being tracked and system enhancements for the Division of Standards will continue through 2023.

Customization work is also underway that will enable the Division of Certification staff to process the second tranche of recertification documents. Given this effort, the IT Division will once again need to support approximately 431 in-scope law enforcement agencies and their submission of officers with last names starting with I-P in order to meet the statutory deadline of July 1st. To prepare for the recertification process, the Information Technology Division and the Division of Certification have started training and using Salesforce daily, enabling them to be well versed in the system by May 15, the approximate date that the Commission will start accepting recertification data.

The IT Division plans to roll out additional customizations to enable the law enforcement agencies to upload their certification requests and new disciplinary records via a portal. Currently, all information from these agencies has been handled via email and the sharing of spreadsheet data. Starting on May 15, the second tranche of recertification requests as well as the ability to upload disciplinary data will be handled via this portal, streamlining the effort of the agencies and the POST Commission.

Training, data migration and customizations continue for all POST users in Salesforce as it will be our system of record moving forward.

### Future goals

Looking toward the coming year, the Information Technology Division will work with our permanent solution vendor Slalom to configure and implement changes as they arise. After the next round of recertifications are completed by late summer, we will review the workflows and make any changes to enable the Division of Certifications to be more efficient in their tasks.

In the latter half of 2023, we will start to evaluate the use of Salesforce as a case management tool that can help process any investigations, tracking all the necessary dates and data needed for the Standards division to operate smoothly and to be able to produce any data as part of a public records request.

The technology team will continue to grow over the next year to manage our Salesforce system, handle internal IT tasks and assist with projects. Currently we are filling a Product Manager role for our Salesforce system as well as a Salesforce Administrator. Along with our Business Analyst this will provide the necessary bandwidth for our immediate needs. Most likely, we will also add a Data Analyst sometime in Q2/Q3 2024 to handle our internal and external data requests and/or as the needs arise.

## **Communications and Community Engagement**

One of the most important goals of police reform is to enhance public confidence in policing. The Commission is committed to engaging with the public, advocacy groups, the media, and the law enforcement community to understand and address stakeholders' concerns. In that regard, there is an on-going communications effort to disseminate the Commission accomplishments and activities. This effort also supports the needs of the division of certification and other regulatory activities.

The statute directs the Commission to maintain a public facing database with information about law enforcement officers and agencies. The communications effort of last year represented an important initial step towards that mandate and in the coming year staff will continue deploying public facing information to further that mission.

### **Operations**

The Director of Communications manages media relations and community outreach, disseminates pertinent, accurate and consistent information to the public and other stakeholders, and promotes the Commission's website. The digital presence includes an archive of all Commission meetings, regulations, advisories and information for the public and the law enforcement community.

In 2022, staff created a You Tube channel as a second outlet to air video recordings of Commission meetings, which are also available on the Commission website. Staff maintains a growing database of individuals and organizations who have requested notifications about the Commission meetings, hearings and other activities (individuals can sign-up through our website to receive these notifications). We also communicate through other channels including Twitter to publicize meetings, hearings, request public comment and inform the public of all activities.

### **Future goals**

The priorities in communications will include the hiring of a digital communications coordinator in early 2023 to assist in the on-going effort to have fresh content in our website, social media, and disseminate public meeting and public hearing information. The team plans a major refresh of the POST website for 2023, along with additional video content.

## **Legal Division**

The Legal, or General Counsel, team provides guidance to the Commission and its personnel on the range of legal matters confronted by the agency. The team's attorneys work closely with other parts of the agency, and with the Municipal Police Training Committee, to develop regulations, policies, and advisories on matters such as the construction of the Commission's governing statute, the standards and procedures for certification, the adjudication of disciplinary matters, the use of force by officers. The team also provides advice, and helps ensure compliance, with respect to sources of law that govern agencies generally. Sources include those related to open meetings, public records, conflicts of interest, administrative procedures, and



employment. Team members further contribute to the Commission's litigation, procurement, and contracting efforts. Additionally, they answer inquiries and deliver presentations on legal and policy matters, both inside and outside of the Commission.

## Operations

In Fiscal Year 2022, the Commission made great strides in developing regulations, policies, and standards. Working closely with the Municipal Police Training Committee, the Commission developed guidelines for its own personnel and the public on how its governing statute, Chapter 6E of the Massachusetts General Laws, should be construed. The guidelines resolved a series of questions about the range of agencies and officers that are subject to the Commission's jurisdiction.

Additionally, in conjunction with the MPTC, the Commission developed protocols for how applications for certification and recertification of law enforcement officers will be processed and evaluated. The protocols covered matters such as the steps to be taken by employing agencies, how the statutory certification standards are to be construed and applied, and how an officer's inability to complete training requirements because of certain documented hardships should be handled.

The development of such protocols led to the promulgation of a comprehensive set of regulations governing the recertification of officers who were automatically certified for a limited time by way of Chapter 253 of the Acts of 2020. Codified at Chapter 7.00 of Title 555 of the Code of Massachusetts Regulations, they: ensure that an officer's certification does not expire while the officer's application is being processed, or is subject to review or a hearing; ensure that officers who were assigned different expiration dates based on their last names have equal opportunities to satisfy certain requirements; provide for officers to be recertified with conditions in appropriate circumstances; establish guidelines for evaluating the various standards for certification; and give officers who are not fully recertified the ability to obtain review by the Commission's Executive Director and a hearing.

The Commission also worked with the MPTC to develop an initial protocol for granting specialized certifications for school resource officers. The protocol laid the groundwork for future regulations on the subject.

Additionally, the Commission collaborated with the MPTC on the promulgation of regulations governing the use of force by law enforcement officers. The regulations can be found at Chapter 6.00 of the Title 550, and Chapter 6.00 of Title 555, of the Code of Massachusetts Regulations. Such regulations ban the use of particular forms of force, otherwise limit the circumstances and manner in which deadly and non-deadly force may be employed, restrict the use of certain methods of crowd control, require officers to intervene upon witnessing certain conduct by others in law enforcement, and establish various reporting requirements. The two agencies later approved an emergency amendment to clarify and strengthen the prohibition on placing pressure on a suspect's neck or head.

Such regulations were partly built on the foundation established by an advisory that the Commission issued at the end of Fiscal Year 2021. The advisory is entitled *Guidance on*

*Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children.* It provides research-based recommendations for de-escalation and disengagement in situations involving juveniles, for educating and training officers on dealing with minors, for helping officers and members of the public address trauma, and for promoting positive relations with communities.

In addition to the above, the Commission developed extensive regulations concerning the disciplining of officers. The regulations are located at Chapter 1.00 of Title 555 of the Code of Massachusetts Regulations. The regulations address matters such as law enforcement agencies' handling and investigation of complaints against officers, the transmission of complaints and reports to the Commission, the Commission's conduct of preliminary inquiries, the suspension of officers pending the outcome of disciplinary matters, and Commission hearings concerning certification and disciplinary matters.

The Commission further responded to a series of public records requests, as well as appeals to the Supervisor of Public Records related to certain of those requests.

### Litigation Matters

Also in Fiscal Year 2022, the Commission confronted certain civil litigation. Claims by four officers and a police association were consolidated into a single action styled as *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2284CV00906 in the Suffolk County Superior Court. Such claims concerned the Commission's operating procedures and its issuance of a questionnaire to officers as an aid in its evaluation of their applications for recertification.

On June 27, 2022, the Honorable Jackie Cowin of the Superior Court issued a decision in which she denied the plaintiffs' requests for preliminary injunctive relief, except in two respects. The judge refused to enjoin the use of the Commission's questionnaire. She also declined to enjoin the Commission from asking a question concerning an officer's tax compliance and a question concerning information that may be relevant to an officer's eligibility for recertification. However, the judge precluded the Commission from continuing to ask certain questions about social-media usage and organizational membership, in the form in which the questions then appeared.

The judge reasoned that "the [Commission's governing] statute vests the Commission with the power to establish the procedures it will use to effect the statute's objectives" and "the command that the Commission 'administer' an oral interview is sufficiently flexible to allow it to require that officers answer written questions as part of the interview." She also recognized that "police officers are subject to greater regulation of their speech than other professionals" and "have a 'reduced expectation of privacy,' that 'the Commission has a compelling interest in rooting out bias in policing,' that 'one's social media postings may be fertile ground for ferreting out discriminatory attitudes, and therefore bear a connection to an officer's fitness to serve,' and that 'some inquiry into officers' social media communications would pass constitutional muster.'" While the judge found the social-media and organizational-membership questions problematic as written, she noted that they "can be rewritten to address deficiencies, while still

eliciting the information the Commission needs,” and that “[n]othing in [her] decision [was] meant to prevent the Commission from requiring officers . . . to answer revised questions that meet constitutional requirements.”

### Future goals

In the coming years, the public can look forward to the Commission’s development of additional regulations, policies, and standards. In particular, the Commission anticipates promulgating regulations governing the databases on officer information that it is statutorily required to maintain, as well as its dissemination of information concerning officers. The Commission can also be expected to promulgate regulations establishing an audit procedure, and to develop various policies, guidelines, and forms for the conduct of its adjudicatory proceedings. It will likely also issue regulations concerning the initial certification of new officers and the certification of constables.

The Commission further expects to continue working with the Municipal Police Training Committee to revise the regulations that govern the use of force by officers and to issue related forms of guidance. The Commission may also develop regulations or policies regarding matters such as in-service training by officers, certain circumstances that will result in a denial of certification, and the issuance of advisory opinions.

The Commission additionally plans to continue providing training and advisories to its personnel in order to ensure their compliance with the various sources of law that govern Commission activity. Such sources include those governing open meetings, agency records, ethical standards, political activity, and other areas.

Added to the above, the Commission is tasked with establishing standards for the certification of law enforcement agencies, in consultation with the MPTC. Under Chapter 6E, Section 5(b) of the Massachusetts General Laws, such standards “shall include, but shall not be limited to, the establishment and implementation of agency policies regarding: (i) use of force and reporting of use of force; (ii) officer code of conduct; (iii) officer response procedures; (iv) criminal investigation procedures; (v) juvenile operations; (vi) internal affairs and officer complaint investigation procedures; (vii) detainee transportation; and (viii) collection and preservation of evidence.”

The POST Commission has made great progress in adopting regulations and issuing advisories for law enforcement certification, as detailed in the section below. The Commission continues ongoing efforts to recommend policy and advisory standards for future officer certification.

## Regulations and Advisories

### *Regulations*

**550 CMR 1.00 Procedural Rules for Receiving, Investigating, Hearing and Adjudicating Complaints Regarding Law Enforcement Officers:** establishes process for reviewing complaints against an officer; hearing and adjudicating appeals; certifying or decertifying an officer

**550 CMR 2.00 Construction, Application of Rules, Notice:** establishes the authority and scope of the POST Commission

**555 CMR 6.00 Use of Force Regulations:** for law enforcement officers; use of force and non deadly force; use of force reporting

**555 CMR 7.00 Recertification Regulations:** establishes process and parameters for recertification and certification; fitness for employment

### *Advisories*

**Construction of Scope:** Defines the POST Commission and Police under the Commission's purview (Chapter 6E of MGL)

**Proposed Plan for Recertification of Officers:** Requirements and plan for recertification of certain law enforcement officers

**De-escalation and Alternatives to Use of Force on Minor Children:** guidance as to developmentally appropriate de-escalation and disengagement tactics, techniques, and procedures and other alternatives to the use of force for minor children

4a.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 8.00: DATABASES AND DISSEMINATION OF INFORMATION

Section

- 8.01: Authority
- 8.02: Scope
- 8.03: Definitions
- 8.04: Submission of Information by Law Enforcement Agencies
- 8.05: Division Databases
- 8.06: Public Database
- 8.07: Maintenance and Security of Databases and Electronic Recordkeeping Systems Generally
- 8.08: Objections Concerning Data
- 8.09: Privileged Information
- 8.10: Compulsory Legal Process

8.01: Authority

- (1) The Massachusetts Peace Officer Standards and Training Commission promulgates 555 CMR 8.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2).

8.02: Scope

- (1) 555 CMR 8.00 applies to:
  - (a) Databases that the Commission must maintain pursuant to M.G.L. c. 6E, §§ 4(h), 4(j), 8(e), and 13(a);
  - (b) Other databases and electronic recordkeeping systems maintained by the Commission; and
  - (c) Commission responses to requests for records served upon it pursuant to M.G.L. c. 66, § 10.
- (2) 555 CMR 8.00 does not apply to any of the following:
  - (a) A response by the Commission to compulsory legal process, except as provided in 555 CMR 8.13;
  - (b) A response by the Commission to a court order relative to the disclosure of information;
  - (c) An inquiry or request concerning personal data, made on behalf of the individual to whom the personal data refers, under M.G.L. c. 66A, §§ 2(g) or 2(i); or
  - (d) The Commission's treatment of evidence that it knows to be relevant to a pending criminal case or exculpatory as to any criminal case.
- (3) With respect to matters to which 555 CMR 8.00 applies, it is intended to supersede 801 CMR 3.00.
- (4) Nothing in 555 CMR 8.00 is intended to:
  - (a) Foreclose the Commission's invocation of any provision, privilege, or doctrine, regardless of whether it is cited in 555 CMR 8.00;
  - (b) Establish a standard of care or create any independent private right, remedy, or cause of action on the part of any person or entity on account of any action the Commission takes or fails to take; or
  - (c) Otherwise waive any power, right, privilege, protection, or immunity that may be available to the Commission.
- (5) Neither 555 CMR 8.00, nor the Commission's provision of any information through a public database or in response to a records request, is intended to:
  - (a) Create an attorney-client relationship, a principal-agent relationship, or a confidential relationship with any person or entity;
  - (b) Make the Commission a part of the prosecution team, the defense team, or the litigation team of any other party in relation to any criminal or civil action or controversy;
  - (c) Impose upon the Commission any duty or obligation of any other entity or person; or
  - (d) Otherwise surrender the Commission's independence.

8.03: Definitions

(1) 555 CMR 8.00 incorporates all definitions set forth in 555 CMR 2.02, except those definitions of terms that are defined in 555 CMR 8.03(2).

(2) For the purposes of 555 CMR 8.00, the following terms have the following meanings, unless the context requires otherwise:

Agency. An “agency” as defined in M.G.L. c. 30A, § 1.

Certification. Certification or recertification of a law enforcement officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, regardless of whether it is conditioned, limited, restricted, or suspended.

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

Complaint. A complaint that must be reported to the Commission pursuant to 555 CMR 1.01(1).

Compulsory Legal Process. A demand that is issued by or through a federal or state court or party to litigation, including any demand made by summons, subpoena, discovery request, or judicial order.

Deadly Force. “Deadly force” as that term is defined in M.G.L. c. 6E, § 1.

Decertification. A revocation of certification made by the Commission pursuant to M.G.L. c. 6E, § 10—an action distinct from a denial, a nonrenewal, or an expiration of certification.

Division of Police Certification. The Division of Police Certification of the Commission established pursuant to M.G.L. c. 6E, § 4(a)(1).

Division of Police Standards. The Division of Police Standards of the Commission established pursuant to M.G.L. c. 6E, § 8(a).

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.

Law Enforcement Agency. A “law enforcement agency” as that term is defined in M.G.L. c. 6E, § 1.

Officer. A “law enforcement officer” as that term is defined in M.G.L. c. 6E, § 1.

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

Personal Data. “Personal data” as that term is defined in M.G.L. c. 66A, § 1.

RAO. The Commission Records Access Officer designated pursuant to M.G.L. c. 66 and 950 CMR 32.00, or that person’s designee for relevant purposes.

Record, Information, and Data. Any form of record, document, written material, or data, regardless of whether it constitutes a “public record” as that term is defined in M.G.L. c. 4, § 7, cl. 26 or “personal data” as that term is defined in M.G.L. c. 66A.

Records Request. A request for Commission records made pursuant to, and in conformance with, M.G.L. c. 66, § 10.

Requester. Any person or entity that tenders a records request to the Commission.

Untruthful. “Untruthful” as that term is defined in M.G.L. c. 6E, § 1.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

8.04: Submission of Information by Law Enforcement Agencies

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

8.05: Division Databases

- (1) The Division of Police Certification, in consultation with the Division of Police Standards, shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a database containing records for each certified law enforcement officer, including, but not limited to:
  - (a) The date of initial certification;
  - (b) The date of any recertification;
  - (c) The records of completion of all training and all in-service trainings, including the dates and locations of said trainings, as provided by the MPTC and the Department of State Police;
  - (d) The date of any written reprimand and the reason for said reprimand;
  - (e) The date of any suspension and the reason for said suspension;
  - (f) The date of any arrest and the charge or charges leading to said arrest;
  - (g) The date of, and reason for, any internal affairs complaint;
  - (h) The outcome of an internal affairs investigation based on an internal affairs complaint;
  - (i) The date of any criminal conviction and crime for said conviction;
  - (j) The date of any separation from employment with a law enforcement agency and the nature of the separation, including, but not limited to, suspension, resignation, retirement or termination;
  - (k) The reason for any separation from employment, including, but not limited to, whether the separation was based on misconduct or whether the separation occurred while the appointing law enforcement agency was conducting an investigation of the certified individual for a violation of an appointing law enforcement agency's rules, policies, procedures or for other misconduct or improper action;
  - (l) The date of decertification, if any, and the reason for said decertification;
  - (m) Any other information as may be required by the Commission; and
  - (n) Any other information expressly required by M.G.L. 6E, § 4(h).
- (2) The Division of Police Standards shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a database containing information related to the following for each officer serving on or after July 1, 2021:
  - (a) The officer's receipt of complaints, including, but not limited to:
    1. The officer's appointing law enforcement agency;
    2. The date of the alleged incident and the date of the complaint;
    3. A description of circumstances of the conduct that is the subject of the complaint; and
    4. Whether the complaint alleges that the officer's conduct:
      - a. Was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level;
      - b. Was unprofessional;
      - c. Involved excessive, prohibited or deadly force; or
      - d. Resulted in serious bodily injury or death;
  - (b) Allegations that the officer was untruthful;
  - (c) The officer's failure to follow Commission training requirements;
  - (d) The officer's decertification by the Commission;
  - (e) Discipline of the officer imposed by a law-enforcement agency;



- (f) The officer's termination for cause;
- (g) Any other information the Commission deems necessary or relevant; and
- (h) Any other information expressly required by M.G.L. 6E, § 8(e).

(3) The Commission may combine the databases prescribed by 555 CMR 8.05(1) and (2) within a single database.

#### 8.06: Public Database

(1) The Commission shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a public database of information concerning individuals who, at any point since July 1, 2021, have served as an officer or have been certified.

(2) The public database must be searchable and accessible to the public through the Commission's official website.

(3) Except as provided in 555 CMR 8.06(4), the public database shall make the following available to the general public, to the extent that the information is possessed by the Commission:

(a) These forms of information for each officer identified in 555 CMR 8.06(1):

1. The officer's first name and surname;
2. The officer's current certification status in Massachusetts, provided that, if the officer is challenging, or has the opportunity to challenge, a certification decision before the Commission or any of its personnel in accordance with a Commission regulation or policy, the officer's status shall be listed as under review or described in a comparable manner;
3. The dates on which the officer, in Massachusetts, was first certified, was most recently certified, and ceased being certified;
4. All of the officer's employing law enforcement agencies in Massachusetts and elsewhere, and the dates of the officer's employment with such law enforcement agencies;
5. Commendations received by the officer in connection with the officer's service in law enforcement;
6. The date of, and reason for, any decertification by the Commission or by a comparable body in any other jurisdiction;
7. The beginning date and end date of, and the reason for, any suspension of certification by the Commission;
8. As to any retraining order issued by the Commission, the date of the order, the reason for the order, the type of retraining ordered, and any date of completion of the retraining ordered;
9. A copy of each final opinion, decision, order, set of findings, and vote issued by the Commission pursuant to M.G.L. c. 6E, § 10 in connection with any proceedings concerning the officer, accessible in a commonly available electronic format; and
10. A summary of the officer's disciplinary record, which may incorporate information provided by law enforcement agencies that have employed the officer, and which shall list:
  - a. Complaints against the officer;
  - b. The final disposition of each listed complaint; and
  - c. The nature of any discipline imposed as a result of each listed complaint;
  - d. Whether each complaint was submitted anonymously; and
  - e. Whether each complaint was submitted under the pains and penalties of perjury;
11. For each decision and action referenced in the database that is being challenged through a proceeding before the Commission, the Civil Service Commission, an arbitrator, or a court, an accompanying notation of that fact; and

(b) Prominently displayed advisories concerning the possibility that decisions and actions concerning officers have been or will be challenged and the benefit of independently seeking the most current information.

(c) To the extent reasonably feasible, ways for public users to obtain information regarding the following, aggregated by rank, by department, or statewide:

1. Decisions by the Commission and comparable bodies in other jurisdictions to decertify officers;
2. Decisions by the Commission to suspend the certification of officers;
3. Decisions by the Commission to order the retraining of officers;
4. Officers who have served;
5. The number of complaints that were resolved adversely to officers; and
6. The number of complaints that were not resolved adversely to officers.

(4) Except as provided in 555 CMR 8.06(5), the public database shall not make available to members of the general public:

(a) The following forms of information:

1. Records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry that are confidential under M.G.L. c. 6E, § 8(c)(2), or 555 CMR 1.03 or 1.07(2);
2. Other information related to disciplinary proceedings that is confidential under 555 CMR 1.01(2)(d), 1.09(6)(c), or 1.10(4)(a);
3. Identifying or contact information that is generally non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
4. Criminal offender record information that cannot be communicated under M.G.L. c. 6, §§ 168 or 178, 803 CMR 2.00, or 803 CMR 7.00; and criminal history record information that cannot be disseminated under 803 CMR 7.00;
5. Sealed or expunged records that are non-public and confidential or are unavailable for inspection under M.G.L. c. 276, §§ 100L, 100O, or 100Q;
6. Juvenile delinquency records that must be withheld under M.G.L. c. 119, § 60A, or juvenile criminal records that cannot be communicated under M.G.L. c. 6, §§ 168 and 178.
7. Police-log entries pertaining to arrests of juveniles that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
8. Police-log entries pertaining to handicapped individuals that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
9. Police-log entries pertaining to alleged domestic violence or sex offenses that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
10. These records, to the extent that they are not public reports and generally must be maintained by police departments in a manner that shall assure their confidentiality under M.G.L. c. 51, § 97D:
  - a. Reports of rape and sexual assault or attempts to commit such offenses;
  - b. Reports of abuse perpetrated by family or household members, as defined in M.G.L. c. 209A, § 1; and
  - c. Communications between police officers and victims of such offenses or abuse;
11. Information in court and police records that identifies alleged victims of sex offenses or trafficking and is non-public, must be withheld, and cannot be published, disseminated, or disclosed under M.G.L. c. 265, § 24C;
12. Identifying, contact, employment, or educational information of victims of crimes or domestic violence or members of their families that is non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
13. Contact, employment, or educational information of victims, members of their families, or witnesses that is confidential and non-disclosable under M.G.L. c. 258B, §§ 3(h) and 3(w);
14. Identifying, contact, employment, or educational information of family-planning personnel or members of their families that is non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
15. Personal data that is non-accessible under M.G.L. c. 66A;
16. Forms of “personal information” referenced in M.G.L. c. 93H, § 1, other than the names of individuals;
17. Data that the Commission is precluded from disclosing pursuant to a court order;
18. Information the disclosure of which would violate a person’s right against unreasonable, substantial, or serious interference with privacy under M.G.L. c. 214, § 1B; and

19. Any other information that is non-disclosable under federal or Massachusetts law; and
- (b) The following additional forms of information:
  1. These forms, the revelation of which could potentially impact officer health or safety, including by facilitating attempts to coerce officers or exploit any individual vulnerabilities:
    - a. Information relating to a member of an officer's family, except where such family member is an officer and any relation between the two officers is not revealed;
    - b. Information concerning an officer's personal finances that is not otherwise publicly available;
    - c. Information that could readily be used to facilitate identity theft or breaches of data security, including, but not limited to, an officer's date of birth, passwords, and entry codes;
    - d. Information concerning an officer's medical or psychological condition;
    - e. Any assessment of whether an officer possesses good moral character or fitness for employment in law enforcement under M.G.L. c. 6E, § 4(f)(1)(ix) that was made:
      1. By a person or entity other than the Commission or its personnel; and
      2. Pursuant to 555 CMR 7.05 or 7.06(9) or otherwise in response to a request by the Commission in connection with a process of determining whether to initially certify or recertify an officer;
    - f. Information concerning an officer's conduct as a juvenile;
    - g. Information concerning any firearm, or firearms license or permit, that an officer currently possesses in a personal capacity;
    - h. Law enforcement information, including information concerning the following subjects, if disclosure could compromise law enforcement or security measures:
      1. Undercover operations;
      2. Confidential informants;
      3. Clandestine surveillance;
      4. Secretive investigative techniques;
      5. Passwords and codes;
      6. The details of security being provided to a person or place; or
      7. Subjects of comparable sensitivity.
    - i. Information concerning any complaint or disciplinary matter that has not been resolved adversely to the officer, unless the matter was resolved in a manner that the Commission determines to have been unwarranted;
    - j. Information concerning a decision or action that has been reversed or vacated; and
    - k. Any other information that could readily be used in an attempt to coerce action or inaction, or exploit individual vulnerabilities, of an officer.
  2. Law enforcement agency records that are within the scope of those being audited by the Commission pursuant to M.G.L. c. 6E, §§ 3(a)(9), 3(a)(21), and 8(d);
  3. Records associated with Commission meetings that may be withheld under M.G.L. c. 30A, § 22;
  4. Information that an individual has the ability to have corrected, amended, or removed pursuant to M.G.L. c. 66A, § 2(j) or 555 CMR 8.08;
  5. Information that shall not be disclosed pursuant to 555 CMR 8.08(10);
  6. Information that is protected by a privilege against disclosure recognized by law and is held by the Commission;
  7. Information that is protected by a privilege against disclosure recognized by law and is held by a person or entity other than the Commission;

8. Data that is non-disclosable under any formal agreement or memorandum of understanding between the Commission and any other federal, state, local, or tribal governmental entity, including, but not limited to, any Commonwealth of Massachusetts Data Sharing Memorandum of Understanding, any Data Use License Agreement between the Commission and another governmental entity, and any Massachusetts Criminal Justice Information System (CJIS) User Agreement;
9. Information that a court has expunged, placed under seal, impounded, or relieved the Commission of having to disclose;
10. Information the confidentiality of which is the subject of dispute in litigation or an administrative proceeding;
11. Any document, record, or petition generated by the Witness Protection Board or by a prosecuting officer and related to witness protection services that is non-public and non-disclosable under 501 CMR 10.14;
12. Information concerning a complaint or disciplinary matter that the Commission, by vote of the Commissioners, has decided not to make available to members of the general public;
13. Information concerning any individual who is no longer serving as an officer, but has not been decertified, other than the individual's name, last employing law enforcement agency, and dates of service; and
14. Information that otherwise does not constitute a public record under M.G.L. c. 4, § 7, cl. 26.

(5) The public database may be designed to allow particular individuals to access certain forms of information that are listed in 555 CMR 8.06(4) to the extent that the Commission is not precluded by law from making such information available to those individuals.

(6) The Commission may make other determinations concerning the content, the accessibility of information, and the format of the public database as follows:

- (a) Any such determination shall be made in accordance with guidelines established by a vote of the Commissioners following an opportunity for public input, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director;
- (b) Such a determination may provide for forms of information that are not specifically referenced in 555 CMR 8.06(3) or (4) to be made available, or to be made unavailable, to the general public or to particular individuals;
- (c) Any such determination must be consistent with 555 CMR 8.00 and other relevant provisions of law; and
- (d) Any such determination must be made with due consideration for the health and safety of officers.

#### 8.07: Maintenance and Security of Databases and Electronic Recordkeeping Systems Generally

(1) When designing or acquiring an electronic record keeping system or database, the Commission's RAO and its Chief Technology Officer shall consult with each other, and with the Commission's Executive Director, its Chief Financial and Administrative Officer, or the Massachusetts Executive Office of Technology Services and Security to ensure, to the extent feasible, that the system or database is capable of providing data in a commonly available electronic, machine readable format.

(2) Any database designs or acquisitions shall allow for, to the extent feasible, information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access.

(3) The Commission shall not enter into any contract for the storage of electronic records that:

- (a) Prevents or unduly restricts the RAO from providing public records in accordance with M.G.L. c. 66;
- (b) Relieves the Commission of its obligations under M.G.L. c. 66A or any governing regulations promulgated thereunder; or
- (c) Omits provisions that are necessary to ensure compliance with M.G.L. c. 66A or any governing regulations promulgated thereunder.

- (4) The Commission shall implement safeguards to ensure the security and integrity of its databases, and to the extent otherwise provided, the confidentiality of such databases.
- (5) The Commission shall take reasonable steps to prevent misuse of any Commission database by any of the Commission's Commissioners, staff, vendors, contractors, or agents, which steps shall include, but need not be limited to:
  - (a) Prohibiting use and access to the database for purposes other than Commission-related business; and
  - (b) Prohibiting improper disclosure of confidential information.

8.08: Objections Concerning Data

- (1) An individual who is identified in data maintained by the Commission, or the individual's representative, may raise objections related to the accuracy, completeness, pertinence, timeliness, relevance, or dissemination of the data, or the denial of access to such data by filing a written petition for relief with the Executive Director, in a form prescribed by the Commission, at any time.
- (2) Upon receiving a petition filed pursuant to 555 CMR 8.08(1), the Executive Director shall promptly evaluate the petition, including by obtaining relevant information.
- (3) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is warranted, the Executive Director shall promptly:
  - (a) Take appropriate steps to grant such relief, or comparable relief;
  - (b) Make information concerning the action taken available to the Commissioners;
  - (c) Notify the petitioner of the status of the petition.
- (4) After the Executive Director takes the steps prescribed by 555 CMR 8.08(3):
  - (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
  - (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.
- (5) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is unwarranted, the Executive Director shall:
  - (a) Within a reasonable time, notify the petitioner in writing that such determination was made and that the petitioner shall have the opportunity to submit a statement reflecting the petitioner's position regarding the data;
  - (b) At or around the same time, make information concerning the determination available to the Commissioners; and
  - (c) Cause any such statement to be included with the data and with any subsequent disclosure or dissemination of the data.
- (6) After the Executive Director takes the steps prescribed by 555 CMR 8.08(5):
  - (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
  - (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.
- (7) Within thirty days of receiving a notification pursuant to 555 CMR 8.08(3)(c), (4)(b), 5(a), or 6(b), a petitioner may file a written request for further review with the Executive Director.
- (8) The Executive Director shall provide any request for further review made pursuant to 555 CMR 8.08(7) to the Chair promptly upon receiving it.
- (9) The Chair may take any action allowed by law with respect to a request for further review made pursuant to 555 CMR 8.08(7).
- (10) If the Commission has a good-faith, reasonable belief that an employee possesses a right to have information that is contained in a personnel record maintained by an employer corrected or expunged by an employer pursuant to M.G.L. c. 149, § 52C, the Commission

shall not disclose such information without first giving the employee the opportunity to exercise the right, unless the law requires otherwise.

8.09: Privileged Information

- (1) Where information is protected by a privilege against disclosure recognized by law:
  - (a) If the Commission is the holder of the privilege, the privilege may be waived only through a vote of the Commissioners; and
  - (b) If a person or entity other than the Commission is the holder of the privilege and the Commission is aware of the protection provided by the privilege, the Commission shall not disclose the information without first taking the following steps, unless the law requires otherwise:
    1. Notifying the holder regarding the records request; and
    2. Making reasonable efforts to give the holder the opportunity to protect the information.

8.10: Compulsory Legal Process

- (1) Except as provided in 555 CMR 8.10(2) or (3), when any person or entity seeks personal data maintained by the Commission through compulsory legal process, the Commission:
  - (a) Shall notify the individual to whom the personal data refers in reasonable time that the individual may seek to have the process quashed; and
  - (b) If appearing or filing any paper in court related to the process, shall notify the court of the requirement of M.G.L. c. 66A, § 2(k).
- (2) The Commission need not provide the notification described in 555 CMR 8.10(1) if a court orders otherwise upon a finding that notice to the individual to whom the personal data refers would probably so prejudice the administration of justice that good cause exists to delay or dispense with such notice.
- (3) If the MPTC is, by agreement, responsible for responding to compulsory legal process received by the Commission, the Commission shall refer the process to the MPTC, and ask the MPTC to respond to the process, or provide reasonable assistance to the Commission in responding to the process, in accordance with such agreement.

REGULATORY AUTHORITY

555 CMR 8.00: M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2).



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 8.00: DATABASES AND DISSEMINATION OF INFORMATION

Section

- 8.01: Authority
- 8.02: Scope
- 8.03: Definitions
- 8.04: Submission of Information by [Law Enforcement](#) Agencies
- 8.05: Division Databases
- 8.06: Public Database
- 8.07: Maintenance [and Security](#) of Databases and Electronic Recordkeeping Systems Generally
- 8.08: Objections Concerning Data
- ~~8.09: Receipt and Referral of Records Requests~~
- ~~8.10: Responses to Records Requests~~
- ~~8.09+1: Privileged Information~~
- ~~8.10+2: Compulsory Legal Process~~

8.01: Authority

- (1) The Massachusetts Peace Officer Standards and Training Commission promulgates 555 CMR 8.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2).

8.02: Scope

- (1) 555 CMR 8.00 applies to:
  - (a) Databases that the Commission must maintain pursuant to M.G.L. c. 6E, §§ 4(h), 4(j), 8(e), and 13(a);
  - (b) Other databases and electronic recordkeeping systems maintained by the Commission; and
  - (c) Commission responses to requests for records served upon it pursuant to M.G.L. c. 66, § 10.
- (2) 555 CMR 8.00 does not apply to any of the following:
  - (a) A response by the Commission to compulsory legal process, except as provided in 555 CMR 8.13;
  - (b) A response by the Commission to a court order relative to the disclosure of information;
  - (c) An inquiry or request concerning personal data, made on behalf of the individual to whom the personal data refers, under M.G.L. c. 66A, §§ 2(g) or 2(i); or
  - (d) The Commission's treatment of evidence that it knows to be relevant to a pending criminal case or exculpatory as to any criminal case.
- (3) With respect to matters to which 555 CMR 8.00 applies, it is intended to supersede 801 CMR 3.00.
- (4) Nothing in 555 CMR 8.00 is intended to:
  - (a) Foreclose the Commission's invocation of any provision, privilege, or doctrine, regardless of whether it is cited in 555 CMR 8.00;
  - (b) Establish a standard of care or create any independent private right, remedy, or cause of action on the part of any person or entity on account of any action the Commission takes or fails to take; or
  - (c) Otherwise waive any power, right, privilege, protection, or immunity that may be available to the Commission.
- (5) Neither 555 CMR 8.00, nor the Commission's provision of any information through a public database or in response to a records request, is intended to:
  - (a) Create an attorney-client relationship, a principal-agent relationship, or a confidential relationship with any person or entity;
  - (b) Make the Commission a part of the prosecution team, the defense team, or the litigation team of any other party in relation to any criminal or civil action or controversy;
  - (c) Impose upon the Commission any duty or obligation of any other entity or person; or
  - (d) Otherwise surrender the Commission's independence.

**Commented [RER1]:** Page 1, Top

- Changes that were made shortly before the last meeting and were discussed at that meeting are shown in **blue**.
- Changes that have been made since the last meeting are shown in **red**.
- Particularly significant areas are in **yellow highlighting**.
- Attachments and endnotes would not be included in any filed version.

**Commented [RER2]:** Page 1, Table of Contents

- This draft eliminates the sections dealing with public records requests.



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

8.03: Definitions

- (1) 555 CMR 8.00 incorporates all definitions set forth in 555 CMR 2.02, except those definitions of terms that are defined in 555 CMR 8.03(2).
- (2) For the purposes of 555 CMR 8.00, the following terms have the following meanings, unless the context requires otherwise:

Agency. An “agency” as defined in M.G.L. c. 30A, § 1.

Certification. Certification or recertification of a law enforcement officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, regardless of whether it is conditioned, limited, restricted, or suspended.

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

Complaint. A complaint that must be reported to the Commission pursuant to 555 CMR 1.01(1).

Compulsory Legal Process. A demand that is issued by or through a federal or state court or party to litigation, including any demand made by summons, subpoena, discovery request, or judicial order.

Conclusion. ~~The point at which the Commission has rendered its ultimate decision or action on a matter, no proceeding regarding the matter is pending before any court or agency, and no opportunity for further review in the normal course by any court or agency remains.~~

Deadly Force. “Deadly force” as that term is defined in M.G.L. c. 6E, § 1.

Decertification. A revocation of certification made by the Commission pursuant to M.G.L. c. 6E, § 10—an action distinct from a denial, a nonrenewal, or an expiration of certification.

Division of Police Certification. The Division of Police Certification of the Commission established pursuant to M.G.L. c. 6E, § 4(a)(1).

Division of Police Standards. The Division of Police Standards of the Commission established pursuant to M.G.L. c. 6E, § 8(a).

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.

Law Enforcement Agency. A “law enforcement agency” as that term is defined in M.G.L. c. 6E, § 1.

Officer. A “law enforcement officer” as that term is defined in M.G.L. c. 6E, § 1.

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

Personal Data. “Personal data” as that term is defined in M.G.L. c. 66A, § 1.

RAO. The Commission Records Access Officer designated pursuant to M.G.L. c. 66 and 950 CMR 32.00, or that person’s designee for relevant purposes.

Record, Information, and Data. Any form of record, document, written material, or data, regardless of whether it constitutes a “public record” as that term is defined in M.G.L. c. 4, § 7, cl. 26 or “personal data” as that term is defined in M.G.L. c. 66A.

**Commented [RER3]:** Page 2, Section 8.03(2)

- Originally, the regulations included this definition of “Conclusion” and then used that term in certain places as a way of establishing when a given certification or disciplinary matter would be publicized.
- This draft eliminates the term “Conclusion” and instead addresses the subject of when and how certain certification and disciplinary matters will become publicized through a set of context-specific provisions below.
- With respect to disciplinary matters, this draft reflects a compromise by providing that:
  - The fact that a matter is pending before the Commission or a law enforcement agency will still not be made available to the general public in the public database.
  - If that body renders a final decision adverse to the officer, the decision will be made available to the general public in the public database.
  - If the Commission has knowledge that the officer is challenging the decision before the Commission, the Civil Service Commission, an arbitrator, or a court, a notation of that fact will be included.
  - In any event, the public database will include prominently displayed advisories about the possibility of challenges.
  - If an action or decision is reversed or vacated, that original action or decision will no longer be available to the general public in the public database.
  - In any event, the Commissioners can vote to make a matter unavailable to the general public.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

Records Request. A request for Commission records made pursuant to, and in conformance with, M.G.L. c. 66, § 10.

Requester. Any person or entity that tenders a records request to the Commission.

Untruthful. “Untruthful” as that term is defined in M.G.L. c. 6E, § 1.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

8.04: Submission of Information by Law Enforcement Agencies

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

8.05: Division Databases

- (1) The Division of Police Certification, in consultation with the Division of Police Standards, shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a database containing records for each certified law enforcement officer, including, but not limited to:
- (a) The date of initial certification;
  - (b) The date of any recertification;
  - (c) The records of completion of all training and all in-service trainings, including the dates and locations of said trainings, as provided by the MPTC and the Department of State Police;
  - (d) The date of any written reprimand and the reason for said reprimand;
  - (e) The date of any suspension and the reason for said suspension;
  - (f) The date of any arrest and the charge or charges leading to said arrest;
  - (g) The date of, and reason for, any internal affairs complaint;
  - (h) The outcome of an internal affairs investigation based on an internal affairs complaint;
  - (i) The date of any criminal conviction and crime for said conviction;
  - (j) The date of any separation from employment with a [law enforcement](#) ~~an~~ agency and the nature of the separation, including, but not limited to, suspension, resignation, retirement or termination;
  - (k) The reason for any separation from employment, including, but not limited to, whether the separation was based on misconduct or whether the separation occurred while the appointing [law enforcement](#) agency was conducting an investigation of the certified individual for a violation of an appointing [law enforcement](#) agency’s rules, policies, procedures or for other misconduct or improper action;
  - (l) The date of decertification, if any, and the reason for said decertification;
  - (m) Any other information as may be required by the Commission; and
  - (n) Any other information expressly required by M.G.L. 6E, § 4(h).
- (2) The Division of Police Standards shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a database containing information related to the following for each officer serving on or after July 1, 2021:
- (a) The officer’s receipt of complaints, including, but not limited to:
    - 1. The officer’s appointing [law enforcement](#) agency;
    - 2. The date of the alleged incident and the date of the complaint;
    - 3. A description of circumstances of the conduct that is the subject of the complaint; and
    - 4. Whether the complaint alleges that the officer’s conduct:
      - a. Was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level;

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

- b. Was unprofessional;
  - c. Involved excessive, prohibited or deadly force; or
  - d. Resulted in serious bodily injury or death;
- (b) Allegations that the officer was untruthful;
- (c) The officer's failure to follow Commission training requirements;
- (d) The officer's decertification by the Commission;
- (e) ~~Agency imposed discipline of the officer~~ imposed by a law-enforcement agency;
- (f) The officer's termination for cause;
- (g) Any other information the Commission deems necessary or relevant; and
- (h) Any other information expressly required by M.G.L. 6E, § 8(e).
- (3) The Commission may combine the databases prescribed by 555 CMR 8.05(1) and (2) within a single database.

8.06: Public Database

- (1) The Commission shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a public database of information concerning individuals who at any point since July 1, 2021, have served as an officer or have been certified, have served as officers at any point since July 1, 2021 and:
- ~~(a) Who are certified or conditionally certified;~~
  - ~~(b) Whose certifications are pending, restricted, limited, or suspended; or~~
  - ~~(c) Who have been decertified or not recertified.~~
- (2) The public database must be searchable and accessible to the public through the Commission's official website.
- (3) Except as provided in 555 CMR 8.06(4), the public database shall make the following available to the general public, to the extent that the information is possessed by the Commission:
- (a) These forms of information for each officer identified in 555 CMR 8.06(1), ~~to the extent that the information is possessed by the Commission:~~
- 1. The officer's first name and surname;
  - 2. The officer's current certification status in Massachusetts, provided that, if the officer is challenging, or has the opportunity to challenge, a certification decision before the Commission or any of its personnel in accordance with a Commission regulation or policy, the officer's status shall be listed as under review or described in a comparable manner;
  - 3. The dates on which the officer, in Massachusetts, was first certified, ~~and was most recently certified, and ceased being certified in Massachusetts;~~
  - 4. All of the officer's employing law enforcement agencies in Massachusetts and elsewhere, and the dates of the officer's employment with such law enforcement agencies;
  - 5. Commendations received by the officer in connection with the officer's service in law enforcement;
  - 6. The date of, and reason for, any decertification by the Commission or by a comparable body in any other jurisdiction;
  - 7. The beginning date and end date of, and the reason for, any suspension of certification by the Commission;
  - 8. As to any retraining order issued by the Commission, the date of the order, the reason for the order, the type of retraining ordered, and any date of completion of the retraining ordered;
  - 9. A copy of each final opinion, decision, order, set of findings, and vote issued by the Commission pursuant to M.G.L. c. 6E, § 10 in connection with any proceedings concerning the officer, accessible in a commonly available electronic format; and
  - 10. A summary of the officer's disciplinary record, which may incorporate ~~based on~~ information provided by law enforcement agencies that have employed the officer, and which shall list:
    - a. Complaints against the officer;
    - b. The final disposition of each listed complaint; and
    - c. The nature of any discipline imposed as a result of each listed

**Commented [RER4]:** Page 4, Section 8.06(3)(a)2.  
• This provides that a certification status that is being challenged, or still could be challenged, within the Commission to be listed as under review.

**Commented [RER5]:** Page 4, Section 8.06(3)(a)3.  
• A possibility would be to add: "and the reason why the officer ceased being certified."

**Commented [RER6]:** Page 4, Section 8.06(3)(a)10.  
• This was intended to allow for flexibility with respect to information that is not provided by a law enforcement agency.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

complaint; ~~and~~

d. Whether each complaint was submitted anonymously; and

e. Whether each complaint was submitted under the pains and penalties of perjury; ~~and~~

11. For each decision and action referenced in the database that is being challenged through a proceeding before the Commission, the Civil Service Commission, an arbitrator, or a court, an accompanying notation of that fact; and

~~11. Information concerning any decision that reversed or vacated an action regarding the officer, or that exculpated the officer for any reason in relation to a particular matter, where such action or matter is referenced in the database.~~

(b) Prominently displayed advisories concerning the possibility that decisions and actions concerning officers have been or will be challenged and the benefit of independently seeking the most current information.

~~(b)(c)~~ To the extent reasonably feasible, aggregations of, or ways for public users to obtain aggregate, available information regarding the following, aggregated by officer, by rank, by department, or statewide:

1. Decisions by the Commission and comparable bodies in other jurisdictions to decertify ~~an~~ officers;
2. Decisions by the Commission to suspend the certification of ~~an~~ officers;
3. Decisions by the Commission to order the retraining of ~~an~~ officers;
4. Officers who have served ~~in a particular department; and~~
5. ~~The total number of complaints reportable to the Commission pursuant to 555 CMR 1.00 that were resolved adversely to an officers; and~~
6. The number of complaints reportable to the Commission pursuant to 555 CMR 1.00 that were not resolved adversely to an officers.

(4) Except as provided in 555 CMR 8.06(5), the public database shall not make available to members of the general public:

(a) The following forms of information:

1. Records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry that are confidential under M.G.L. c. 6E, § 8(c)(2), or 555 CMR 1.03 or 1.07(2);
2. Other information related to disciplinary proceedings that is confidential under 555 CMR 1.01(2)(d), 1.09(6)(c), or 1.10(4)(a);
3. Identifying or contact information that is generally non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
4. Criminal offender record information that cannot be communicated under M.G.L. c. 6, §§ 168 or 178, 803 CMR 2.00, or 803 CMR 7.00; and criminal history record information that cannot be disseminated under 803 CMR 7.00;
5. Sealed or expunged records that are non-public and confidential or are unavailable for inspection under M.G.L. c. 276, §§ 100L, 100O, or 100Q;
6. Juvenile delinquency records that must be withheld under M.G.L. c. 119, § 60A, or juvenile criminal records that cannot be communicated under M.G.L. c. 6, §§ 168 and 178.
7. Police-log entries pertaining to arrests of juveniles that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
8. Police-log entries pertaining to handicapped individuals that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
9. Police-log entries pertaining to alleged domestic violence or sex offenses that are non-public and non-disclosable under M.G.L. c. 41, § 98F;
10. These records, to the extent that they are not public reports and generally must be maintained by police departments in a manner that shall assure their confidentiality under M.G.L. c. 51, § 97D:
  - a. Reports of rape and sexual assault or attempts to commit such offenses;
  - b. Reports of abuse perpetrated by family or household members, as defined in M.G.L. c. 209A, § 1; and
  - c. Communications between police officers and victims of such offenses or abuse;

**Commented [RER7]:** Page 5 (or 4 on the clean copy), Section 8.06(3)(a)11.

- New Subsection 11 is the provision that calls for notations regarding pending challenges to decisions or actions.
- Alternatively, this could be addressed through [a more detailed provision](#).
- Old Subsection 11 has been replaced with a provision that provides for reversed or vacated decisions or actions to be removed.

**Commented [RER8]:** Page 5 (or 4 on the clean copy), Section 8.06(3)(b)

- This is the provision that calls for prominently displayed advisories regarding the possibility of challenges.

**Commented [RER9]:** Page 5 (or 4 on the clean copy), Section 8.06(3)(c).

- This phrase “reportable to the Commission pursuant to 555 CMR 1.00” is no longer necessary in light of the definition of “complaint” above.
- Other changes were made to avoid redundancy or inconsistency.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

11. Information in court and police records that identifies alleged victims of sex offenses or trafficking and is non-public, must be withheld, and cannot be published, disseminated, or disclosed under M.G.L. c. 265, § 24C;
  12. Identifying, contact, employment, or educational information of victims of crimes or domestic violence or members of their families that is non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
  13. Contact, employment, or educational information of victims, members of their families, or witnesses that is confidential and non-disclosable under M.G.L. c. 258B, §§ 3(h) and 3(w);
  14. Identifying, contact, employment, or educational information of family-planning personnel or members of their families that is non-public and non-disclosable under M.G.L. c. 66, §§ 10B and 15;
  15. Personal data that is non-accessible under M.G.L. c. 66A ~~and M.G.L. c. 214, § 3B;~~
  16. Forms of “personal information” referenced in M.G.L. c. 93H, § 1, other than the names of individuals;
  17. Data that the Commission is precluded from disclosing pursuant to a court order;
  18. Information the disclosure of which would violate a person’s right against unreasonable, substantial, or serious interference with privacy under M.G.L. c. 214, § 1B; and
  - ~~19. Information concerning any complaint that was not resolved against the officer, unless the Commission determines that the resolution reached was unwarranted; and~~
  - ~~19. Information concerning any complaint against an officer that has been found not to have been supported by a preponderance of the evidence, unless the Commission finds to the contrary; and~~
  - ~~1920.~~ Any other information that is non-disclosable under federal or Massachusetts law; ~~and~~
- (b) The following additional forms of information:
1. These forms, the revelation of which could potentially impact officer health or safety, including by facilitating attempts to coerce officers or exploit any individual vulnerabilities:
    - a. Information relating to a member of an officer’s family, except where such family member is an officer and any relation between the two officers is not revealed;
    - b. Information concerning an officer’s personal finances that is not otherwise publicly available;
    - c. Information that could readily be used to facilitate identity theft or breaches of data security, including, but not limited to, an officer’s date of birth, passwords, and entry codes;
    - d. Information concerning an officer’s medical or psychological condition;
    - e. Any assessment of whether an officer possesses good moral character or fitness for employment in law enforcement under M.G.L. c. 6E, § 4(f)(1)(ix) that was made:
      1. By a person or entity other than the Commission or its personnel; and
      2. Pursuant to 555 CMR 7.05 or 7.06(9) or otherwise in response to a request by the Commission in connection with a ~~certification process of determining whether to initially certify~~ or recertify an officer;
    - f. Information concerning an officer’s conduct as a juvenile;
    - g. Information concerning any firearm, or firearms license or permit, that an officer currently possesses in a personal capacity;
    - h. Law enforcement information, including information concerning the following subjects, if disclosure could compromise law enforcement or security measures:
      1. Undercover operations;
      2. Confidential informants;
      3. Clandestine surveillance;
      4. Secretive investigative techniques;
      5. Passwords and codes;

**Commented [RER10]:** Page 6, Section 8.06(4)(b)1.e.2.  
• This change was intended to make clear that this provision is referring to a process for rendering a decision on a certification application, and not a process for deciding whether to revoke or suspend a certification.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

6. The details of security being provided to a person or place; or
7. Subjects of comparable sensitivity.
  - ~~i. Information concerning any complaint or disciplinary matter that has not been resolved adversely to the officer, unless the matter was resolved in a manner that the Commission determines to have been unwarranted;~~
  - ~~j. Information concerning a decision or action that has been reversed or vacated; and~~
  - ~~i. Information concerning any complaint that was not resolved adversely to the officer, unless the Commission determines that the resolution reached was unwarranted;~~
  - ~~j. Information concerning a disciplinary matter before the Commission where:
    1. The Commission has not rendered a final decision in the matter; or
    2. By a vote of the Commissioners, the Commission has adopted a policy or decision providing for the information not to be included in the public database; and~~
  - ~~i. Information concerning a disciplinary matter before the Commission that has not reached a conclusion; and~~
  - ~~k. Any other information that could readily be used in an attempt to coerce action or inaction, or exploit individual vulnerabilities, of an officer.~~
2. Law enforcement agency Agency records that are within the scope of those being audited by the Commission pursuant to M.G.L. c. 6E, §§ 3(a)(9), 3(a)(21), and 8(d);
3. Records associated with Commission meetings that may be withheld under M.G.L. c. 30A, § 22;
4. Information that an individual has the ability to have corrected, amended, or removed pursuant to M.G.L. c. 66A, § 2(j) or 555 CMR 8.08;
5. Information that shall not be disclosed pursuant to 555 CMR 8.08(10);
6. Information that is protected by a privilege against disclosure recognized by law and is held by the Commission;
7. Information that is protected by a privilege against disclosure recognized by law and is held by a person or entity other than the Commission;
8. Data that is non-disclosable under any formal agreement or memorandum of understanding between the Commission and any other federal, state, local, or tribal governmental entity, including, but not limited to, any Commonwealth of Massachusetts Data Sharing Memorandum of Understanding, any Data Use License Agreement between the Commission and another governmental entity, and any Massachusetts Criminal Justice Information System (CJIS) User Agreement;
9. Information that a court has expunged, placed under seal, impounded, or relieved the Commission of having to disclose;
10. Information the confidentiality of which is the subject of dispute in litigation or an administrative proceeding;
11. Any document, record, or petition generated by the Witness Protection Board or by a prosecuting officer and related to witness protection services that is non-public and non-disclosable under 501 CMR 10.14; ~~and~~
- ~~12. Information concerning a complaint or disciplinary matter that the Commission, by vote of the Commissioners, has decided not to make available to members of the general public;~~
- ~~13. Information concerning any individual who is no longer serving as an officer, but has not been decertified, other than the individual's name, last employing law enforcement agency, and dates of service; and~~
- ~~14. Information that otherwise does not constitute a public record under M.G.L. c. 4, § 7, cl. 26.~~

(5) The public database may be designed to allow particular individuals to access certain forms of information that are listed in 555 CMR 8.06(4) to the extent that the Commission is not precluded by law from making such information available to those individuals.

**Commented [RER11]:** Page 7 (or 6 on the clean copy), Section 8.06(4)(b)1.i.-j.

- Subsection *i* makes clear that the pendency of a complaint or disciplinary matter, or the resolution of such a matter in a way that was not adverse to the officer, ordinarily will not be made available to members of the general public.
- New subsection *j* establishes that a reversed or vacated decision will not be made available to members of the general public.
- Old subsection *j* has been replaced with comparable provisions.

**Commented [RER12]:** Page 7, Section 8.06(4)(b)12.

- This is the provision that would allow the Commissioners to make certain information concerning a complaint or disciplinary matter unavailable.

**Commented [RER13]:** Page 7, Section 8.06(4)(b)13.

- This would provide for the exclusion of information regarding officers who are no longer serving, beyond basic facts, unless they have been decertified.
- An alternative would be to provide as follows:  
Information concerning any individual **who ceased serving as an officer more than five years previously**, but has not been decertified, other than the individual's name, last employing law enforcement agency, and dates of service.



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

~~(6) — For purposes of applying 555 CMR 8.00, Commission personnel may ordinarily treat the following guidelines as instructive, to the extent that they do not conflict with any governing source of law.~~

~~(a) — A certification matter should be deemed active and subject to Commission oversight, beginning upon the earliest of the following:~~

~~1. — The Commission's receipt of an application for certification on behalf of an officer, including one made pursuant to M.G.L. c. 6E, § 4, M.G.L. c. 30A, § 13, or 555 CMR 7.03; or~~

~~2. — A law enforcement agency's receipt from an officer of an application for certification or any materials required for the law enforcement agency to complete an application for certification on the officer's behalf.~~

~~(b) — A certification matter should be deemed active until such time as the Commission has issued its final decision on the matter and the officer has waived or otherwise lacks an entitlement to review of the decision by the Commission or any of its personnel or by a court under M.G.L. c. 30A.~~

~~(c) — A disciplinary matter should be deemed active and subject to Commission oversight, beginning upon the earliest of the following:~~

~~1. — The Commission's receipt of a complaint or information warranting a determination of whether to initiate a preliminary inquiry under M.G.L. c. 6E, § 8; or~~

~~2. — A law enforcement agency's receipt of a complaint that must or will be reported to the Commission under 555 CMR 1.01.~~

~~(d) — A disciplinary matter should be deemed active until the latest of the following:~~

~~1. — Such time as the Commission has issued its final decision on the matter and the officer has waived or otherwise lacks an entitlement to review of the decision by the Commission or any of its personnel or by a court under M.G.L. c. 30A; or~~

~~2. — The point at which all entities that the Commission knows to have been investigating the matter have decided not to pursue any associated disciplinary or legal action.~~

~~(6) — For purposes of determining whether a matter is ongoing, as that question relates to the applicability of exemptions under M.G.L. c. 4, § 7, cl. 26 or other provisions or doctrines, Commission personnel may treat the following guidelines as instructive, to the extent that they do not conflict with any governing source of law.~~

~~(a) — A certification matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:~~

~~1. — The Commission's receipt of an application for certification on behalf of an officer, including one made pursuant to M.G.L. c. 6E, § 4, M.G.L. c. 30A, § 13, or 555 CMR 7.03; or~~

~~2. — An agency's receipt from an officer of an application for certification or any materials required for the agency to complete an application for certification on the officer's behalf.~~

~~(b) — A certification matter should be deemed no longer ongoing upon the conclusion of the matter.~~

~~(c) — A disciplinary matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:~~

~~1. — The Commission's receipt of a complaint or information warranting a determination of whether to initiate a preliminary inquiry under M.G.L. c. 6E, § 8; or~~

~~2. — An agency's receipt of a complaint that must or will be reported to the Commission under 555 CMR 1.01.~~

~~(d) — A disciplinary matter should be deemed no longer ongoing upon the earliest of the following:~~

~~1. — The conclusion of the matter;~~

~~The point at which all entities that the Commission knows to have been investigating the matter have decided not to pursue any associated disciplinary or legal action; or~~

~~2. — An officer's communication to the Commission of a decision not to challenge any disciplinary action.~~

(6) The Commission may make other determinations concerning the content, the

**Commented [RER14]:** Page 8 (or 7 on the clean copy), Section 8.06(6)

- This is the first of 3 parts dealing with public records matters that were cut.

## 555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

accessibility of information, and the format of the public database as follows:

- (a) Any such determination shall be made in accordance with guidelines established by a vote of the Commissioners following an opportunity for public input, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director;
- (b) Such a determination may provide for forms of information that are not specifically referenced in 555 CMR 8.06(34) or (45) to be made available, or to be made unavailable, to the general public or to particular individuals;
- (c) Any such determination must be consistent with 555 CMR 8.00 and other relevant provisions of law; and
- (d) Any such determination must be made with due consideration for the health and safety of officers.

### 8.07: Maintenance and Security of Databases and Electronic Recordkeeping Systems Generally

(1) When designing or acquiring an electronic record keeping system or database, the Commission's RAO and its Chief Technology Officer shall consult with each other, and with the Commission's Executive Director, its Chief Financial and Administrative Officer, or the Massachusetts Executive Office of Technology Services and Security to ensure, to the extent feasible, that the system or database is capable of providing data in a commonly available electronic, machine readable format.

(2) Any database designs or acquisitions shall allow for, to the extent feasible, information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access.

(3) The Commission shall not enter into any contract for the storage of electronic records that:

- (a) Prevents or unduly restricts the RAO from providing public records in accordance with M.G.L. c. 66;
- (b) Relieves the Commission of its obligations under M.G.L. c. 66A or any governing regulations promulgated thereunder; or
- (c) Omits provisions that are necessary to ensure compliance with M.G.L. c. 66A or any governing regulations promulgated thereunder.

(4) The Commission shall implement safeguards to ensure the security and integrity of its databases, and to the extent otherwise provided, the confidentiality of such databases.

(5) The Commission shall take reasonable steps to prevent misuse of any Commission database by any of the Commission's Commissioners, staff, vendors, contractors, or agents, which steps shall include, but need not be limited to:

- (a) Prohibiting use and access to the database for purposes other than Commission-related business; and
- (b) Prohibiting improper disclosure of confidential information.

### 8.08: Objections Concerning Data

(1) An individual who is identified in data maintained by the Commission, or the individual's representative, may raise objections related to the accuracy, completeness, pertinence, timeliness, relevance, or dissemination of the data, or the denial of access to such data by filing a written petition for relief with the Executive Director, in a form prescribed by the Commission, at any time.

(2) Upon receiving a petition filed pursuant to 555 CMR 8.08(1), the Executive Director shall promptly evaluate the petition, including by obtaining relevant information.

(3) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is warranted, the Executive Director shall promptly:

- (a) Take appropriate steps to grant such relief, or comparable relief;
- (b) Make information concerning the action taken available to the Commissioners;
- (c) Notify the petitioner of the status of the petition.

(4) After the Executive Director takes the steps prescribed by 555 CMR 8.08(3):



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

- (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
  - (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.
- (5) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is unwarranted, the Executive Director shall:
- (a) Within a reasonable time, notify the petitioner in writing that such determination was made and that the petitioner shall have the opportunity to submit a statement reflecting the petitioner's position regarding the data;
  - (b) At or around the same time, make information concerning the determination available to the Commissioners; and
  - (c) Cause any such statement to be included with the data and with any subsequent disclosure or dissemination of the data.
- (6) After the Executive Director takes the steps prescribed by 555 CMR 8.08(5):
- (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
  - (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.
- (7) Within thirty days of receiving a notification pursuant to 555 CMR 8.08(3)(c), (4)(b), 5(a), or 6(b), a petitioner may file a written request for further review with the Executive Director.
- (8) The Executive Director shall provide any request for further review made pursuant to 555 CMR 8.08(7) to the Chair promptly upon receiving it.
- (9) The Chair may take any action allowed by law with respect to a request for further review made pursuant to 555 CMR 8.08(7).
- (10) If the Commission has a good-faith, reasonable belief that an employee possesses a right to have information that is contained in a personnel record maintained by an employer corrected or expunged by an employer pursuant to M.G.L. c. 149, § 52C, the Commission shall not disclose such information without first giving the employee the opportunity to exercise the right, unless the law requires otherwise.

~~8.09: Receipt and Referral of Records Requests~~

- ~~(1) The Commission may decline to accept records requests by telephone, pursuant to 950 CMR 32.06(1)(a).~~
- ~~(2) If the MPTC is, by agreement, responsible for responding to a records request received by the Commission, the RAO shall refer the request to the MPTC, and ask the MPTC to respond to the request as a Commission designee in accordance with such agreement, M.G.L. c. 66, § 10(a), and 950 CMR 32.06(2)(a).~~

~~8.10: Responses to Records Requests~~

- ~~(1) A records request shall be processed in accordance with M.G.L. c. 66 and 950 CMR 32.00.~~
- ~~(2) If a record includes information identified in 555 CMR 8.06(4)(a), such information shall not be disclosed.~~
- ~~(3) If a record includes information identified in 555 CMR 8.06(4)(b), taking into account the provisions of 555 CMR 8.06(6), such information shall not be disclosed, unless:
  - ~~(a) Disclosure is required under M.G.L. c. 66, § 10, M.G.L. c. 66A, § 2, or any other source of federal or Massachusetts law; or~~
  - ~~(b) Disclosure:
    - ~~1. Is not prohibited by federal or Massachusetts law;~~
    - ~~2. Will not jeopardize any law enforcement efforts or the security of any person or entity; and~~
      - ~~a. Will be made to the person or entity who is the subject of the~~~~~~

**Commented [RER15]:** Pages 10-11 (or 9 on the clean copy), Section 8.09-10  
• As noted above, these sections dealing with public records requests have been struck.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

information;

b. Will be made to a law enforcement agency or a criminal justice agency in Massachusetts or elsewhere;

c. Is warranted by public interests that are substantially greater than any interests in non-disclosure; or

d. Has previously been made in litigation publicly by the officer at issue or the Commission.

(4) In response to any records request that does not address the requester's eligibility for a waiver of fees under M.G.L. c. 66, § 10(e)(v) and 950 CMR 32.07(2)(k), the Commission may seek information from the requester regarding the purpose of the records request, in accordance with M.G.L. c. 66, § 10(d)(viii) and 950 CMR 32.06(2)(h).

(5) If a requester requests a public record that is available through the public database prescribed by 555 CMR 8.06, and that database is appropriately indexed and searchable, the RAO shall, to the extent feasible, furnish the record by providing reasonable assistance in locating it on the website, pursuant to M.G.L. c. 66, § 6A(d), 950 CMR 32.04(5), and 950 CMR 32.07(2)(a).

(6) If a requester requests a public record that is available through the public database prescribed by 555 CMR 8.06, or that is substantially similar in content to a record that is available through that database, in circumstances other than those described in 555 CMR 8.10(5):

(a) The RAO shall direct the requester to the database; and

(b) If the Commission must furnish the record, the Commission shall, except in extraordinary circumstances, charge the maximum fee permitted by law, notwithstanding the provisions of M.G.L. c. 66, § 10(e)(v) and 950 CMR 32.07(2)(k).

(7) If a requester requests a public record that is available on a public website pursuant to M.G.L. c. 66, § 19(b), M.G.L. c. 7, § 14C, 555 CMR 8.06, or any other appropriately indexed and searchable public website, other than the public database prescribed by 555 CMR 8.06, the RAO shall, to the extent feasible, furnish the record by providing reasonable assistance in locating it on the public website, pursuant to M.G.L. c. 66, § 6A(d), 950 CMR 32.04(5), and 950 CMR 32.07(2)(a).

(8) Where the Commission has decided to charge a fee for the provision of records in response to a request:

(a) The requester shall not be obligated to pay any fee without having agreed to do so;

(b) The Commission may decline to continue assembling or reviewing potentially responsive documents before the full fee has been paid; and

(c) The Commission may decline to provide documents before the full fee has been paid.

8.0911: Privileged Information

- (1) Where information is protected by a privilege against disclosure recognized by law:
  - (a) If the Commission is the holder of the privilege, the privilege may be waived only through a vote of the Commissioners; and
  - (b) If a person or entity other than the Commission is the holder of the privilege and the Commission is aware of the protection provided by the privilege, the Commission shall not disclose the information without first taking the following steps, unless the law requires otherwise:
    1. Notifying the holder regarding the records request; and
    2. Making reasonable efforts to give the holder the opportunity to protect the information.

8.1012: Compulsory Legal Process

- (1) Except as provided in 555 CMR 8.1012(2) or (3), when any person or entity seeks personal data maintained by the Commission through compulsory legal process, the Commission:
  - (a) Shall notify the individual to whom the personal data refers in reasonable time

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

that the individual may seek to have the process quashed; and

(b) If appearing or filing any paper in court related to the process, shall notify the court of the requirement of M.G.L. c. 66A, § 2(k).

(2) The Commission need not provide the notification described in 555 CMR 8.~~1012~~(1) if a court orders otherwise upon a finding that notice to the individual to whom the personal data refers would probably so prejudice the administration of justice that good cause exists to delay or dispense with such notice.

(3) If the MPTC is, by agreement, responsible for responding to compulsory legal process received by the Commission, the Commission shall refer the process to the MPTC, and ask the MPTC to respond to the process, or provide reasonable assistance to the Commission in responding to the process, in accordance with such agreement.

REGULATORY AUTHORITY

555 CMR 8.00: M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2).

4b.

555 CMR 11.00: REGULATORY ACTION AND ADVISORY OPINIONS

Section

- 11.01: Authority
- 11.02: Scope
- 11.03: Definitions
- 11.04: Petition for Regulatory Action or an Advisory Opinion
- 11.05: Processing of a Petition
- 11.06: Regulatory Action
- 11.07: Issuance of an Advisory Opinion
- 11.08: Effect of an Advisory Opinion
- 11.09: Representation by an Attorney at Law

11.01: Authority

- (1) The Commission promulgates 555 CMR 11.00 pursuant to M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.

11.02: Scope

- (1) 555 CMR 11.00 governs:
  - (a) The submission, consideration and disposition of a petition requesting regulatory action, pursuant to M.G.L. c. 30A § 4;
  - (b) Regulatory action by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E and c. 30A;
  - (c) The submission, consideration, and disposition of a petition requesting the issuance of an advisory opinion, pursuant to M.G.L. c. 30A, § 8; and
  - (d) The issuance of an advisory opinion by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E, § 3(a).
- (2) Nothing in 555 CMR 11.00 is intended to:
  - (a) Obligate the Commission to take or decline to take any regulatory action, or to issue or decline to issue any advisory opinion;
  - (b) Preclude the Commission from taking regulatory action or issuing an advisory opinion in the absence of a request, or from issuing other types of opinions, answers to questions, or forms of guidance;
  - (c) Create an attorney-client, principal-agent, or confidential relationship between the Commission, any Commissioners, or any member of the Commission's staff and any petitioner, other person, or other entity;
  - (d) 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
  - (e) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission.

11.03: Definitions

- (1) 555 CMR 11.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02, except those definitions of terms that are defined in 555 CMR 11.03(2).
- (2) For the purposes of 555 CMR 11.00, the following terms have the following meanings, unless the context requires otherwise:

Advisory Opinion. An advisory ruling with respect to the applicability to any person, property, or state of facts of any statute or regulation enforced or administered by the Commission, under M.G.L. c. 30A, § 8, or any other opinion that relates to the Commission's authority or

responsibilities and is formally issued in writing by the Commission.

Agency. An “agency” as defined in M.G.L. c. 30A, § 1.

Commission. The Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2 as an agency, including its Commissioners and its staff.

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.

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

Officer. A “law enforcement officer” as defined in M.G.L. c. 6E, § 1.

Petition. A request for regulatory action or the issuance of an advisory opinion submitted to the Commission.

Petitioner. A person or entity who submits a request for regulatory action or the issuance of an advisory opinion to the Commission.

Regulation. A “regulation” as defined in M.G.L. c. 30A, § 1.

Regulatory Action. The adoption, amendment, or repeal of a regulation.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

11.04: Petition for Regulatory Action or an Advisory Opinion

- (1) Any person or entity may submit to the Commission a petition requesting the adoption, amendment, or repeal of a regulation, or the issuance of an advisory opinion, concerning a matter related to the Commission’s authority and responsibilities.
- (2) A petitioner should:
  - (a) Submit a written petition containing the following:
    1. The petitioner’s name;
    2. The petitioner’s certification number, if the petitioner has been certified as a law enforcement officer by the Commission;
    3. The name, an address, a telephone number, and an email address of an attorney at law who is representing the petitioner in relation to the matter, if the petitioner is so represented;
    4. An address, a telephone number, and an email address of the petitioner, if the petitioner is not represented by an attorney at law in relation to the matter;
    5. The name of each organization on behalf of which the petitioner is submitting the petition, and any title or role that the petitioner has with each such organization, if the petitioner is submitting the petition on behalf an organization;
    6. A clear indication at the outset of the petition whether the petitioner is requesting regulatory action or the issuance of an advisory opinion;
    7. A precise description of the action being requested;
    8. A clear and concise statement of any facts relevant to the petition, which statement may be relied on by the Commission in rendering any opinion;
    9. Citations to applicable sources of law that could be identified with reasonable effort; and
    10. A listing of any other governmental regulations or advisory opinions concerning the same subject matter that have been issued

or requested and could be identified with reasonable effort;

11. The signature of the petitioner or any attorney at law representing the petitioner in relation to the matter, which shall constitute a certification that the signer has read the petition and that any facts recited therein are true to the best of the signer's belief; and

12. A certificate of service, stating the name and contact information of each person and entity upon which a copy of the petition was served pursuant to 555 CMR 11.04(2)(c);

(b) Submit the petition in an electronic format, by electronic means, and using any form or email address designated for such a purpose on the Commission's website; and

(c) Serve a copy of the petition upon each person and entity that can fairly be deemed to be in a direct, adverse position to the petitioner with respect to the matter.

(3) The Commission further requests that the petitioner include in the petition:

(a) The text of any regulation or regulatory amendment desired by the petitioner, if the petitioner is requesting regulatory action;

(b) Any arguments against the action requested by the petitioner; and

(c) Names of persons and entities that would be impacted by the action requested by the petitioner, and the form and extent of such impact.

(4) A petitioner may also include in the petition any supporting data, views, or arguments that the petitioner believes to be pertinent.

(5) A petitioner should immediately notify the Commission if, at any point in time, the petitioner or any attorney at law representing the petitioner in relation to the matter becomes aware that any facts recited in a petition are inaccurate or any circumstances referenced in the petition have changed.

(6) Officers and law enforcement agencies are obligated to ensure the accuracy of any information that they submit to the Commission in relation to a petition, or in relation to any other regulatory action or issuance of an advisory opinion by the Commission, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), and 5(c).

(a) The failure of an officer or a law enforcement agency to comply with 555 CMR 11.04(6) may constitute grounds for disciplinary action, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, and/or 10.

#### 11.05: Initial Processing of a Petition

(1) Where a petitioner has taken all steps listed in 555 CMR 11.04(2)(a)-(c):

(a) The Commission staff shall, with reasonable promptness, acknowledge to the petitioner that the petition was received;

(b) The Commission staff shall ensure that the petition is provided to the Commissioners and the Executive Director;

(c) At direction of the Chair or the request of four Commissioners, the subject of the petition shall be placed on the agenda of a Commission meeting to be held in accordance with M.G.L. c. 6E, § 2(e) and c. 30A; and

(d) If the subject of the petition is placed on the agenda for a public Commission meeting, the Commission shall provide notice to the petitioner of that fact with reasonable promptness, and in no event less than two business days before the meeting.

(2) Where a petitioner has not taken all steps listed in 555 CMR 11.04(2)(a)-(c), the Commission may nevertheless follow the steps listed in 555 CMR 11.05(1) or otherwise consider the petition in accordance with any applicable provisions of law.

(3) The Commission may provide a copy of a petition to any other person or entity, and may utilize any information provided in a petition in any manner, where not precluded from doing so by law.

- (4) The Commission shall maintain a copy of any petition received.
- (5) With respect to any matter involving regulatory action or the issuance of an advisory opinion, or contemplation of the same, whether or not the Commission has received a petition related to the matter:
  - (a) The Commission should take steps to communicate with any other governmental entity that possesses interests, powers, or duties that may be implicated with respect to the matter; and
  - (b) The Commission may:
    - 1. Issue a request for public comment about the matter;
    - 2. Request information or advocacy about the matter from any person or entity; or
    - 3. Ask any person or entity to speak about the matter, or otherwise appear, at a Commission meeting.

11.06: Regulatory Action

- (1) The Commission may take or decline to take any regulatory action, whether or not such action is requested by a petitioner, provided the action is allowed by law.
- (2) In pursuing any regulatory action, the Commission shall proceed in accordance with M.G.L. c. 30A and 950 CMR 20.00: *Preparing and Filing Regulations*.
- (3) If the Commission schedules any public hearing or commences any other public comment process related to proposed regulatory action in response to a petition, the Commission shall provide notice of the public hearing or other public comment process to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (4) At any hearing conducted by the Commission with respect to proposed regulatory action, the presiding official:
  - (a) Shall be designated by the Chair;
  - (b) May impose reasonable restrictions on the speaking time or the presentation of testimony or materials; and
  - (c) May adjourn and continue the hearing to a specified time and place upon determining that the initial time allotted for the hearing has proven to be insufficient.
- (5) Following any public hearing or other public comment process concerning proposed regulatory action, the Commission may, by a vote of the Commissioners, approve revisions to the proposed regulatory action, whether or not such revisions were suggested in such a public hearing or other public comment process.
- (6) If the Commission takes any regulatory action in response to a petition, the Commission shall provide notice of the action to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (7) If the Commission decides not to take a regulatory action requested by a petitioner:
  - (a) The Commission shall provide notice of the decision to the petitioner with reasonable promptness; and
  - (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the



petitioner's, and no weight should be assigned to the decision.

(8) Following the Commission's approval of any regulation, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.07: Issuance of an Advisory Opinion

(1) The Commission may issue or decline to issue any advisory opinion, whether or not such action is requested by a petitioner, provided the action is allowed by law.

(2) The Commission shall issue an advisory opinion only if its issuance and its general substance are approved by a vote of the Commissioners, either before or after the development of a draft advisory opinion.

(3) Any advisory opinion:  
(a) Shall be in writing;  
(b) Shall be issued in the name of the Commission;  
(c) Shall include a statement of reasons supporting any conclusion reached; and  
(d) May be signed by an individual on behalf of the Commission.

(4) If the Commission issues an advisory opinion in response to a petition, the Commission:

(a) Shall provide a copy of the advisory opinion to:  
1. The petitioner, or where there are multiple petitioners, to any one of the petitioners; and  
2. Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable;  
(b) Shall afford the petitioner the opportunity to request, within a reasonable and specified period of time, that the Commission omit the petitioner's name from any publicized version of the opinion;  
(c) Shall honor any timely request made under 555 CMR 11.07(4)(b), unless the Commission decides otherwise by a vote of the Commissioners;  
(d) Shall maintain a copy of the advisory opinion; and  
(e) Except as provided in 555 CMR 11.07(4)(c), may publish an advisory opinion on its website or otherwise, where such publication is not precluded by law.

(5) If the Commission decides not to issue an advisory opinion in response to a petition:

(a) The Commission shall provide notice to the petitioner of the decision with reasonable promptness; and  
(b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the petitioner's, and no weight should be assigned to the decision.

(6) Following the Commission's approval of any advisory opinion, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.08: Effect of an Advisory Opinion

(1) The Commission's issuance of an advisory opinion shall, in any Commission proceeding, provide a defense to a person or entity that acted in accordance with that opinion, where:

(a) The circumstances at issue in the Commission proceeding are not

materially different than those upon which the advisory opinion was based;

(b) The person or entity has not acted inconsistently with 555 CMR 11.04(5); and

(c) The person or entity has not failed to comply with an obligation under 555 CMR 11.04(6).

(2) At any time, the Commission may rescind or revise an advisory opinion.

(a) Where the original advisory opinion was issued in response to a petition, the Commission shall promptly provide notice to the petitioner of any rescission or revision.

(3) An advisory opinion shall have no force or effect:

(a) With respect to circumstances that are materially different than those upon which it was based;

(b) If it is rescinded;

(c) If it is materially revised in relevant part;

(d) If it is rendered invalid by a change in law; or

(e) If a court issues a binding decision that is inconsistent with it.

(4) The circumstances described in 555 CMR 11.08(3) shall not invalidate or negate any prior Commission action or decision other than an advisory opinion, unless the Commission or any source of law expressly requires the invalidation or negation of such action or decision.

#### 11.09: Representation by an Attorney at Law

(1) Any action that 555 CMR 11.00 contemplates being taken by a petitioner may be taken on a petitioner's behalf by an attorney at law representing the petitioner in relation to the matter.

(2) Where a petitioner, another person, or another entity is represented by an attorney at law in relation to a petition, any communication between the Commission and that petitioner, person, or entity should be made through the attorney, unless the attorney authorizes otherwise in writing.

#### REGULATORY AUTHORITY

555 CMR 11.00: M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 11.00: REGULATORY ACTION AND ADVISORY OPINIONS

Section

- 11.01: Authority
- 11.02: Scope
- 11.03: Definitions
- 11.04: Petition for Regulatory Action or an Advisory Opinion
- 11.05: Processing of a Petition
- 11.06: Regulatory Action
- 11.07: Issuance of an Advisory Opinion
- 11.08: Effect of an Advisory Opinion
- 11.09: Representation by an Attorney at Law

11.01: Authority

- (1) The Commission promulgates 555 CMR 11.00 pursuant to M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.

11.02: Scope

- (1) 555 CMR 11.00 governs:
  - (a) The submission, consideration and disposition of a petition requesting regulatory action, pursuant to M.G.L. c. 30A § 4;
  - (b) Regulatory action by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E and c. 30A;
  - (c) The submission, consideration, and disposition of a petition requesting the issuance of an advisory opinion, pursuant to M.G.L. c. 30A, § 8; and
  - (d) The issuance of an advisory opinion by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E, § 3(a).
- (2) Nothing in 555 CMR 11.00 is intended to:
  - (a) Obligate the Commission to take or decline to take any regulatory action, or to issue or decline to issue any advisory opinion;
  - (b) Preclude the Commission from taking regulatory action or issuing an advisory opinion in the absence of a request, or from issuing other types of opinions, answers to questions, or forms of guidance;
  - (c) Create an attorney-client, principal-agent, or confidential relationship between the Commission, any Commissioners, or any member of the Commission's staff and any petitioner, other person, or other entity;
  - (d) 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
  - (e) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission.

11.03: Definitions

- (1) 555 CMR 11.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02, except those definitions of terms that are defined in 555 CMR 11.03(2).
- (2) For the purposes of 555 CMR 11.00, the following terms have the following meanings, unless the context requires otherwise:

Advisory Opinion. An advisory ruling with respect to the applicability to any person, property, or state of facts of any statute or regulation enforced or administered by the Commission, under M.G.L. c. 30A, § 8, or any other opinion that relates to the Commission's authority or

**Commented [RER1]:** • By way of reminder, these proposed regulations are intended to:

- Satisfy the statutory requirement to promulgate regulations concerning petitions from members of the public for regulatory action by the agency; and
- Prescribe procedures for the agency to exercise its power to issue an "advisory ruling."

• They:

- List steps that a petitioner "should" take, which would facilitate the processing of the petition; and
- Aim to incentivize a petitioner to take those steps by providing that, where a petitioner does so, the Commission will take certain steps in processing the petition and providing notification.

• With respect to petitions for regulations, they include provisions concerning:

- Hearings on proposed regulations; and
- Revisions following hearings.

• With respect to petitions for advisory opinions, they include provisions regarding:

- The procedures for approval;
- Publication;
- The effect of opinions; and
- The ability to rely on them.

• With respect to both types of petitions, they include provisions regarding:

- Administrative matters;
- Non-substantive corrections by the staff after adoption; and
- Communicating through any counsel for petitioners.

• Endnotes would not appear in any filed version.

• Highlighted below are some small changes that have been made since these were last presented, on page 3 in Section 11.05(1)(b)-(c).

- Those changes are offered in light of comments made at Commission meetings, in relation to other draft regulations, about affording Commissioners opportunities to respond to decisions made by a single person.

**Commented [RER2]:** These regulations are intended to:

- Respond to two different provisions of Chapter 30A:
  - One states, "Any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany [the] petition with such data, views and arguments as [the person] thinks pertinent. Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions."
  - The other states, "On request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by that agency."
- Address regulatory action and advisory opinions not requested by any petitioner (defining advisory opinions to include advisory rulings and other formal, written opinions).
- Without obligating the Commission to issue or decline to issue any regulation or advisory opinion.
- And without precluding the Commission from issuing other forms of guidance.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

responsibilities and is formally issued in writing by the Commission.

Agency. An “agency” as defined in M.G.L. c. 30A, § 1.

Commission. The Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2 as an agency, including its Commissioners and its staff.

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.

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

Officer. A “law enforcement officer” as defined in M.G.L. c. 6E, § 1.

Petition. A request for regulatory action or the issuance of an advisory opinion submitted to the Commission.

Petitioner. A person or entity who submits a request for regulatory action or the issuance of an advisory opinion to the Commission.

Regulation. A “regulation” as defined in M.G.L. c. 30A, § 1.

Regulatory Action. The adoption, amendment, or repeal of a regulation.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

11.04: Petition for Regulatory Action or an Advisory Opinion

- (1) Any person or entity may submit to the Commission a petition requesting the adoption, amendment, or repeal of a regulation, or the issuance of an advisory opinion, concerning a matter related to the Commission’s authority and responsibilities.
- (2) A petitioner should:
  - (a) Submit a written petition containing the following:
    1. The petitioner’s name;
    2. The petitioner’s certification number, if the petitioner has been certified as a law enforcement officer by the Commission;
    3. The name, an address, a telephone number, and an email address of an attorney at law who is representing the petitioner in relation to the matter, if the petitioner is so represented;
    4. An address, a telephone number, and an email address of the petitioner, if the petitioner is not represented by an attorney at law in relation to the matter;
    5. The name of each organization on behalf of which the petitioner is submitting the petition, and any title or role that the petitioner has with each such organization, if the petitioner is submitting the petition on behalf an organization;
    6. A clear indication at the outset of the petition whether the petitioner is requesting regulatory action or the issuance of an advisory opinion;
    7. A precise description of the action being requested;
    8. A clear and concise statement of any facts relevant to the petition, which statement may be relied on by the Commission in rendering any opinion;
    9. Citations to applicable sources of law that could be identified with reasonable effort; and
    10. A listing of any other governmental regulations or advisory opinions concerning the same subject matter that have been issued

**Commented [RER3]: Sections 11.04 and 11.05:**

- Concern **petitions for either regulatory action or an advisory opinion.**
- List things that a petitioner “should” do, which would facilitate the processing of the petition.
- Aim to incentivize a petitioner to take those steps by providing that, where a petitioner does so, the Commission will take certain steps in processing the petition and providing notification.
- Do not **require** a person to do anything in particular in petitioning, except for:
  - Requiring law enforcement agencies and officers to ensure accuracy in anything they submit.
- Provide for certain other administrative steps to be taken.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

- or requested and could be identified with reasonable effort;
11. The signature of the petitioner or any attorney at law representing the petitioner in relation to the matter, which shall constitute a certification that the signer has read the petition and that any facts recited therein are true to the best of the signer's belief; and
12. A certificate of service, stating the name and contact information of each person and entity upon which a copy of the petition was served pursuant to 555 CMR 11.04(2)(c);
- (b) Submit the petition in an electronic format, by electronic means, and using any form or email address designated for such a purpose on the Commission's website; and
- (c) Serve a copy of the petition upon each person and entity that can fairly be deemed to be in a direct, adverse position to the petitioner with respect to the matter.
- (3) The Commission further requests that the petitioner include in the petition:
- (a) The text of any regulation or regulatory amendment desired by the petitioner, if the petitioner is requesting regulatory action;
- (b) Any arguments against the action requested by the petitioner; and
- (c) Names of persons and entities that would be impacted by the action requested by the petitioner, and the form and extent of such impact.
- (4) A petitioner may also include in the petition any supporting data, views, or arguments that the petitioner believes to be pertinent.
- (5) A petitioner should immediately notify the Commission if, at any point in time, the petitioner or any attorney at law representing the petitioner in relation to the matter becomes aware that any facts recited in a petition are inaccurate or any circumstances referenced in the petition have changed.
- (6) Officers and law enforcement agencies are obligated to ensure the accuracy of any information that they submit to the Commission in relation to a petition, or in relation to any other regulatory action or issuance of an advisory opinion by the Commission, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), and 5(c).
- (a) The failure of an officer or a law enforcement agency to comply with 555 CMR 11.04(6) may constitute grounds for disciplinary action, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, and/or 10.

11.05: Initial Processing of a Petition

- (1) Where a petitioner has taken all steps listed in 555 CMR 11.04(2)(a)-(c):
- (a) The Commission staff shall, with reasonable promptness, acknowledge to the petitioner that the petition was received;
- (b) The Commission staff shall ensure that the petition is provided to the ~~Commissioners Chair~~ and the Executive Director;
- (c) ~~The Chair may place the~~ ~~the~~ ~~subject of the petition~~ ~~shall be placed~~ on the agenda of a Commission meeting to be held in accordance with M.G.L. c. 6E, § 2(e) and c. 30A; and
- (d) If the subject of the petition is placed on the agenda for a public Commission meeting, the Commission shall provide notice to the petitioner of that fact with reasonable promptness, and in no event less than two business days before the meeting.
- (2) Where a petitioner has not taken all steps listed in 555 CMR 11.04(2)(a)-(c), the Commission may nevertheless follow the steps listed in 555 CMR 11.05(1) or otherwise consider the petition in accordance with any applicable provisions of law.
- (3) The Commission may provide a copy of a petition to any other person or entity, and may utilize any information provided in a petition in any manner, where not precluded from doing so by law.

- (4) The Commission shall maintain a copy of any petition received.
- (5) With respect to any matter involving regulatory action or the issuance of an advisory opinion, or contemplation of the same, whether or not the Commission has received a petition related to the matter:
  - (a) The Commission should take steps to communicate with any other governmental entity that possesses interests, powers, or duties that may be implicated with respect to the matter; and
  - (b) The Commission may:
    1. Issue a request for public comment about the matter;
    2. Request information or advocacy about the matter from any person or entity; or
    3. Ask any person or entity to speak about the matter, or otherwise appear, at a Commission meeting.

#### 11.06: Regulatory Action

- (1) The Commission may take or decline to take any regulatory action, whether or not such action is requested by a petitioner, provided the action is allowed by law.
- (2) In pursuing any regulatory action, the Commission shall proceed in accordance with M.G.L. c. 30A and 950 CMR 20.00: *Preparing and Filing Regulations*.
- (3) If the Commission schedules any public hearing or commences any other public comment process related to proposed regulatory action in response to a petition, the Commission shall provide notice of the public hearing or other public comment process to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (4) At any hearing conducted by the Commission with respect to proposed regulatory action, the presiding official:
  - (a) Shall be designated by the Chair;
  - (b) May impose reasonable restrictions on the speaking time or the presentation of testimony or materials; and
  - (c) May adjourn and continue the hearing to a specified time and place upon determining that the initial time allotted for the hearing has proven to be insufficient.
- (5) Following any public hearing or other public comment process concerning proposed regulatory action, the Commission may, by a vote of the Commissioners, approve revisions to the proposed regulatory action, whether or not such revisions were suggested in such a public hearing or other public comment process.
- (6) If the Commission takes any regulatory action in response to a petition, the Commission shall provide notice of the action to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (7) If the Commission decides not to take a regulatory action requested by a petitioner:
  - (a) The Commission shall provide notice of the decision to the petitioner with reasonable promptness; and
  - (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the

**Commented [RER4]:** Section 11.06 includes some additional provisions regarding **regulatory action**, such as provisions that:

- Generally call for notice to be provided at various stages to those who petitioned for the regulatory action or were identified as being opposing parties.
- Allow certain procedural steps to be taken at any public hearing on proposed action, which steps are consistent with those the Commission normally takes.
- Confirm that, after a public comment process, the Commission may make revisions in addition to those suggested by the public.
- Allow the staff, after the Commission votes, to make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

petitioner's, and no weight should be assigned to the decision.

(8) Following the Commission's approval of any regulation, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.07: Issuance of an Advisory Opinion

- (1) The Commission may issue or decline to issue any advisory opinion, whether or not such action is requested by a petitioner, provided the action is allowed by law.
- (2) The Commission shall issue an advisory opinion only if its issuance and its general substance are approved by a vote of the Commissioners, either before or after the development of a draft advisory opinion.
- (3) Any advisory opinion:
- (a) Shall be in writing;
  - (b) Shall be issued in the name of the Commission;
  - (c) Shall include a statement of reasons supporting any conclusion reached; and
  - (d) May be signed by an individual on behalf of the Commission.
- (4) If the Commission issues an advisory opinion in response to a petition, the Commission:
- (a) Shall provide a copy of the advisory opinion to:
    - 1. The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
    - 2. Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable;
  - (b) Shall afford the petitioner the opportunity to request, within a reasonable and specified period of time, that the Commission omit the petitioner's name from any publicized version of the opinion;
  - (c) Shall honor any timely request made under 555 CMR 11.07(4)(b), unless the Commission decides otherwise by a vote of the Commissioners;
  - (d) Shall maintain a copy of the advisory opinion; and
  - (e) Except as provided in 555 CMR 11.07(4)(c), may publish an advisory opinion on its website or otherwise, where such publication is not precluded by law.
- (5) If the Commission decides not to issue an advisory opinion in response to a petition:
- (a) The Commission shall provide notice to the petitioner of the decision with reasonable promptness; and
  - (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the petitioner's, and no weight should be assigned to the decision.
- (6) Following the Commission's approval of any advisory opinion, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

**Commented [RER5]:** Section 11.07 includes some additional provisions regarding **advisory opinions**, such as provisions that:

- Call for the Commissioners to approve the general substance of an opinion before it is issued.
- Generally call for notice to be provided to those who petitioned for the regulatory action or were identified as being opposing parties.
- Generally provide for the opinion to be published.
- Allow petitioners to request that their names be omitted from opinions.
- Allow the staff to make certain types of corrections, as above.
- Confirm that nothing should be read into a decision not to issue an opinion.
- Call for certain other administrative steps to be taken.

11.08: Effect of an Advisory Opinion

- (1) The Commission's issuance of an advisory opinion shall, in any Commission proceeding, provide a defense to a person or entity that acted in accordance with that opinion, where:
- (a) The circumstances at issue in the Commission proceeding are not

**Commented [RER6]:** Section 11.08 concerns the **effect of an advisory opinion**, providing in part that:

- An opinion provides a defense in a Commission proceeding to one who relied on it in circumstances that were not materially different, provided that person or entity honored the provisions concerning the making of accurate statements to the Commission.
- An opinion is of no force or effect in certain circumstances that make it invalid.
- But those circumstances do not impact any other decision or action by the Commission unless it says so.



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

- materially different than those upon which the advisory opinion was based;
- (b) The person or entity has not acted inconsistently with 555 CMR 11.04(5); and
  - (c) The person or entity has not failed to comply with an obligation under 555 CMR 11.04(6).
- (2) At any time, the Commission may rescind or revise an advisory opinion.
- (a) Where the original advisory opinion was issued in response to a petition, the Commission shall promptly provide notice to the petitioner of any rescission or revision.
- (3) An advisory opinion shall have no force or effect:
- (a) With respect to circumstances that are materially different than those upon which it was based;
  - (b) If it is rescinded;
  - (c) If it is materially revised in relevant part;
  - (d) If it is rendered invalid by a change in law; or
  - (e) If a court issues a binding decision that is inconsistent with it.
- (4) The circumstances described in 555 CMR 11.08(3) shall not invalidate or negate any prior Commission action or decision other than an advisory opinion, unless the Commission or any source of law expressly requires the invalidation or negation of such action or decision.

11.09: Representation by an Attorney at Law

- (1) Any action that 555 CMR 11.00 contemplates being taken by a petitioner may be taken on a petitioner's behalf by an attorney at law representing the petitioner in relation to the matter.
- (2) Where a petitioner, another person, or another entity is represented by an attorney at law in relation to a petition, any communication between the Commission and that petitioner, person, or entity should be made through the attorney, unless the attorney authorizes otherwise in writing.

**Commented [RER7]: Section 11.09:**

- Confirms that action may be taken on a petitioner's behalf by **an attorney**.
- Provides that, in such cases, communication should go through the attorney.

REGULATORY AUTHORITY

555 CMR 11.00: M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.

5a.

# PST 0800-0000

	FY23	FY24	FY24 VS FY23	
	FY23 BASE	FY24 MNT	\$ Change	% Change
<b>EMPLOYEE COMPENSATION</b>	3,182,915	5,331,107	2,148,192	76%
<b>EMPLOYEE EXPENSES</b>	25,000	25,000		
<b>CONTRACT EMPLOYEES</b>	150,000	25,000	(125,000)	-83%
<b>PAYROLL TAX/FRINGE</b>	65,658	98,625	32,967	50%
<b>OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS</b>	74,975	138,200	63,225	84%
<b>OFFICE SPACE LEASE</b>	357,552	837,740	480,188	134%
<b>CONSULTANTS/LEGAL SERVICES</b>	435,000	435,000		
<b>OFFICE FURNITURE/FIXTURES/EQUIPMENT</b>	25,000	105,000	80,000	320%
<b>OFFICE EQUIPMENT LEASE</b>		4,430	4,430	
<b>INFORMATION TECHNOLOGY</b>	683,900	2,117,874	1,433,974	210%
<b>Grand Total :</b>	<b>5,000,000</b>	<b>9,117,976</b>	<b>4,117,976</b>	<b>82%</b>



# Financial Report

	FY23			FY24	FY24-FY23	
	BUDGET	EST FINAL SPENDING	VARIANCE SAV/(DEF)	GOV	GOV-BUDGET	%
EMPLOYEE COMPENSATION	3,341,340	3,043,896	297,444	5,331,107	1,989,767	
EMPLOYEE TRAVEL	25,000	25,000	0	25,000	0	0%
CONTRACT EMPLOYEES	150,000	0	150,000	25,000	(125,000)	-83%
PAYROLL TAX/FRINGE	65,658	65,658	0	98,625	32,967	50%
OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS	74,975	74,975	0	138,200	63,225	84%
OFFICE SPACE LEASE	357,552	247,030	110,522	837,740	480,188	134%
CONSULTANTS/LEGAL SERVICES	435,000	233,089	201,911	435,000	0	0%
OFFICE FURNITURE/FIXTURES/EQUIPMENT	25,000	25,000	0	105,000	80,000	320%
OFFICE EQUIPMENT LEASE	0	0	0	4,430	4,430	
OFFICE MAINTENANCE/REPAIRS	0	0	0	0	0	
INFORMATION TECHNOLOGY	3,583,330	3,742,981	(159,651)	2,117,874	(1,465,456)	-41%
<b>Grand Total :</b>	<b>8,057,855</b>	<b>7,457,629</b>	<b>600,226</b>	<b>9,117,976</b>	<b>1,060,121</b>	<b>13%</b>





# FY24 Organizational Chart

Updated: 2/8/2023

