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# Payroll Public Records Exemption Policy

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## Executive Summary

This policy is issued jointly by the Office of the Comptroller (CTR) and the Human Resources Division (HRD) to provide guidance on the implementation of several exemptions limiting disclosure of employee information under the Public Records Law. Chief Fiscal Officers (CFOs), Human Resource Directors (HR Directors), and Records Access Officers are responsible for implementation of this policy

## Policy

Under the public records law, M.G. L. c. 4 § 7(26), an employee's name, title, salary and department are considered public records. If a public records request is made to a department or to the Office of the Comptroller (CTR), the department and CTR are required to provide this information, including electronically. Under this law, a person making a public records request cannot be asked the reason for the request, nor can the Commonwealth control how that individual uses or publishes this information. The home address and telephone number for government employees is not public, pursuant to M.G.L. c. 4 § 7 (26)(o) and the name, home address and home telephone number for family members of government employees is not public, pursuant to M.G.L. c. 4 § 7 (26)(p).

The personal safety of certain victims of adjudicated crimes or domestic violence, sexual assault or rape may be compromised when this type of information is released. For this reason, M.G.L. c. 66, § 10B exempts the following information from public records disclosure: the home address, telephone number, personal email address or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name, home address, telephone number, personal email address or place of employment or education of a family member of any of the foregoing.

Each department will have its own internal procedures related to responding to public records requests, including payroll requests, and will need to update these procedures to reflect this exemption. Each department will have to take steps to ensure that responses to requests are properly redacted to remove exempt information for employees who have claimed and been approved for these exemptions.

## Procedure

### Distribution of the Payroll Public Records Exemption Form

Each department must notify its employees of the availability of the Payroll Public Records Exemption Form in a manner determined by the department. If an employee wishes to request that their information be exempt from payroll public records requests made either to the department or to CTR for statewide payroll requests, they must submit the Payroll Public Records Exemption Form. The form

can be distributed in paper or by email. This form should be included in new employee orientation. Employees may submit this form and supporting documentation (if available) to their HR Director, General Counsel or, as the alternative, they have the option of contacting (in confidence) the HRD Labor Counsel Ashlee Logan at Ashlee.Logan@mass.gov who will facilitate the review. HR Directors will review the Payroll Public Records Exemption Form and supporting documentation, if any, to determine if that documentation reasonably supports that the employee is a victim of domestic violence, sexual assault or rape or an adjudicated (resolved) crime.

Please note that, because they represent the Commonwealth in a very public manner, elected officials and department heads are not eligible for this exemption.

## Exemption for Victims of Domestic Violence, Rape or Sexual Assault

Many victims of domestic violence, sexual assault, or rape typically do not want to disclose these issues to their employer due to concerns regarding confidentiality and privacy, or fear that their employment or opportunities will change or that they will be stigmatized.

The HR Director may ask the employee to submit either a signed statement outlining the circumstances and safety concerns or a copy of a protective order. If the employee is uncomfortable providing written documentation, the employee may provide a brief oral description to the HR Director identifying the need for the exemption due to safety concerns. The HR Director (or designee) may ask some questions to ensure that the request is legitimate, so that the exemption is provided only to eligible individuals. The HR Director should not offer legal advice, but may provide a list of resources related to domestic violence and may address an employee's needs or concerns for any workplace safety plans. Resources and training related to the Zero Tolerance Policy for Domestic Violence, Sexual Assault and Stalking are available through the Human Resources Division.

HR Directors have the discretion to approve or deny a request based upon the information presented by the employee. HR Directors are not expected to be experts regarding domestic violence issues and should use their best judgment. If they are uncomfortable with entering an exemption for either an employee or an employee's family member, the HR Director should seek guidance from HRD Labor Counsel Ashlee Logan at Ashlee.Logan@mass.gov.

Employees who are denied a request for exemption by their HR Director or General Counsel may contact HRD Labor Counsel Ashlee Logan for a final determination. Every effort will be made to make this determination quickly. If the exemption is approved, the HR Director will be notified and will be instructed to enter the exemption in the payroll system. An employee's information will be removed from the Commonwealth's financial records transparency platform (CTHRU) after the pay period in which it is approved. This may mean that there is up to a two-week lag between the date of approval and the removal of an employee's information.

Approval for this exemption does not equate to an approval for leave or benefits related to an underlying domestic violence matter.

Employees who are untruthful in their request for exemption from the public records law may be subject to disciplinary action.

## Exemption for Victims of Adjudicated Crimes

For victims of adjudicated crimes (crimes that have been resolved through the court system after an arrest has been made), the employee will need to provide some documentation of the case. This may include a trial report, prosecutor statement or other supporting documentation of the case and outcome. The fact that a case was dismissed does not negate the fact that the employee was a victim of a crime. Therefore, if the employee has been involved in a recent criminal case and they have imminent safety concerns, the HR Director will determine whether the exemption is appropriate.

If an employee is involved in a *current* criminal case and the employee has imminent safety concerns, the HR director will determine whether the exemption is appropriate. Since the goal is safety, if the employee would be eligible for the exemption once the criminal matter is resolved the exemption may be used to prevent disclosure of payroll information while the matter is pending.

## Exemptions for Family Members

If an employee qualifies under one of the exemptions, either as a victim of an adjudicated crime or as a victim of domestic violence, the employee may also request the exemption for any family member who work for a Commonwealth agency. The exemption can be applied only to employees in the state payroll system (not to employees of state authorities, quasi-public entities, municipalities or employees in the University of Massachusetts system who are not paid through the state payroll system). The employee must identify the legal name, department, and employee ID of the family member for the exemption flag to be entered for that employee's state payroll system record.

Eligible family members include the spouse, child, foster child, step child, parent, step parent, brother, sister, grandparent, or grandchild of either the victim or the victim's spouse, as well as any person for whom the employee is legal guardian a person living in the victim's immediate household. Friends or acquaintances of the employee are not eligible for exemption.

The exemptions under this form may be claimed solely by the victim. For privacy reasons, an employee who is a family member may not identify another individual who is a victim under either exemption to claim the exemption either for themselves or the victim. The employee (family member) may work with the victim to claim this exemption through the victim's department. If the victim is not a state employee, the victim will need to submit this form and documentation to the family member's HR Director requesting the exemption for the employee as a family member. In such circumstances, the family member must sign the victim's certification form.

If an employee who is a victim has an approved payroll public records exemption, they may request to add the exemption for a family member at any time. The victim must complete the form with the listed family member(s) and submit it to their department HR Director. The employee does not have to resubmit supporting documentation, since this will have already been reviewed. The HR Director may ask questions to confirm that the additional individuals are family members.

## What is the exemption flag?

The statewide payroll system includes an exemption indicator, which is used to identify employee records that are exempt from disclosure. The public records exemption page is included in the Personal Data record, and there is an accompanying security role - PUBLIC PUR U/D. Requests for access to this page must be routed through and authorized by the department HR Director due to the

confidential nature of the exemption status and to guard against misuse of the exemption program. Only HR Directors and/or their designee should enter public records exemptions into the payroll system. The exemption indicator is generic and does not identify the reason for the exemption, only that the employee has the exemption.

The indicator enables both your department and CTR to run warehouse queries in the Commonwealth Information Warehouse (CIW) to identify those employee records that should have the name, title and department redacted either for a departmental request at your department or by CTR for a statewide request.

If an exemption is approved, the HR Director or other authorized designees with appropriate security must enter the exemption flag for the employee in the state payroll system. (Please refer to the Job Aid.)

If family members are listed on the form and are employed by another department within the Commonwealth, the HR Director will not be able to enter the exemption in the state payroll system. The HR Director must notify HRD Labor Counsel Ashlee Logan first and then provide the request to HRD, which will facilitate the entry of the exemption for any listed family members.

## Retention of the Payroll Public Records Exemption Form and Supporting Documentation

The Payroll Public Records Exemption Form and any supporting documentation are not considered public records, are strictly confidential and may not be disclosed for any reason. All supporting documentation submitted for this reason should be reviewed by the department HR Director, and shall be maintained in a file separate from the employee's personnel file.

The completed and executed Public Records Exemption Form must be maintained in one confidential file within the department's Human Resources or General Counsel's Office, or a centralized location designated by the Agency Head/Cabinet Secretary or Appointing Authority.

If the forms are not submitted to your Human Resources or General Counsel's office, but are instead submitted to the Labor Counsel at HRD, the forms will be retained at HRD in a confidential file. The Labor Counsel at HRD will communicate the decision to grant an exemption to the Department Human Resource officer in writing.

## HR Directors, Chief Fiscal Officers (CFOs) and Records Access Officers must coordinate Payroll Information Requests

The Commonwealth is committed to compliance with public records statutes, including authorized exemptions. HR Directors must coordinate with their CFOs and Records Access Officers for all payroll information requests to ensure that this exemption is incorporated into their internal public records procedures.

With regard to statewide payroll inquiries and inquiries made to CTR for specific department payroll information or specific employees, before responding CTR will run a CIW query to identify all employees in the state payroll system that have this exemption indicator and redact the names, titles and departments of exempt employees from the public records produced, in accordance with G.L. c. 66, § 10B. Salary information may be released, but the employee's name and title will not be identified with

the salary amount.

Requests made directly to your department should be handled in accordance with your internal public records and payroll records policy. However, CFOs, HR Directors and Records Access Officers should work together to ensure that whenever a payroll request or other information request is made related to any employee with the exemption indicator, that employee's name, title, and department are redacted from the records disclosed.

If an employee has been approved for this exemption and wants to be notified if a request regarding that employee is made related to payroll information, they should make this request to the HR Director, who will coordinate with the Records Access Officer. Please be advised that, under the public records law, public records requests may be made anonymously, and a department cannot require any requestor to identify themselves or state the intended use for any information provided. HR Directors should coordinate with employees who have been approved for this exemption where there are requests for income verification or employment verification (e.g., mortgage applications, credit cards, school courses).

## Exemption Review Alert

An alert has been added to the state payroll system to indicate to authorized users that a current exemption must be reviewed by the department. An alert will appear for an employee with an existing exemption if:

1. The employee transfers to a different agency within the state government;
2. The employee changes positions within their existing department;
3. The employee leaves state service; or
4. Five years have passed since the exemption was granted.

If the first, second, or third circumstances occur, the authorized user must review this policy and contact the employee to determine if the exemption still applies based on current circumstances. If it does, no further action is required. Departments are reminded that, if an employee becomes an elected official or a department head, they are no longer eligible for this public records exemption. If the employee moves into one of these roles and has an existing exemption, the exemption must be removed.

If the alert appears because five years have passed since it was initially placed, the employee must be contacted by the department and asked to submit a new form for review if they want the exemption to continue.

# Information Sources

## Related Policy

- Executive Order No. 491: Policy for Zero Tolerance for Domestic Violence Legal Authority
- M.G.L. c. 4 § 7(26)
- M.G.L. c. 66 § 10B
- M.G.L. c. 7A (Office of the Comptroller)
- M.G.L. c. 29 (State Finance Law)
- M.G.L. c. 265 § 24C (Sexual Assault and Rape, Confidentiality)

## Attachments

- Process Public Information Exemptions Job Aid

## Forms

- Payroll Public Records Exemption Form

## Contacts

- CTR Solution Desk
- HRD Labor Counsel Ashley Logan: Ashlee.Logan@mass.gov