



## **Comments to MA Peace Officer Standards and Training (POST) Commission Responding to Draft Regulations on Databases and Dissemination of Information**

TO: Massachusetts Peace Officer Standards & Training (POST) Commission

FROM: CEO Action for Racial Equity

DATE: Monday, December 5, 2022

RE: Written Comments for Public Hearing on 555 CMR 8.00 Databases and Dissemination of Information

CEO Action for Racial Equity (CEOARE) applauds the MA POST's proposed regulations that endeavor to provide transparency into officer records. We recognize the need to balance the health and safety of law enforcement with the public's interest in knowing that honorable officers are policing their communities and we respectfully request the Commission consider the amendments and clarifications described below.

CEOARE is a coalition of over 100 signatory organizations from CEO Action for Diversity & Inclusion that mobilize a community of business leaders with diverse expertise across multiple industries and geographies to advance public policy in four key areas — healthcare, education, economic empowerment, and public safety. Its mission is to identify, develop and promote scalable and sustainable public policies and corporate engagement strategies that will address systemic racism and social injustice and improve societal well-being. Its focus is to improve the quality of life for the 47 million Black Americans through advocacy and advancement of solutions that seek to end systemic racism.

As a business coalition, we care about the health and safety of our employees and the Commonwealth's communities in which they work and live. We are working to eliminate the economic, educational, and public safety barriers to achieving optimal health for all residents. Healthy communities start with residents feeling safe in their homes and neighborhoods. Safety requires trusting relationships between law enforcement and the community members that the officers are sworn to protect. Advancing accountability databases is just one type of policy change that can improve law enforcement transparency and accountability.

CEOARE recently published a report, "*Advancing Transparency and Accountability: A Framework for a Law Enforcement Officer Accountability Database*" (the Report), which introduces our suggested framework for the design of accountability databases. As part of our work, we analyzed 15 existing and proposed databases, including the MA POST's proposed databases, through the lens of seven design elements, including the status of complaints collected, access to the records and the definition of misconduct.

Many of the MA POST's draft regulations align with the guidance in the Report. We agree that:



- **Select information on law enforcement misconduct should be publicly accessible.** Proposed regulation sections 8.05(1) and 8.05(2) outline the Commission's proposal to maintain a public database of information, searchable and accessible on the Commission's official website. We applaud the Commission for prioritizing the maintenance of a public and cost-free database of certain law enforcement information.
- **Misconduct information should be available on the individual officer level.** Proposed regulation section 8.05(4)(a) states that the proposed database will report certain information at the individual officer level. Our Report defines reporting at an individual officer level as one of the four key attributes of a law enforcement officer accountability database. We also support providing the functionality for users to aggregate certain data (i.e., 8.05(4)(b)) including the number of complaints at the agency level, as it could supplement the data.
- **Prioritize making information available in the public database so that accessing information through open records requests is minimal and as low cost as possible.** We encourage the MA POST to limit the instances where law enforcement officer data can only be accessed through public record requests rather than the public database. We support waiving the public records request fees as outlined in section 8.11(1) and 950 CMR 32.07(2)(k) based on a variety of criteria including the requester lacks the financial ability to pay the quoted fee. It should also be noted that access to important information can still be compromised when a requester must prove the existence of the waiver conditions.

We also respectfully ask the Commission to consider and clarify the following areas in the proposed regulations:

- **Recommend making publicly available the demographic information of the complainant and the officer, along with legal settlement costs, judgments and fees of misconduct cases.** Proposed regulation 8.05(4) provides the record details that should be collected and made available as part of the public database. While the list is fulsome, we also recommend that demographics of officers and complainants be included to support fairness and equity in policing. Demographics provide an opportunity for analysis to determine any potential bias in the conduct/misconduct of an officer. Where applicable, we encourage inclusion of legal settlement amounts related to misconduct. This allows for analyzing the cost of officer misconduct in individual jurisdictions and highlights settlements involving the same officers.
- **Recommend requiring MA POST or other appropriate state agency to conduct regularly scheduled audits of the complaint information reported by the local law enforcement agencies.** Effective audit and compliance procedures are critical to ensuring the information in a database is current, accurate and complete. 555 CMR 8.00 does not appear to specifically address audit and compliance of database information. We recommend incorporating regularly scheduled audits into the proposed regulations, 555 CMR 8.05. The final regulation should also clarify what, if any, incentives and disincentives (i.e., access to or restriction from state or local law

enforcement grants) will be used to confirm timely, accurate, and complete reporting to the databases by the local law enforcement agencies.

- **Recommend establishing a record retention policy for the MA POST's private and public-facing databases.** Establishing a definitive period for retaining records in a database is foundational for data management and governance. While different stakeholders can have different needs for lookback periods, we strongly discourage permanent deletion of records given the value of historical data in assessing trends over time. We recommend that if historical data is not viewable in the public-facing database, it is made accessible through other means. 555 CMR 8.0 does not currently specifically address database data retention requirement and the final regulation should. To the extent other state record retention policies would apply, as seems to be contemplated under 555 CMR 8.06, we recommend incorporating the applicable subsections of M.G.L. c. 66 in proposed regulation, 555 CMR 8.05.

We appreciate consideration of our viewpoints and thank you for the effort to implement a public database that strives to promote transparency and build trust between law enforcement and community members.

Sincerely,

CEO Action for Racial Equity

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## Citations

[1] [A Report of the DC Police Reform Commission](#), April 1, 2021, "Decentering Police to Improve Public Safety"; See also, DC Police Reform Commission – Condensed List of Recommendations, April 1, 2021

[2] [Code of the District of Columbia, § 1-301.191\(c\)\(6\)](#)

[3] [Police Reform Commission Report](#) recommended that MPD "revise its policies and stop purging disciplinary actions automatically from officers' personnel files after a set number of years." [April 1, 2021](#) at 174.

[4] Brenan, Megan, Gallup, August 12, 2020, "[Amid Pandemic, Confidence in Key U.S. Institutions Surges](#)"

[5] Policing Project New York University School of Law, June 1, 2020 "[Our Statement Regarding Policing in the United States](#)".

[6] [Police Reform Commission Report, April 1, 2021](#) at 157-58.

[7] Policing Project New York University School of Law, June 1, 2020

[8] Brandeis, Louis, D., Harper's Weekly, December 20, 1913, [Other People's Money-Chapter V: "What Publicity Can Do"](#)

[9] [Code of the District of Columbia § 5-1032](#)

[10] RC20-0010 – Correspondence from Metropolitan Police Department- "[Metropolitan Police Department's Report on Disciplinary Actions and Grievances for Calendar Year 2012](#)",



March 7, 2013

[11] [George Floyd Justice in Policing Act of 2021, H.R. 120, 117th Congress](#) (GFJPA) which passed the US House of Representatives in March 2021, but has stalled in the U.S. Senate, requires applicable federal, state and local law enforcement agencies to submit information to a registry every 6 months. See Section 201(c) and (d). GFJPA conditions a law enforcement agency's receipt of federal funds on the agency's compliance with the reporting requirements under the law. [South Carolina Senate Bill S124](#) also proposes authorizing the Law Enforcement Training Council to take punitive action against a law enforcement agency that refuses to implement and enforce compliance with the new training standards including issuing civil fines and excluding agencies from grant funding.

[12] Safe Communities Institute, (May 17, 2021). [The LEWIS Registry – A Q&A with Dr. Erroll Southers](#). USC Price Safe Communities Institute; See also, Troy Riggs, Former Public Safety Director Denver, CO and Former Public Safety Director and Chief of Police, Indianapolis, IN, interview with CEOARE, August 2021, stating *“Complete and publicly available data are key to creating meaningful police misconduct registries. Communities have a right to know whether officers, entrusted with protecting the public, have been terminated, resigned for any reason, or have a pending investigation against them. Transparency is the path to building trust and accountability in policing.”*

[13] [CA SB 16](#), 2021-2022, (California, 2021); and Press Release – State Senator Nancy Skinner (D-CA), September 30, 2021, [Governor Signs SB 16 to Expand Access to Police Records](#).

[14] [TX H.B. 3723](#), 87<sup>th</sup> Reg. Sess. (Texas 2021).

[15] NYU School of Law Policing Project [Draft Transparency Statute](#), VII. 2., February 8, 2021

[16] Code of the District of Columbia [§ 1-301.191\(c\)\(6\)](#)

[17] [Police Reform Commission Report](#) at 174

[18] [Police Reform Commission Report](#) at 175, citing footnote 698

[19] AL H.B. 411, 2021 Reg. Session, <https://legiscan.com/AL/bill/HB411/2021>

[20] About NDI, International Association of Directors of Law Enforcement Standards and Training, <https://www.iadlest.org/our-services/ndi/about-ndi>

[21] [§ 5-107.01\(f\) < D.C. Code < D.C. Law Library < Reader \(dccouncil.us\)](#)

[22] [FL H 1529](#), [IL HB 3653](#) and [CA SB 16](#)

[23] [MA Session Law – Acts of 2020 Chapter 253 No. Section 3](#) and [NC S300, Section 15](#)

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