

HOW TO PROTECT YOUR PRIVACY

The right to privacy is emerging as a major legal and social issue. Contemporary concern results from the documented misuse of governmental and corporate/private power in regard to record-keeping, computer database interfacing, investigations and the rapid growth in the technology of gathering personal information in both governmental and private institutions. Serious questions about potential misuse of vast quantities of stored personal data must be faced as we enter the 21st century.

Massachusetts has been uniquely involved in the development of the legal concept of the right to privacy since an article was published in the Harvard Law Review in 1890 by two Boston lawyers, Louis D. Brandeis and Joseph Warren. Later, Brandeis, as justice of the United States Supreme Court, articulated in a dissenting opinion the basic concepts of the constitutional right to privacy. The constitutional right to privacy has been a major development in American law in recent years.

GOVERNMENT RECORDS

Law

Both federal and state governments collect personal information about you. Some of it, such as welfare records, will indicate that you are a participant in a government program. Other records may be generated from a law enforcement investigation.

On the federal level, the Freedom of Information Act and the Privacy Act generally give you access to any records about you, including records of the FBI, unless such records were collected for purposes of a criminal investigation. Within Massachusetts, various laws, including the Fair Information Practices Act and the Public Records Law, give you a right of access to state government records. In addition to access, you also have the right to seek to protect against the dissemination of your federal and state governmental records.

Action

If you believe that any state or federal government agency has records concerning you and you want access to those records, contact the public information officer of the agency to request access. For FBI records, write the Freedom of Information/Privacy Act Section, J. Edgar Hoover Building, 10th and Pennsylvania Avenue N.W., Washington, D.C. 20535. Requests must include your place and date of birth, be notarized and accompanied by a fee. For information concerning Massachusetts law, contact the Supervisor of Public Records, Room 1719, One Ashburton Place, Boston, MA 02108.

CREDIT REPORTS

Law

Whenever you apply for credit, the potential creditor will probably seek a report about you from a credit-reporting agency. (Credit-reporting agencies are regulated by both federal and state law. With newly enacted amendments, the Massachusetts credit reporting laws generally provide greater protection to consumers' privacy.) A credit report will describe your credit history. Under Massachusetts law, credit-reporting agencies must give a clear, written explanation of all information in a credit report. Generally, credit information about you may be maintained in a credit report for only seven years.

You can discover the information contained in your credit report and challenge inaccuracies you believe exist. Whenever credit is denied because of a credit report, the creditor must inform you of that fact and supply the name and address of the credit-reporting agency, which prepared the report. If credit is denied, you are entitled to a free copy of the report from the reporting agency.

Action

If you want access to your credit file, first determine which credit-reporting agency has your file. The easiest way is to ask the creditor to which you applied for credit to give it to you. When you have obtained the name of the credit-reporting agency, you may request a copy of your credit report over the telephone by toll-free number or in writing. Currently, the law in Massachusetts stipulates that residents are entitled to one free credit report per year from each of the national credit-reporting agencies.

If you believe the information in the credit report is inaccurate or incomplete, request the credit-reporting agency to reinvestigate its information and change the credit report. The agency must reinvestigate and correct the erroneous information within 30 business days. The agency must provide you, free of charge, with a written report of the results of its reinvestigation within 10 business days after its completion. Additionally, upon your request, the agency must send the new report within 15 business days to all persons who have received the old one within the past two years for employment purposes, and within the past six months for other purposes. If the agency decides that it need not change your credit report, it must give you an opportunity to have your version of the facts placed in your file.

If you believe that a credit-reporting agency or creditor has not complied with its legal responsibilities, contact an attorney or the Office of the Attorney General, Commonwealth of Massachusetts, One Ashburton Place, Boston, MA 02108.

SCHOOL RECORDS

Law

State and federal laws and regulations protect a parent's right to inspect and copy school records in any educational institution that receives federal funds. This includes public and many private schools. In Massachusetts, you are entitled to inspect your public school records within two consecutive weekdays after your request, and students 14 years or older may have access to their own public school records. Eligible students or parents have the right to add information to the student record and request that the principal delete or amend information in the file. The principal must answer in writing to a deletion request within one week. If the request is denied, you may appeal to the superintendent.

INSURANCE AND EMPLOYMENT REPORTS

Law

When you apply for life insurance and occasionally when you apply for a job, an insurance company or an employer will want to learn details about your personal habits before determining whether to grant insurance or offer a job. A prospective employer or insurance company may ask a consumer-reporting agency to compile an investigative report. These reports are compiled from information about your reputation, personal characteristics and habits from investigations with neighbors, co-workers and associates. However, an insurance company may not include in its investigative report any information relating to or identifying your sexual orientation or that of a beneficiary or information relating to counseling for AIDS.

Before an insurance company or potential employer has an investigative report prepared about you, it must inform you that it intends to do so. Upon your written request, it must tell you the name and address of the company which will prepare the report and the nature and scope of the investigation. You have a right to dispute its accuracy. Insurance companies must provide a copy of the investigative report within 30 days.

If insurance or employment is denied as the result of information contained in the report, the insurance company or employer must tell you the name and address of the company that prepared the report. You also have a right to learn the substance of the report.

Action

If you are told that an investigative report is going to be prepared about you, be sure to ask for the name and address of the company which will prepare the report and the "nature and substance" of the investigation. Often the nature of the report sought appears in small print on an application. Be sure to look for such notices.

If you want to know what is in a consumer-reporting agency's

investigative report, proceed as described in the section on credit reports to obtain access. The challenge procedures are also the same.

MEDICAL INFORMATION

Law

The right of an individual to his or her medical records is a rapidly changing area of the law. This section of the pamphlet is meant to give general information on the laws regarding access to and control over general information on the laws regarding access to and control over medical records. For legal advice, you should seek the assistance of an attorney. Currently, Massachusetts law gives you an absolute right to see and obtain a copy of your medical records from a hospital. Regulations ensure you the right to either a summary or a copy of the records held by a private physician, at the doctor's discretion. However, individuals do not have an absolute right to their inpatient psychiatric records if held by facilities under the supervision of or licensed by the Department of Mental Health. Such records may be obtained by court order, through request by the patient's attorney or when the commissioner of the department determines that such release is in the patient's best interest.

When you apply for life insurance, the results of your physical examination will probably be sent to a data bank known as the Medical Information Bureau. If this happens, the insurance company will send you a notice that will include the address of the Medical Information Bureau. In addition, researchers, government agencies, computer agencies, Social Security and Medicare can all obtain access to your medical records without your knowledge.

Action

If you have been to a hospital and want access to your records, ask the hospital records librarian for permission to see your records. You or your attorney may obtain a copy of your records upon payment of a fee.

The decision to deny access to your inpatient mental health records may be appealed to the Department of Mental Health.

If you want access to and copies of your records from a particular physician, write the Medical Information Bureau, P.O. Box 105, Essex Station, Boston, MA 02112. If you find that some of the bureau's information about you is inaccurate, write them and request that the records be corrected.

CRIMINAL RECORDS

Law

While a person is in custody in a correctional facility and for a period of time after release, any member of the public may receive a record of that person's convictions from the Criminal History

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Systems Board for a fee. An individual may obtain access to his or her own records. In addition, over 6,000 private organizations have access to individuals' criminal records.

Massachusetts does have legislation in place to protect the confidentiality of criminal records. State law provides that adult criminal records may be sealed 15 years after conviction for a felony or 10 years after conviction for a misdemeanor if an individual has not been convicted of any criminal offense in the interim. Juvenile criminal records may be sealed three years after conviction, if an individual has not been convicted of any criminal offense in the interim. A person with a sealed record may answer "no record" to any question on an employment application concerning his sealed record. Massachusetts law also forbids employers to ask about juvenile records, misdemeanors more than five years old if the applicant has no convictions in the interim, a first conviction for certain minor offenses and any arrests which did not lead to conviction.

Action

If you have a criminal record and wish to see it, contact your local police department or the Criminal History Systems Board in Chelsea to obtain a Personal Criminal Record request form. If after seeing your record, you believe that it is incomplete or inaccurate, you may request a modification of the record by contacting the chief probation officer of the court where you were arraigned for the offense. If your request is denied, you may file a complaint with the Criminal History Systems Board. If you still have questions, contact the board's legal department. You may also file a complaint with the board if you believe information regarding your criminal record has been misused or your record has been given out to a person or agency not legally entitled to have access to it.

If you believe you are eligible to have your criminal record sealed, contact the Office of the Commissioner of Probation in Boston.

EMPLOYEE RECORDS

Law

Massachusetts law ensures employees the right of access to their personnel records when requested in writing to the employer. Any employer receiving a request from an employee shall provide the employee with an opportunity to review his or her personnel record.

It is unlawful for an employer to require a job applicant or employee to take a lie detector test as a condition of employment or continued employment.

Action

If you disagree with any information contained in your personnel record, such information can be removed or corrected if your

employer agrees to do so. If our employer does not agree to make the requested changes, you may submit a written statement explaining your position, which must be placed in your personnel record.

Through litigation, such as unemployment hearings and discrimination claims, an employee may also secure personnel records from an employer.

SOCIAL SECURITY NUMBER

Law

Many people feel that the Social Security number is a sort of national identification number and that this development threatens individual privacy.

Section 7 of the Federal Privacy Act of 1974 states that no government agency may require an individual to give his or her Social Security number for any purpose unless required by a federal law or regulation in effect before Jan. 1, 1975. However, as of a 1976 amendment, the act does not apply to government agencies for issues of general welfare, motor vehicles and taxes.

Many uses of your Social Security number are required by federal law. For example, it is required for income tax purposes and for certain welfare benefits. There are also a number of non-mandatory uses of the Social Security number. In Massachusetts, for example, the Registry of Motor Vehicles uses your Social Security number as your driver's license number. However, on request, the RMV will provide an alternative identification number on your driver's license. The RMV is not required by law to allow this service and is free to change this policy to require use of Social Security numbers on a license at any time. Massachusetts law prohibits any persons or business entities from requiring a person to provide a Social Security number for the purpose of accepting or cashing a check. For these purposes, the only personal information you are required to provide is your name, address, driver's license number or state identification card number and telephone number.

The privacy act does not affect use of the Social Security number by private organizations.

Action

If you don't want your Social Security number on your driver's license, you may request a different identification number when applying for your license, or you may amend your current license for a nominal fee.

When a governmental agency (whether federal, state or local) requests you to provide your Social Security number, ask if the collection of the Social Security number is mandatory. If not, you may decline to furnish the number.

This pamphlet is issued as a public service of the Massachusetts Bar Association and does not constitute legal advice, which can only be given by an attorney. The contents of this pamphlet pertain only to the laws of Massachusetts at the time of publication.

Legal assistance is available through the Massachusetts Bar Association services listed below.

■ Dial-A-Lawyer

Call and speak to an attorney, free of charge, on the first Wednesday of every month.

5:30–7:30 p.m. (617) 338-0610

■ Lawyer Referral Service

Open Monday through Friday, from 9 a.m. to 4:45 p.m., the Lawyer Referral Service helps solve legal problems by referring callers to lawyers or appropriate agencies. The LRS does not offer legal advice. There is no charge to use the service. To contact the LRS, call:

Boston area: (617) 654-0400

Toll-free: (866) MASS LRS (866) 627-7577

TTY: (617) 338-0585

E-mail: LRS@massbar.org

Web site: MassLawHelp.com

■ Legal Fee Arbitration Board

When your attorney's fee is in dispute, call:

Statewide: (617) 338-0552

E-mail: FAB@massbar.org

Web site: www.MassBar.org/LawHelp

■ MassLawHelp.com

Free legal information and online referrals to attorneys is available on the Massachusetts Bar Association's Web site at www.MassLawHelp.com.

■ Speakers Bureau

Whether you're looking to educate your group or class about a particular area of law or trying to add variety to your regular meetings, the Massachusetts Bar Association Speakers Bureau is your solution. Speakers Bureau attorneys are available for free presentations on a wide variety of legal topics.

Statewide: (617) 338-0571

E-mail: communityservices@massbar.org



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