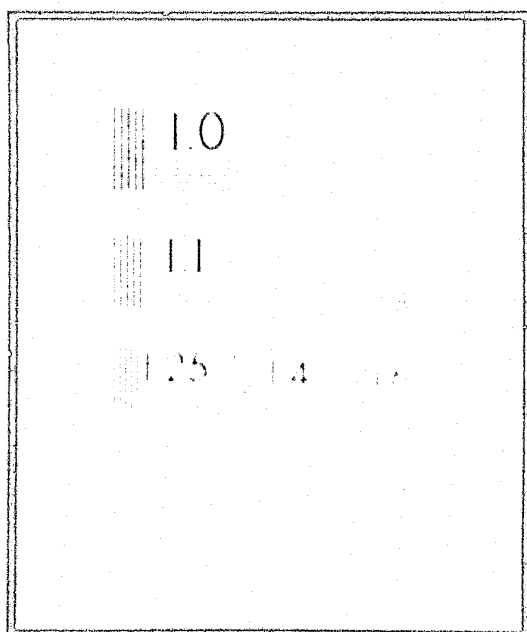


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PRIVACY IN MASSACHUSETTS:

YOUR RIGHTS UNDER THE LAW

GOVERNOR'S COMMISSION ON PRIVACY AND PERSONAL DATA

NOVEMBER, 1974



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

FRANCIS W. SARGENT  
GOVERNOR

The following booklet detailing your right to personal privacy in Massachusetts is as important as any such compendium of individual rights ever put together in Massachusetts.

The right to privacy is the most comprehensive of all rights and the foundation upon which many other rights rest including freedom of speech, due process, the right of assembly and association, and more.

In this day of vastly improving communications and computer technology, the right to privacy is being threatened as never before. Recent events have shown us that the very government that is supposed to protect our rights as American citizens has done the opposite. Instead of protecting privacy, it has been building massive, uncontrolled data banks and too often been found to be actually encouraging break-ins, bugging and illegal surveillance, all designed to deny us this right.

Information is power. Used properly, it can help government provide needed services. Used without safeguards and unchecked, it can be used against the innocent. The more government knows about the activities, habits and associations of individual citizens, the more it can monitor and control those activities. A "chilling factor" takes effect, convincing citizens that perhaps they ought not to speak out, or protest their government for fear of repercussions whether it be cancelled credit to data stored in government dossiers that will insure against future employment.

To counteract this danger, citizens must know what their right to privacy is and protect that right. That is what the following booklet does. It details what Massachusetts' citizens' rights to privacy are in a variety of information - gathering contexts, whether it be in the context of credit information, mental health records, education files or others.

Although this Commonwealth has led the nation during the past several years in protecting personal privacy and challenging abusive federal and state information practices--including many federal computerized data banks--like most rights, the best defender of personal privacy is each and every individual citizen.

*Arthur D. Miller*

*Francis W. Sargent*

Chairman  
Governor's Commission on Privacy  
and Personal Data

SECRET

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STATUTORY RIGHTS

You have the right to be protected against unreasonable, substantial, or serious interferences with your privacy.

(G.L. c. 214, s. 1B) You have the right to be protected against unapproved use of your name or likeness.

(G.L. c. 214, s.3A)

I. Public Records

A public record is any document which is made or received by any official of the Commonwealth. All records are presumed public unless exempted by law. Among the statutory exemptions are any trade secrets or medical information pertaining to individuals, any information relating to inter-agency policies or regulations, and any information which may cause an invasion of privacy of a named individual. (G.L. c. 4, s.7, clause 26)

Records kept by the Massachusetts Civil Service Commission are open to the public with the exception of individual scores obtained on exams and the examinations themselves.

An applicant's examination may only be inspected by the applicant or his authorized agent if the applicant or his authorized agent agrees in writing that they will not divulge any information regarding the exam. Such inspection must be made within seventeen days after the results of the exam have been mailed to the applicant.

(G.L. c. 31, ss. 29 & 12A as amended by St. 1973, c. 320, ss. 9 & 8)

All vital statistics are public records except for records of illegitimate births, abnormal sex births, fetal deaths, intent to marry, and marriage records where a physician's certificate has been filed. These records are available only to a person who wishes to see his own record, his parent, guardian, or attorney, or those who need such records for their official duties. (G.L. c. 46, s. 2A)

You have the right to inspect any public record at a reasonable time under the supervision of the record keeping agency, and to receive one copy upon payment of a reasonable fee. (G.L. c. 66, s.10(a))

If a government agency fails or refuses to comply with a written request to inspect a public record after 20 days, you have a right to take legal action. (G.L. c. 66, s.10 (b))

## II. Credit Records

A consumer report is a report which contains information concerning a consumer's credit worthiness, credit standing, or credit capacity. An investigative report is a report which contains information concerning a person's character, general reputation, personal characteristics, or mode of living where the information is obtained through personal interviews with neighbors, friends, or associates of the person. (G.L. c. 93, s. 50)

A consumer reporting agency may only give out a credit report it has prepared about you to persons to whom you have applied to for credit, insurance, government benefits, or to your employer. (G.L. c. 93, s. 51)

A consumer reporting agency may not include in any report about you most adverse financial information which occurred seven years before the report is made, or bankruptcies which occurred fourteen years before the report is made. (G.L. c. 93, s. 53)

A consumer reporting agency must tell you within three days after it has received a request for an investigative report about you that it is going to prepare such a report. (G.L. c. 93, s. 53)

You have the right to request a consumer reporting agency to tell you the nature and scope of any investigative consumer report prepared about you. (G.L. c. 93, s. 53)

You have the right to know the nature, contents, and substance of all information, except medical information, kept about you in a credit report by a consumer reporting agency, and to know the sources and recipients of any consumer report prepared about you. (G.L. c. 93, s. 56)

You have the right to challenge information kept about you by a consumer reporting agency and ask them to reinvestigate the accuracy of their information. Should they not correct information which you believe to be inaccurate, after a reinvestigation, you have the right to take legal action to obtain such correction, and to insert a statement of clarification into your record. (G.L. c. 93, s. 58)

If your credit or insurance for personal, family, household purposes, or employment is denied, terminated, or the charges are increased, you have the right to know if it was because of information provided by a consumer reporting agency and the name of such agency. (G.L. c. 93, s. 62)

### III. Education Records

If you are a student in a public elementary or secondary school and are eighteen years or older, you have the right to inspect your school record. If you are under eighteen, your parents or guardian may see your record. However, this does not apply to private schools. (G.L. c. 71, s. 34E)

You have the right to have all non-academic information kept by a public school destroyed four years after the student leaves the school. (G.L. c. 71, s. 34F)

You have the right not to furnish information to any educational institution about any prior violations of the law which did not result in conviction, or any first convictions for certain types of misdemeanors, or any conviction for a misdemeanor which occurred prior to the date of application for admission. (G.L. c. 151C, s.2(f))

All special education records, evaluations, and assessments of students are confidential. (G.L. c. 15, s 1M and c. 71B, s. 3)



IV. Medical Records

You have the right to inspect your medical records kept by a hospital or clinic upon the payment of a reasonable fee. (G.L. c. 111, s. 70)

Your medical records kept by hospitals or clinics may be destroyed 30 years after your final treatment. (G.L. c. 111, s. 70)

All rehabilitation information and records that might be kept about you by the Massachusetts Rehabilitation Commission are confidential and available only to employees of the Commission, or agencies which are directly involved in the rehabilitation of the Commission's clients. You or your attorney may have access to information kept about you by the Commission at the Commission's discretion. (G.L. c. 6, s. 84)

The Department of Public Health and the various boards of Public Health maintain records on contagious diseases, children with congenital deformities, cerebral palsy, venereal disease, lead poisoning, and burns from fabric ignition. These records are not open to the public with the exception of burn records, or lead poisoning records which do not contain the name of the person poisoned. (G.L. c. 111, ss. 67E, 111A, 119, 191, 200)

V. Mental Health Records

You have the right to have your attorney or guardian inspect your mental health records and you have the right to inspect your own mental health records provided the Commissioner of Mental Health decides it is in your best interest to do so. (G.L. c. 123, s. 36 as amended by St. 1974, c. 348)

VI. Welfare Records

Your welfare records may be disclosed to you or your authorized agent at the discretion of your case worker.

(G.L. c. 66, s. 17A)

Those who can see your welfare records are: members of the state legislature, representatives of the federal government, or employees of the Department of Public Welfare. (G.L. c. 66, s. 17A)

The Department of Public Welfare maintains records of all child abuse incidents. These records are confidential and available only to the agency or person making the report, the child's parents, guardian, or attorney, the appropriate review board or the social worker assigned to the case. (G.L. c. 119, s. 51E)

The Department of Public Welfare maintains a central registry of complaints of alleged child abuse. Information in the registry is available at the discretion of the Commissioner. (G.L. c. 119, s. 51F)

Your welfare records must be destroyed ten years after the discontinuance of aid. (G.L. c. 66, s. 17A)

## VII. Criminal Records

The following chart, prepared by and used with the approval of The Civil Liberties Union of Massachusetts, details how to get a record sealed and tells what that means.

This chart applies only to people charged under Massachusetts law. If you don't find yourself in one of the following categories, you have no sealing rights

"Sealing" means changing your record so that you have no criminal record in the eyes of the public. Only the police and the courts have limited access to the information. Generally, you can have your record sealed only after all court proceedings have ended, all fines paid and all jail or prison terms or probation or parole periods are completed.

"Misdemeanor" means a crime for which the maximum sentence is 2½ years or less. Imprisonment in jail or house of correction.

"Felony" means a crime for which the maximum sentence is over 2½ years. Imprisonment in state prison.

References in parentheses are to Massachusetts statutes, which appear in two forms: codified laws, the General Laws, for which citations are to chapter and section, e.g., c. 276 s. 100A, and the session laws, for which citations are to chapter and the year of passage, e.g., c. 1102 of '73.

With respect to most drug crimes, it can be important whether or not the complaint or indictment was initiated before, or on or after, July 1, 1972, because on that date the new drug law, G.L. c. 94C, went into effect. Therefore, in this chart when that date is mentioned, the date of initiation is what is meant. Thus "Not convicted, before 1972" means "In a case initiated before 7/1/72, you were not convicted."

In this chart "probation only" is the same as saying "successful completion of probation."

## \*Types of action defined:

**1** Call or write the Office of the Commissioner of Probation (OCP), Court House, Boston, Massachusetts, 02108 (617-727-5300) for a sealing form; fill it out; file it with OCP. You will be notified when your record has been sealed. Allow about one month.

**2** Petition the original court of action. Advisable to consult a lawyer.

**3** Petition the original court of action. No lawyer necessary.

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If you have any questions which these charts do not answer, contact the OCP.

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Chart prepared with assistance from the staff of the Real Paper.

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**ALL CRIMES**

	<b>Factual situation</b>	<b>Sealing right</b>	<b>*Action to take</b>
Felonies	A. Convicted and the last relevant proceeding took place 15 years ago or more. (Not applicable to certain offenses, such as those relating to firearms, bribery, perjury or aiding in the escape or misconduct of prisoners. You must not have been convicted of any other crimes in the interim, including traffic offenses for which the maximum possible penalty exceeds a \$50 fine.)	Right to have record sealed (c. 276 s.100A (c.525 of '74))	<b>1</b>
	B. Not guilty, no indictment or no probable cause.	Right to have record sealed (c.276 s.100C).	<b>1</b>
	C. Otherwise not convicted, i.e., dismissed by court (or continued without a finding and then dismissed) or not pressed (dropped by prosecution).	Chance to have your record sealed "if it appears to the court that substantial justice would be served" (c.276 s.100C).	<b>2</b>
	D. Felony which has since become a misdemeanor. (For some examples, see DRUG CRIMES)	Rights are the same as if the offense had always been a misdemeanor (c.276 s.100A).	See below where appropriate.
Misdemeanors	E. Convicted and the last relevant proceeding took place 10 years ago or more. (Not applicable to certain offenses, such as those relating to firearms, bribery, perjury or aiding in the escape or misconduct of prisoners. You must not have been convicted of any other crimes in the interim, including traffic offenses for which the maximum possible penalty exceeds a \$50 fine.)	Right to have record sealed (c.276 s.100A)	<b>1</b>
	F. Not guilty, no indictment or no probable cause.	Right to have record sealed immediately (c.276 s.100C).	<b>1</b>
	G. Otherwise not convicted, i.e., dismissed by court (or continued without a finding and then dismissed) or not pressed (dropped by prosecution).	Chance to have record sealed "if it appears to the court that substantial justice would be served" (c.276 s.100C).	<b>2</b>
Other	H. Juvenile delinquency — convicted and the last relevant proceeding took place 3 years ago or more. (You must not have been convicted of any other crimes or delinquencies in the interim, including traffic offenses for which the maximum possible penalty exceeds a \$50 fine.)	Right to have record sealed (c.276 s.100B).	<b>1</b>

DRUG CRIMES

Possession of any drug	J. Convicted, before 7/1/72, not marijuana	Was felony; now misdemeanor (c.94C s.34). Must satisfy sealing conditions in E	1
	J. Convicted, on or after 7/1/72, second or subsequent offense and/or fined or sentenced	Must satisfy sealing conditions listed in E	1
	K. Convicted, on or after 7/1/72, not marijuana, first offense, probation only.	Court may seal Discretionary with the court (c.94C s.34).	2
	L. Not convicted, before 7/1/72.	Refer to either F or G in chart for ALL CRIMES.	1 if F, 2 if G.
	M. Not convicted, on or after 7/1/72	Right to have record sealed immediately (c.94C s.44).	3
Marijuana offenses	N. Convicted, before or after 7/1/72, of sale, possession with intent to sell, manufacture or gift.	Was felony; now misdemeanor (c.94C s.32). Must satisfy sealing conditions in E	1
	O. Not convicted of same, before 7/1/72.	Refer to either F or G in chart for ALL CRIMES.	1 if F, 2 if G.
	P. Not convicted of same, on or after 7/1/72.	Right to have record sealed immediately (c.94C s.44).	3
	Q. Convicted, before 7/1/72, of possession only, second or subsequent offense.	Was felony; now misdemeanor (c.94C s.34). Must satisfy sealing conditions in E	1
	R. Convicted of same, before 7/1/72, first offense	Right to have record sealed immediately (c.1102 of '73)	3
	S. Convicted of same, on or after 7/1/72; second or subsequent offense and/or fined or sentenced	Must satisfy sealing conditions in E	1
	T. Convicted of same, on or after 7/1/72; first offense and probation only	Right to have record sealed immediately (c.94C s.34).	3
Being present where heroin is found	U. Convicted, before 7/1/72	Was felony; now misdemeanor (c.94C s.35). Must satisfy sealing conditions in E	1
	V. Not convicted, before or after 7/1/72.	Refer to either F or G in chart for ALL CRIMES.	1 if F, 2 if G.
	W. Convicted, on or after 7/1/72; second or subsequent offense and/or fined or sentenced	Must satisfy sealing conditions in E	1
	X. Convicted on or after 7/1/72, first offense and probation only.	Right to have record sealed immediately (c.94C ss.34 & 35).	2
Other	Y. Being present where any drug other than heroin is found	No longer a crime as of 7/1/72 (s.2 of c.1071 of '71). Right to have record sealed immediately (c.276 s.100A)	1
	Z. Drunkenness	No longer a crime as of 7/1/73 (s.11 of c.1076 of '71). Right to have record sealed immediately (c.276 s.100A)	1

If you have a sealed record, you may answer "no record" to any person who inquires whether you have even been arrested or convicted of a crime. (G.L. c. 276, s.100A and 100C)

It is illegal for an employer to request information from an applicant for employment or to discriminate in hiring, promotion, or transfer against you if you do not furnish information concerning an arrest which did not result in conviction, a first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or of conviction of a misdemeanor where the date of such conviction or termination of incarceration, whichever is later, occurred more than five years prior to the request for information. (G.L. c. 151 B, s. 4, par.9)

VII. FEDERAL LAWS

A. Wiretapping and Electronic Surveillance

You have the right to suppress any evidence in a court of law if it was obtained from a wiretap or surveillance of your communications and was not authorized by the U.S. Attorney General and a federal judge, or a state Attorney General and a state or local judge. Exceptions to this requirement may be made for reasons of national security. (18 U.S.C.A. s. 2518 (10) (a) (1968))

However, evidence which was obtained from a conversation you had with another person who was being wiretapped or under surveillance illegally may be introduced into a court of law. (18 U.S.C.A. s. 2518 (7) (a) (1968))

You have the right to sue in a court to recover damages due to an illegal wiretap or surveillance. (18 U.S.C.A. s. 2520 (1968))

You must be notified if an application is made to intercept your communication either within 90 days after such application is denied or within 90 days from the end of the period in which your communications were intercepted. (18 U.S.C.A. s. 2518 (8) (d) (1968))

In addition there is a Massachusetts statute which permits wiretapping by state law enforcement officials only for the purposes of investigating organized crime. (G.L. c. 272, s. 99)



B. Mailing Lists

You have the right to:

- 1) Prohibit any particular mailer from sending you advertisements which you believe to be erotically arousing or sexually provocative.
- 2) Direct such a mailer to delete your name from all mailing lists owned or controlled by the mailer.
- 3) Prohibit the mailer from the sale, exchange, rental, or other transactions involving mailing lists which bear your name. (39 U.S.C. 3008 (1970))

You have the right to specify to the Postal Service that you do not wish to receive sexually oriented advertisements through the mail. Ask the Post Office for Postal Service Form 220. (39 U.S.C. 3010 (1970))

The Direct Mail Marketing Association prepares monthly a list of those people who wish to have their names stucken from mailing lists. To take advantage of the DMAA's Mail Preference Service write to the Association's headquarters at 6 East 43rd Street, N.Y., N.Y. 10017.

C. Military Discharge Codes

All veterans who were discharged from their service of duty before March 22, 1974 have a three number code in Box 11-C of their discharge form (DD-214). Such a code gives the circumstances of the discharge and it is called a "Separation Program Number". Even though you may have an honorable discharge, your coded "SPN" may have adverse effects on your future employment prospects. Although the code is supposed to be confidential, many employers do know the meaning of the code. Some codes may indicate "apathetic attitude", or "marginal producer", or sexual preference.

Since the military has dropped the code, it will now issue new discharge papers without the code, if you request that it be done. Such requests should be addressed to the particular branch of service you were in at their headquarters in Washington, D.C.

D. Social Security Number

The Social Security Number was developed by the Social Security Administration as an identifier for contributors to the social security system. In recent years many other organizations, both public and private, including the Massachusetts Registry of Motor Vehicles, banks, and insurance companies have adopted the Social Security Number as the means for identifying their clients. Since no statute currently governs the use of the Social Security Number, these agencies are free to adopt the Social Security Number and to deny services to people who refuse to furnish their Social Security Number.

GOVERNOR'S COMMISSION ON PRIVACY AND PERSONAL DATA

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**END**

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