

Rules and Procedures

Rule 307

November 27, 2007

Rule 307 - SECURITY OF CRIMINAL OFFENDER RECORD INFORMATION (CORI) AND THE PUBLIC RECORD LAW (PRL)

This rule is issued to ensure compliance with Massachusetts General Laws Chapter 6, Sections 167-178 and the Code of Massachusetts Regulations, Title 803, Chapter 2.04. These statutes and policies outline the regulations and liabilities associated with Criminal Offender Record Information (CORI). This rule is effective immediately, superseding all rules, orders, bulletins and other directives previously issued in connection with the release of CORI. In conjunction with this rule, members of the Department shall also adhere to the guidelines issued in Rule 300, News Media Relations – Release of Official Information.

Sec. 1 GENERAL CONSIDERATIONS: The policy of the Boston Police Department with regard to the release of official information to the news media and other persons interested in Departmental activities has been set forth in Rule 300, News Media Relations – Release of Official Information. However, since the Acts of 1973, Chapter 1050, gives the public the right of access to certain public records, and M.G.L. Chapter 6 exempts Criminal Offender Record Information from public access, the Department is obliged to protect its personnel from civil and criminal liabilities that may result from the improper disclosure of protected records. All Boston police officers are eligible to receive Criminal Offender Record Information in the course of their official duties. However, having obtained such information, no police officer shall give, furnish, or disseminate, directly or indirectly, any probation records or other criminal offender record information except as authorized by this rule. The Department will thoroughly investigate any and all instances of the unauthorized release of CORI information, as conveying the contents of an individual's probation or police record to any unauthorized person or agency may result in civil and criminal liability.

Sec. 2 DEFINITIONS: For the purposes of this rule, pursuant to M.G.L. c. 6 §§ 168-178 and 803 C.M.R. 2.00 – 9.00, the following definitions shall apply:

A. Criminal Justice Agencies – those agencies at all levels of government which perform as their principal function, activities relating to crime prevention, including research or the sponsorship of research; the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or the collection, storage, dissemination or usage of CORI.

B. Criminal Offender Record Information – records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. This includes photographs and fingerprints, which are recorded as a result of the initiation of a criminal proceeding. CORI does not include:

- **Statistical Records and Reports** – CORI shall not include statistical data in which individuals are not identified and from which identities are not ascertainable.
- **Juvenile Data** – CORI shall not include information concerning a person who is under the age of 17 years unless that person is prosecuted criminally as an adult.
- **Intelligence Information** – CORI shall not include records and data compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by a criminal justice agency for the purpose of investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility. This information may still be protected from public disclosure, per the investigatory exemption to the Public Records Law. Contact the Office of the Legal Advisor prior to releasing this information to a member of the public.
- **Information Regarding Minor Offenses** - CORI shall not include information concerning offenses that are not punishable by incarceration.
- **Photographs or Fingerprints of an Unidentified Individual** – CORI shall not include photographs, fingerprints, or other identifying data of an individual used for investigative purposes if the individual is not identified. This information may still be protected from public disclosure, per the investigatory exemption to the Public Records Law. Please contact the Office of the Legal Advisor prior to releasing this information to a member of the public.
- **Information of a Deceased Individual** – CORI shall not include information regarding a deceased individual. Restrictions on the access to and dissemination of an individual’s CORI terminate upon his / her death.

C. Criminal History Systems Board (CHSB) – the entity which is given the duty of promulgating regulations regarding the collection, storage, dissemination and usage of CORI.

Sec. 3 AGENCIES ALLOWED TO RECEIVE CORI: M.G.L. Chapter 6, Section 172 provides that CORI may be disseminated, whether directly or through an intermediary, only to:

- A. Criminal justice agencies;
- B. Other agencies and individuals required to have access to such information by statute including US Armed Forces recruiting offices for the purpose of determining whether a person enlisting has been convicted of a felony;
- C. The active or organized militia of the commonwealth for the purpose of determining whether a person enlisting has been convicted of a felony; and
- D. Any other agencies and individuals where the CHSB has determined that the public interest in disseminating such information to these parties clearly outweighs the interest in security and privacy.

Sec. 4 PUBLIC DISSEMINATION OF CORI: The public dissemination of CORI is allowed under the following circumstances:

A. Victim receipt of CORI – M.G.L. Chapter 6, Section 178A provides that a victim of a crime, a witness, or a family member of a homicide victim, all as defined by M.G.L. Chapter 258B, Section 1, shall be certified by the CHSB, upon request, to receive CORI, provided that the request for said information relates to the offense in which the person was involved;

B. Contemporaneous with investigation - A criminal justice agency with official responsibility for a pending criminal investigation or prosecution may disseminate CORI that is specifically related to and contemporaneous with an investigation or prosecution;

C. Contemporaneous with search for person - A criminal justice agency may disseminate CORI that is specifically related to and contemporaneous with the search for or apprehension of any person; and

D. Information regarding incarceration / custody status – A criminal justice agency with jurisdictional responsibilities for an offender shall release information regarding an individual's custody status and placement within the criminal justice system where:

- The individual named in the request or summary has been convicted of a crime punishable by a term of imprisonment of 5 years or more or has been convicted of any crime,
- Sentenced to any term of incarceration, and
- At the time of the request:
 - o Is serving a sentence of probation or incarceration; or
 - o Is under the supervision of the Parole Board; or
 - o Having been convicted of a misdemeanor has been released from all custody or supervision for not more than one year; or
 - o Having been convicted of a felony has been released from all custody or supervision for not more than two years; or
 - o Having been sentenced to the custody of the Dept. of Correction has finally been discharged there from, either having been denied release on parole or having been returned to penal custody for violation of parole, for not more than three years.

Sec. 5 LIABILITY FOR UNAUTHORIZED DISCLOSURE OF CORI:

A. Civil Liability – M.G.L. Chapter 6, Section 177 sets forth the civil liabilities that may be incurred by those who willfully communicate CORI to anyone not authorized to receive it.

B. Criminal Liability – M.G.L. Chapter 6, Section 178 states “[a]ny person who willfully requests, obtains or seeks to obtain CORI under false pretenses, or who willfully communicates or seeks to communicate CORI to any agency or person except in accordance with the provisions of sections 168-175, inclusive, or any member, officer, employee or agency of the board or any participating agency, or any person connected with any authorized research program, who willfully falsifies CORI, or any records relating thereto, shall for each offense be fined not more than \$5000.00, or imprisoned in a jail or house of correction for not more than one year, or both.”

Sec. 6 PROCEDURES: Members of the Department shall strictly adhere to the following procedures to maintain the security of CORI:

- A.** Members of the Department who are not assigned to the Identification Unit shall not give, furnish or disseminate, directly or indirectly, any CORI to any individual or agency outside the Department. However, members of the Department may disseminate CORI to criminal justice agencies with whom the Department is engaged in a criminal investigation. Members shall refer any agency or individual seeking such information to the Identification Unit.

- B.** The Attorney General of Massachusetts has notified all local licensing bodies and all other non-criminal justice agencies authorized to receive CORI by the CHSB not to make record requests through local police departments or the Massachusetts State Police. Department personnel who furnish CORI to such non-criminal justice agencies may be subject to the civil and criminal sanctions of M.G.L. Chapter 6, Sections 177 and 178. Personnel shall refer all non-criminal justice agencies to the CHSB for access to CORI.

Sec. 7 REQUESTS FOR CORI BY OUTSIDE AGENCIES: Identification Unit personnel shall only honor requests for CORI from non-federal outside criminal justice agencies certified by CHSB when the requests are in writing, whether by Teletype or US Mail. The Identification Unit will also honor e-mails with confirmed government URL and faxes with appropriate agency letterhead. The Identification Unit will not honor walk-in requests. Identification Unit personnel shall provide CORI to federal law enforcement agents on a walk-in basis upon proof of identity. Identification Unit personnel in doubt as to the eligibility of a person(s) to receive CORI shall contact the Office of the Legal Advisor for guidance.

Sec. 8 RECORD OF CORI REQUESTS: M.G.L. Chapter 6, Section 172 mandates that each agency holding or receiving CORI shall maintain, for such period as the board shall determine, a listing of the agencies or individuals to which it has released or communicated such information. From time to time, the CHSB or council may review such listings, or reasonable samples thereof, to determine whether any statutory provisions or regulations have been violated.

Except as otherwise provided, each time Department personnel request criminal or non-criminal records or photographs from the Identification Unit's Records Section, they shall complete BPD Form 0032-BIS-0107. The Records Section shall provide this form and after completion, shall maintain it in Section files. This applies to telephone (intradepartmental) and walk-in requests.

Sec. 9 REQUESTS TO THE IDENTIFICATION UNIT BY BOSTON POLICE PERSONNEL: Requests by members of the Department for CORI and/or photographs can be made in person or by telephone. In all cases of telephone requests in which the requesting officer is unknown to the Identification Unit/Records Section person receiving the call, the Identification Unit/Records Section person shall return the call to verify the identity of the requesting officer before any information is released. He/she shall call the place of assignment of the requesting officer, or

his/her assigned department cell phone to verify the officer's identity, not his/her home or a private telephone number. Identification Unit/Records Section personnel shall complete a copy of BPD Form 0032-BIS-0107 each time Boston Police personnel request information and maintain this form in Section files.

Sec. 10 SPECIAL SEARCHES: The Identification Unit's Record Section' files may be searched by the following persons without the assistance of the Section's personnel. They shall not be required to sign for necessary information; however, records shall not be removed from the file room:

- § Chief, Bureau of Professional Standards and Development, and his/her designee
- Commanding Officer, Homicide Unit, and his/her designee

Sec. 11 CJIS ACCESS: The data stored in the CJIS is documented criminal justice information and must be protected to ensure correct, legal, and efficient dissemination and use. Only law enforcement and criminal justice personnel in the performance of their authorized criminal justice activities can obtain information from or through CJIS.

Department personnel must be certified by the Criminal History Systems Board to access Board of Probation (BOP) records electronically through the CJIS Mobile Data Terminal System. In addition, all CJIS terminal and Mobile Data terminal operators must be re-certified once every two years.

The CJIS Automated Board of Probation file was created to provide users with on-line access to both the adult and juvenile arraignment and disposition data maintained by the Office of the Commissioner of Probation. Information provided in response to a BOP query is CORI.

Sec. 12 PUBLIC RECORDS LAW: M.G.L. Chapter 4, Section 7 (26) provides that every record of a city, town or state agency is deemed public, unless an exemption under the Public Records Law (PRL) applies. M.G.L. Chapter 66, Section 10 states that if the agency can demonstrate that any of the PRL exemptions apply to a record, the specific information must be redacted and the remaining information is deemed public and must be disclosed. CORI falls within the "statutory exemption" of the PRL. **All PRL requests must be referred to the Public Information Office in Headquarters, or to the Office of the Legal Advisor.**

Edward F. Davis
Police Commissioner