

TO: NEPBA Massachusetts Local Members
FROM: Chris Ryan, NEPBA President & Nolan | Perroni, PC, Legal Counsel
RE: P.O.S.T. Discipline Records Database
ERROR/ CORRECTION PROCESS

We have been flooded with calls and emails about the POST disciplinary records publication yesterday. I have been working closely with Gary and Peter (Nolan Perroni PC) to lay out some first steps in combatting this latest injustice. Please take the time to print and read this entire memo and follow its steps for affected members. It's long, but hopefully it will be helpful.

Putting aside for a moment the issue of how such a blanket and misleading data dump is both irresponsible and horribly unfair to our members, we have seen several errors on the public list, including discipline that was vacated, overturned, exonerations, involved non-reportable matters (i.e. verbal reprimands, minor policy and conduct unbecoming matters), and even involved officers retired in good standing – all of which, by POST's own rules, are excludable from reporting.

Making this more egregious, even POST's website includes a disclaimer that the information may in fact not be accurate, may contain omissions', inconsistencies, defects, and that they cannot guarantee the accuracy, etc. – and that they are relying on the local agencies reporting data. **At a minimum, before publicizing such harmful materials, POST should demand that materials provided to it be certified as updated, complete, true and accurate by the agency submitting them – anything less is grossly negligent and damaging to our members.** For example, we have seen already multiple cases that are reported on the POST site where we know that discipline was vacated, ordered rescinded, was unsustainable, ordered removed from personnel records, or was subject to an agreement to correct IA files to exonerate officers.

ACTION ITEM LIST

1. CONTACT POST TO DEMAND ACCOUNTABILITY:

POST is not a newspaper that can simply publish information that someone passed along to it and disclaim responsibility for its accuracy – it should demand a guarantee of accuracy and completeness from the agencies. Our members and our locals should make this demand to their local legislative representatives, and to POST directly. The POST staff contact list can be found here: <https://www.mass.gov/info-details/post-commission-staff-contact-information> Let them, and your local legislators, hear from you directly! Give examples of the impact to you.

2. TAKE ACTION TO CORRECT THE RECORD:

Educate yourselves to understand (1) what records POST requires to be published; (2) what records are excludable from publication; (3) what your agency actually told POST about your discipline, and (4) make a demand that POST (and your agency) correct your record

if any errors are made. This is all easy to do – see the end of this email, but first, take steps to determine if your record is in error.

3. **KNOW WHAT RECORDS POST REQUIRED FROM AGENCIES**

POST requested generally that all disciplinary records be submitted if they fit the following categories (but importantly, POST has a bunch of exclusions, which is where we have seen multiple errors already). As an initial matter, the following disciplinary records must be included:

- Complaints alleging **bias** on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level;
- Complaints regarding **use of force** (excessive, prohibited, or deadly force);
- Actions that resulted in **serious bodily injury or death** (including Officer-Involved Shootings or “OIS”)
- Complaints and incidents that are **not related to minor matters** and fall in the category of officer **misconduct or unprofessionalism**, should also be submitted to POST and subcategorized as follows:
 - Unprofessionalism:
 - **Policy or Procedure Violations/Conformance to Laws**
 - **Conduct Unbecoming**
 - **Untruthfulness**

IN OTHER WORDS, IF THE DISCIPLINE MEETS THE DEFINITION OF A MINOR MATTER (SEE BELOW), THEN SUCH RECORDS ARE **EXCLUDABLE (POLICY VIOLATIONS, CONDUCT UNBECOMING ALLEGATIONS WILL OFTEN FIT THE CATEGORY OF MINOR MATTERS AND NOT BE REPORTABLE)*

4. **KNOW WHICH RECORDS ARE EXCLUDED (DON'T HAVE TO BE SUBMITTED TO POST).** ***This is important – if your records is listed and falls into one of the following categories, then it was not required to be submitted to POST for publication***

- You may exclude disciplinary records if their disposition was “**Not Sustained,**” “**Unfounded,**” or “**Exonerated.**” (WE HAVE SEEN RECORDS SUBMITTED THAT FIT THIS CATEGORY)
- You may exclude records **for officers who retired or resigned in good standing.**

- You may **exclude or remove records that fall outside of POST's reporting requirements** - see reporting requirements at <https://www.mass.gov/info-details/complaint-and-incident-reporting>

The following examples **fall outside of the reporting requirements**:

- **minor matters, such as discourtesy and basic work rule violations** (tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions).
- Complaints that were **not credible or lacked a basis for adequate investigation**.
- Anonymous complaints without adequate basis for investigation.
- **Records of incidents that resulted in a verbal reprimand** (incidents or complaints that resulted in written reprimands should be included unless they fall in the exclusion categories herein).

5. EXCLUDABLE RECORDS BY LAW - POST'S DATABASE REQUIREMENTS ARE SET OUT IN 555 CMR 8.00 -

By its own regulation, POST states that the following records shall not be published:

- Information concerning any complaint or disciplinary matter that has not been resolved adversely to the officer, unless the matter was resolved in a manner that the Commission determines to have been unwarranted;
- Information concerning a decision or action that has been **reversed or vacated**;

IF YOU BELIEVE THAT YOU HAVE INFORMATION LISTED THAT FALLS INTO ANY OF THE EXCLUDED CATEGORIES, YOU SHOULD TAKE IMMEDIATE ACTION TO REQUEST THAT POST AND YOUR AGENCY CORRECT THE RECORD AND THAT THE INFORMATION BE REMOVED FROM THE LIST (SEE BELOW FOR INSTRUCTIONS).

6. FIND OUT WHAT YOUR AGENCY REPORTED ABOUT YOU

PD's and Agencies were required to fill out a spreadsheet and provide disciplinary records to POST. Post relied on the agencies and does not vouch for the accuracy of the records, so it's important for members to check the accuracy of what was provided. We have already seen that some Agencies reported false information (for example, reporting the results of earlier IA records that were vacated or rescinded, successfully appealed, and even reporting prior versions of IA records that they agreed to update and rescind after exonerating officers. If agencies have knowingly provided false information (i.e., in contradiction to a

settlement agreement or appeal ruling), it is possible that damaged individuals may have legal claims against the agencies – those members will want to consult with an attorney to determine that, but first should take the following steps:

- Demand that your agency (public record request) provide to you the spreadsheet information that it provided to POST about you. Each agency was required to fill out a spreadsheet listing all of the materials and information reportable to POST – request a copy and find out what exactly was reported about you. Get the spreadsheet and locals and members should review for accuracy.
- If the information is inaccurate or incomplete, demand that it be corrected (by both your agency and POST).
- If you have further important documents (settlement agreements, appeal documents, arbitration decisions, civil service decisions, etc.) make sure your agency submits them – you should also submit them to POST – and demand that the records be removed or corrected.
- If it appears your agency knowingly submitted false or misleading information, consult a lawyer to determine any legal claims you may have.

TAKING CORRECTIVE ACTIONS

1. First – you can immediately notify POST of any reporting error – email them directly at POSTCREPORTS@MASS.GOV
2. Make sure to provide information and documents you are relying on and highlight why there is an error (minor offence, retired in good standing, overturned findings on appeal, not a reportable office, etc.).
3. Follow up with a Petition to the POST Executive Director. A copy of the CMR setting out the process is attached to this email – scroll to the end of the attachment and see the large, highlighted section setting out the process. Follow the process, and make sure you continue to follow up often.
4. The law allows for items to be removed from personnel records by agreement – GL c. 149, Sec. 52C – if you had agreed with the agency for removal or a record, make the agency and POST aware of that agreement, and the law, and demand that they remove any record that was intended to be removed. The POST CMR attached contemplates that such materials may be not subject to posting.
5. Review any applicable appeals and agreements that impact your cases – make sure that the employer complied with its obligations (for example, did they remove discipline, did they correct the findings, did they rescind the records, etc. – or did they just ignore all that and submit an old IA file without telling the whole story?).

We will continue to explore ways to address this situation – in the meantime, individual members and locals can follow these steps to demand accountability, accuracy, and fairness as we all search for a better solution.

Fraternally, Chris...

For further information on this process, access POST's materials at:
<https://www.mass.gov/info-details/complaint-and-incident-reporting>
<https://www.mass.gov/info-details/disciplinary-record-resubmission>