

**PROPOSED  
SUPREME JUDICIAL COURT RULE 1:24  
PROTECTION OF PERSONAL IDENTIFYING INFORMATION IN PUBLICLY  
ACCESSIBLE COURT DOCUMENTS**

**Section 1. Purpose and Scope.** This rule is intended to prevent the unnecessary inclusion of certain personal identifying information in publicly accessible documents filed with or issued by the Courts, in order to reduce the possibility of using such documents for identity theft or other improper purposes. The rule applies to publicly accessible documents filed in civil and criminal cases; documents offered in evidence at any trial or hearing; and any order, decision, or other document issued by a court that will be publicly accessible. The rule does not prevent a document's filer from requesting more or less protection of personal identifying information than this rule requires. The rule does not limit a court's authority to enter specific orders in particular cases, and it does not relieve a filer of any greater obligations imposed by the law or a court. Further, the rule does not prohibit any Department of the Trial Court, or any appellate court, from adopting a rule or standing order providing additional protections for personal identifying information covered by this rule, or protecting additional categories of personal identifying information. The rule applies only to filings made after its effective date.

**Section 2. Definitions.** As used in this rule, the following terms shall have the following meanings:

"Clerk" shall mean a Clerk, Clerk-Magistrate, Register of Probate, the Recorder of the Land Court, and their assistants.

"Court" shall mean all Departments of the Trial Court; the Appeals Court; and the Supreme Judicial Court.

"Document" shall mean any material filed in a court, in paper or electronic form.

"Filer" shall mean any person or entity, including a corporation or government entity, that files documents in a court, and is not limited to parties.

"Personal identifying information" shall mean a social security number, taxpayer identification number, driver's license number, state-issued identification card number, or passport number, a parent's birth surname if identified as such, a financial account number, or a credit card number.

"Redacted" shall mean a filing that either does not include complete personal identifying information or has portions of such information whited or blacked out so they are not readable.

**Section 3. Personal Identifying Information: Requirement of Limited Disclosure.**

When filing a document in court that will be publicly accessible, a filer may not, unless otherwise allowed by this rule, include personal identifying information, except when the filer redacts it as follows:

- (a) **Government-Issued Identification Numbers.** If a social security number, taxpayer identification number, driver’s license number, state-issued identification card number, or passport number must be included, all but the last four digits of that number shall be redacted.
- (b) **Parent’s Birth Surname, if Identified as Such.** If the birth surname of a person’s parent, identified as such, must be included, all but the first initial of the birth name shall be redacted.
- (c) **Financial Account Numbers and Credit Card Numbers.** If a financial account number or credit card number must be included, all but the last four digits of the number shall be redacted.

**Section 4. Methods of Redaction.** Documents shall be redacted as set forth below.

- (a) **Documents Drafted for Filing in Court.** In the case of a document drafted for filing in court, the omitted information shall be replaced by three “x” characters or, where appropriate, by the phrase “beginning with” or “ending in.”
- (b) **All Other Documents.** In all documents that were not drafted for filing in court, such as copies of pre-existing exhibits, the filer shall partially redact all personal identifying information as required by this rule. All redactions shall be made in a way that prevents the redacted information from being read. Any document redacted in this way shall be clearly marked to show the name of the filer making the redaction and the date on which it was made. The location of each redaction in the document must be visible. The filer shall keep an unredacted copy of the document while the case is pending, including during any related appeal, and furnish it to any party or to the court promptly upon request.

**Section 5. General Exceptions.** Unless the court orders otherwise, unredacted personal identifying information may be included in documents filed with the court if any of the following exceptions applies:

- (a) A law, court rule, standing order, court-issued form, or an order issued in the proceeding specifically requires including the personal identifying information in the document.
- (b) The document including the personal identifying information is a transcript of the court proceeding, filed directly by a court reporter or transcriber, or is the official

record of an administrative agency adjudicatory proceeding or another court proceeding, filed by that agency or court.

(c) The document including the personal identifying information is produced directly to or in the court by a nonparty in response to a subpoena, summons or other court order, and is not publicly accessible. Any party that intends to offer such a document in evidence shall make a copy of it, redact the copy as required by this rule, and offer the redacted copy.

(d) The document includes a financial account number that is necessary to identify an account that is the subject of a forfeiture proceeding, in which case the number need not be redacted.

**Section 6. Exceptions in Criminal and Youthful Offender Cases.** The following exceptions apply in criminal and youthful offender cases:

(a) Unless the court orders otherwise, the following personal identifying information need not be redacted: the defendant's social security number, driver's license number, state-issued identification card number, or passport number, or the defendant's parent's birth name identified as such.

(b) Unless the court orders otherwise, the following documents need not be redacted when filed originally, but shall be redacted when attached by an attorney as exhibits unless the original filing is in the same court file:

(i) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal case or is not filed as part of any docketed criminal case;

(ii) an arrest or search warrant; or

(iii) a charging document, including an application for a criminal complaint, and supporting documents filed in support of any charging document.

**Section 7. Responsibility for Redaction.** The filer is responsible for redacting personal identifying information. The clerk need not review each filed document for compliance.

**Section 8. Waiver.** The filing of a document that contains the filer's personal identifying information does not make this rule inapplicable to that information. A filer may waive the applicability of this rule to the filer's own personal identifying information, but only by an express statement of waiver filed in writing or made in open court.

**Section 9. Noncompliance.** The court, on its own initiative or on motion of a party or the person whose personal identifying information is at issue, may impose sanctions for noncompliance where appropriate. The court may also strike and return to the filer any noncompliant document. If a filer files a document that includes another person's personal identifying information, that person may still move for an order keeping the information confidential.

**Section 10. Applicability to Court Orders and Other Court-Issued Documents.** In any order, decision, or other document issued by the court that will be publicly accessible, the court shall avoid including a complete version of any personal identifying information covered by this rule, unless including it (1) is specifically required by law, court rule, standing order, or court-issued form or (2) is necessary to serve the document's purpose.

**Section 11. Appellate Court Filings.** In addition to the other requirements of this rule, filers in the Supreme Judicial Court, the Appeals Court, or the Appellate Divisions of the District and Boston Municipal Courts shall comply with the following requirements:

(a) Brief. If a filer includes any complete personal identifying information in a publicly accessible brief, the filer shall at the same time file one additional, unbound copy of the brief, with that personal identifying information redacted according to this rule, clearly marked "Limited Personal Identifying Information" on the cover and without including any addendum or appendix.

(b) Record Appendix. A filer shall make every effort to avoid unnecessarily including in the record appendix any document, particularly any part of a transcript, that contains complete personal identifying information covered by this rule. In addition:

(1) If a document to be included in the record appendix was redacted when filed in or issued by the trial court, the same version of the document shall be included in the record appendix.

(2) If a document to be included in the record appendix was not redacted when filed in or issued by the trial court, even where complete personal identifying information was included under the exception in Section 6(a), the party that wants to include the document in the record appendix shall redact it as required by Section 3 above.

## Commentary

### Section 1

This rule applies to paper documents, as well as to electronic documents that are now or may in the future be filed with or issued by all Departments of the Trial Court; the Appeals Court; and the Supreme Judicial Court. The rule does not govern the separate question whether various court documents should be made publicly available on the Internet.

The reference in Section 1 to “greater obligations imposed by the law or court” is intended to include statutes and rules that require, or authorize a court to require, impoundment or confidentiality, however labeled. *See, e.g.*, G.L. c. 265, § 24C (requiring that court records containing rape victims’ names be “withheld from the public”); G.L. c. 6, § 178M (on judicial review of Sex Offender Registry Board decisions, records to be kept “confidential and . . . impounded”); Mass. R. App. P. 16(m) (governing “references to impounded material”).

### Section 2

The term “filer” as used in Section 2 and throughout this rule includes any person or governmental or other entity making a filing (including, *e.g.*, persons applying for criminal complaints, police officers applying for search warrants, putative interveners, and amici curiae) regardless of their status as parties.

### Section 3

Section 3 refers to “filing” documents in court. Exhibits offered at evidentiary hearings, although not “filed” as that term is used in Mass. R. Civ. P. 5 or Mass. R. Crim. P. 32, are subject to this rule. Prior to trial or other evidentiary hearing, the parties should discuss how to handle exhibits in compliance with this rule, as well as any issues of waiver of the rule’s protection pursuant to Section 8.

### Section 4

In the case of documents drafted for filing in court as described in Section 4(a) (*e.g.*, motions, memoranda, and affidavits, as opposed to pre-existing exhibits), this rule does not require the filer to prepare a second version with complete personal identifiers. Nothing in this rule limits the court’s power to order that such complete information be supplied to other parties or non-parties.

The provision in Section 4(b) requiring the filer to mark redactions creates a record that helps protect against claims of improper alteration of documents. Particularly in documents with multiple redactions, the required notation of each redaction need be no more than an asterisk or similar mark, together with a single statement, on or accompanying the document, explaining that redactions so marked were made by the filer on a specified date.

## **Section 5**

The exception in Section 5(a) does not permit inclusion of complete personal identifying information in a filing merely because such information may be useful to include in an order to be issued in the proceeding as requested by the filing. Alternatives are often available.

Thus, a motion for an order to a third party to produce records, such as a person's hospital records under G.L. c. 233, § 79, or a person's criminal offender record information (CORI), shall not include the person's unredacted personal identifying information. The motion and any resulting order may instead include redacted information, and the moving party may then, at the time the order is served on the entity required to respond to it, provide any unredacted information the entity requires in order to respond.

Similarly, a filer shall not include bank or other asset account numbers in court filings in connection with court orders that serve to secure assets to satisfy a judgment. If complete account numbers are necessary, the filer (usually the plaintiff) may provide this information separately, along with any other unredacted personal identifying information necessary to identify an account holder, to those who may need it to carry out the order.

Likewise, a bank responding to a trustee summons shall not include the entire account number in the trustee's answer. Section 1 and Section 10 recognize that courts and filers retain flexibility to deal with such situations without unnecessarily making personal identifying information publicly accessible.

The exception in Section 5(b) for transcripts is included to avoid undue burden on the court reporter or transcriber.

The exception in Section 5(b) for the official record of an administrative adjudicatory proceeding or another court proceeding, filed by the agency or court, is included because of the degree of burden on agencies and courts and because such records, often being lengthy, are less likely to be searched through for the purpose of obtaining information to be used for identity theft purposes. The term "adjudicatory proceedings" refers to proceedings that are judicially reviewed primarily or exclusively on the agency record, under G.L. c. 30A or other law such as G.L. c. 249, § 4. The qualifier "adjudicatory" is used because the reasons for excepting records of such proceedings are less likely to apply to documents concerning other, less formal administrative proceedings.

The exception in Section 5(c) is intended to cover documents produced by a non-party pursuant to Mass. R. Civ. P. 45(b), Mass. R. Crim. P. 17(a)(2), Superior Court Rule 13 and G.L. c. 233, § 79 (hospital records); and similar court rules or laws. It is intended to be consistent with the Dwyer protocol applicable to defendants' motions for Rule 17(a)(2) summonses. *See Commonwealth v. Dwyer*, 448 Mass. 122, 147-50 (2006). The exception recognizes that requiring the non-party to redact, particularly where some or all of the records may never become available to the public, would be unduly burdensome.

## **Section 6**

The exception in Section 6(a) is included because in virtually all criminal and youthful offender cases, publicly accessible documents, often filed as part of initiation of the case, necessarily include numerous types of complete personal identifying information about the defendant. In such cases, there is little to be gained by partially redacting or omitting that particular information in subsequent filings in the same case. The exception does not apply to the defendant's taxpayer identification number (if different from social security number) or credit card or other financial account number, because they do not routinely appear in such case-initiation-related documents.

## **Section 10**

The exception in Section 10 for inclusion of complete personal identifying information where "necessary to serve the document's purpose" is included because some types of court documents, although directed to parties or non-parties that require specific identifying information, are included in the court file, where they are publicly accessible as a matter of law. Although the inclusion of personal identifying information should be minimized when drafting such documents, it must be recognized that sometimes, unredacted information will be necessary to serve the purpose of the document.

## **Section 11**

Section 11(b)(2) is included because the rationale underlying the exception in Section 6(a) ordinarily would not apply, and would not serve any useful purpose if applied, to documents presented to the appellate court. If the complete item of personal identifying information is nevertheless reasonably believed to be necessary to the resolution of an issue on appeal, Section 11(b)(2) permits its inclusion.