


New England **First Amendment** Coalition

Protecting First Amendment Freedoms and the Public's Right to Know

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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Office of the Attorney General
Attn: Attorney General Andrea Joy Campbell
One Ashburton Place, 20th Floor
Boston, MA 02108

September 4, 2024

RE: Public Records and the Work Family Mobility Act

Dear Attorney General Campbell,

I'm writing on behalf of the New England First Amendment Coalition. NEFAC is the region's leading advocate for First Amendment freedoms and the public's right to know about government. The coalition is a non-partisan and non-profit organization that believes in the power of civic engagement and government transparency. Its Board of Directors and Advisors include many of the state's top media attorneys and journalists.¹

We are requesting that you amend your office's regulations related to the Work Family Mobility Act (WFMA). The law and related regulations pose an impassable barrier for journalists seeking a variety of Registry of Motor Vehicles (RMV) records that were previously public and contain no immigration information — the primary focus of the WFMA. In collaboration with several investigative journalists in Massachusetts, we identified two record types that were once readily available, but are now withheld due to an interpretation of the WFMA we believe is outside the statute's scope and intent.

■ **Individual Driving Records** | The RMV is now citing the WFMA to withhold all individual driving records. These records were previously available to journalists who needed them to report, for example, on Boston City Councilor Kendra Lara who crashed into a house in Jamaica Plain while driving with a revoked license.² This also includes records for police officers who are charged with or fired for drunk driving.³ It is now impossible to determine through the public records law if these officers faced other violations in their jurisdiction or another following a transfer.⁴

■ **Commercial Driver's License (CDL) Records** | Records related to CDLs are no longer available to journalists. Public safety reporting — such as coverage of the recent preferential treatment given by State Police troopers to CDL applicants — has been drastically limited as a result.⁵

These categories of records are caught in an immigration-related law that was never intended to have such a broad effect on public records. Other records, namely vanity plate applications and databases, were previously withheld due to the WFMA. However, earlier this year, your office changed the §37.04 regulations as they pertained to vanity plate applications and records. This change restored access to these records and allowed a variety of stories commonly reported across the country⁶ to be shared again in Massachusetts.

We ask that your regulations be further amended, as they were for vanity plate information, to confirm that these other records are public just as they were before July 2023 when the RMV began withholding them.

WFMA History

In summer 2022, the Massachusetts State Legislature passed the WFMA which took effect on July 1, 2023.⁷ The law was designed to make it possible for immigrants who might not have legal status to obtain driver's licenses and/or learner's permits.⁸ After legislators initially passed it during the 2022 session, a group of activists got a measure on the ballot in an effort to repeal it⁹ — but voters ultimately upheld the act later that year.¹⁰ Proponents of the act argue it improves safety in a variety of ways, such as reducing the likelihood of hit-and-run accidents and providing better access to insurance.¹¹

To create a pathway for licensure or learner's permits, however, the RMV needs to create application records for people who may not have legal status. This has led to concerns about the information's use and accessibility. Legislators feared citizenship status would be used for immigration enforcement.¹² As such, the WFMA contains a section relevant to privacy and public records, which your elaborate upon.

Section 7(a) and 7(b) explicitly address the accessibility of a learner's permit or driver's license applicant or holder's personal information. Section 7(a) states that potentially identifying personal information provided by *applicants* for learner's permit or driver's licenses in Massachusetts, including information on immigration status, "shall neither be a public record nor be disclosed by the registrar, except as required by federal law or as authorized by regulations promulgated by the attorney general."¹³ The only exception is that certain information may be disclosed for the purpose of motor vehicle insurance, pursuant to another section of the Massachusetts General Laws.¹⁴ The substantive language of section 7(b) is the same. It outlines the same restrictions and exemption for insurance, but for license and learner's permit *holders* in the state of Massachusetts, rather than applicants.¹⁵

These statutory restrictions are fairly opaque but they do allow your office to clarify these restrictions and issue guidelines for records under the WFMA:

Any information provided by, or relating to an applicant for a Massachusetts [license or learner's permit] . . . shall neither be a public record nor be disclosed by the registrar, except as required by federal law or as authorized by regulations promulgated by the attorney general.¹⁶ (emphasis added)

A frequently cited exemption in records request denials from the RMV Registrar are the responsive attorney general regulations, 940 C.M.R. 37.04. The regulations took effect on June 30, 2023, and relate specifically to the public records status of driver's licenses and learner's permits in the state.¹⁷

These problems have persisted despite additional regulations promulgated by your office that were intended to address the issue. For example, 940 CMR 37.04(13) states:

Notwithstanding 940 CMR 37.04(12), the Registrar may release the following Registry and Merit Rating Board data as a public record, provided that all personal information and highly restricted personal information, as defined in 18 U.S.C. § 2725, and all information required to be shielded under M.G.L. c. 90, § 30, have been redacted . . .

(b) documents provided to the Registrar by state or local government agencies, so long as these documents would have been considered public records before they were provided to the Registrar.

Our understanding is that 37.04(13)(b) was intended to clarify that the regulations do not prohibit the disclosure of information provided to the RMV by state and local law enforcement officers concerning driving violations and accidents so long as this information would have been considered public before its submission to the RMV. Unfortunately, the updated regulations have not had this effect.

Legislative Intent

Legislative intent, or the goal of legislators in passing a bill, is useful in determining what downstream effects might be warranted or intended, and those which were unintentionally caught up in the legal changes. In the case of WFMA, the bill's language and legislators' comments lay bare that the intent was only to provide immigrants a path to licensure while shielding their legal status — and not to obstruct once public records from public view and newsroom access.

The intent to protect immigrant status is also apparent throughout the regulations in § 37.04, which provides a handful of exemptions for release. The RMV, for example, may release records in cases where the registrar sees indications of criminal fraud, as well as when state agencies request information with a legitimate purpose.¹⁸ Another indicator is § 37.04(5). This section permits record requestors who are not otherwise exempted by the regulations to obtain records as long as they certify under the penalty of perjury that they do not intend to use the records for immigration purposes or disclose them to entities that would.¹⁹ Permitting access pending a statement of such magnitude illuminates the regulatory intent to protect immigrants as well as an intent to not block access entirely.

The most notable section in terms of record accessibility is § 37.04(13), which specifies categories of records that can be released without the declaration under penalty of perjury typically required by § 37.04(5). Under § 37.04(13), assuming that individuals' personal information has been redacted in accordance with state and federal laws,²⁰ the registrar may release:

(a) vehicle information, such as vehicle inspection data, titles, VIN numbers, and license plate numbers, provided that the data does not, through ordinary means, identify a license or permit applicant, or a license or permit holder; and

(b) documents provided to the Registrar by state or local government agencies, so long as these documents would have been considered public records before they were provided to the Registrar.²¹

We believe some of the denials journalists have received, despite this exemption, are likely a result of the regulation's use of the word "may" rather than requiring the records' release.

Public record request denials NEFAC reviewed also cited § 37.04(6), which states that the regulations cannot be interpreted to "authorize the designation as a public record of any information provided by or relating to" applicants or holders of Massachusetts licenses or learner's permits.²² This statement, however, is at odds with the fact that registrars are not required to "authorize the designation as public record" any of the records journalists request. These records are already public information, and their release should not be construed as a "designation" or "authorization."

Limiting Public Safety and Accountability Reporting

The statute and current regulations create insurmountable barriers for journalists and heavily infringe on the public's right to know. They foster a sense of opacity around government records for drivers and restrict access to numerous records that were previously public. The following topics, which were all reported on prior to the WFMA, cannot be reported on today because of the RMV's broad interpretation of the law.

Public Official and Other Individual Driving Records

Before the regulations and law took effect, reporters used public record requests to obtain redacted individual driving records for public officials, including police officers. In the past, stories based on these records have revealed off-duty crashes by police officers that were unknown to their departments.²³ Since the regulations' implementation multiple reporters' requests for driving records have been denied on the basis of § 37.04. The denials claim that the RMV is no longer authorized by attorney general regulations to release responsive records.²⁴

WBUR reporter Todd Wallack's request for the driving records of several public officials, including Boston City Councilor Kendra Lara and Governor Maura Healey, were rejected due to § 37.04.²⁵ Lara's records are of immense public interest given her public position and her history of reckless driving.²⁶ The denial noted that driving records cannot be considered public records, absent attorney general regulations specifying they are public.²⁷ Wallack appealed the denial three times with three different arguments for why the records should be public, but was repeatedly denied.²⁸

Example 1

Prior to July 1, 2023, redacted individual driving records were released as public records. On July 1, 2023, however, Chapter 81 of the Acts of 2022, the Work and Family Mobility Act ("WFMA"), became effective*. The WFMA provides that any "information provided by or relating to the holder of a Massachusetts license issued under section 8 of said chapter 90" shall "neither be a public record nor be disclosed by the registrar, except as authorized by regulations promulgated by the attorney general." The individual driving record you have requested comprises "information...relating to the holder of a Massachusetts license issued under section 8 of said chapter 90," and is therefore presumptively no longer a public record under the WFMA.

Example 1: An official's initial response to Wallack's request for the driving records of Governor Healey; Erving police officer Adam Paicos; Councilor Lara; and Massachusetts State Police Lieutenant Colonel Jack Mawn. (emphasis added)

Laura Crimaldi, a reporter at The Boston Globe, filed a similar request for the driving record of Jean M. Fenlon, a bus driver who crashed a shuttle bus with Brandeis University students in 2022, killing one of the passengers.²⁹ Given the public history of his driving infractions and connection to the deaths of two individuals, his overall record would be of great public interest. Yet, Crimaldi's request received nearly the same response as Wallack's request that cited the regulation and denied the records.

Example 2

Prior to July 1, 2023, redacted individual driving records were released as public records. On July 1, 2023, however, Chapter 81 of the Acts of 2022, the Work and Family Mobility Act ("WFMA"), became effective. The WFMA provides that any "information provided by or relating to the holder of a Massachusetts license issued under section 8 of said chapter 90" shall "neither be a public record nor be disclosed by the registrar, except as authorized by regulations promulgated by the attorney general." The individual driving record you have requested comprises "information...relating to the holder of a Massachusetts license issued under section 8 of said chapter 90," and is therefore presumptively no longer a public record under the WFMA.

Example 2: An official's initial response to Crimaldi's records request for Fenlon's driving record. (emphasis added)

It should be noted that neither request was for information related to immigration status. The law simply creates a black hole for any records related to any driver in the state. It even shields public officials with histories of dangerous or reckless driving from public scrutiny. The occlusion of individual driving records has and will continue to have a negative impact on the public's right to know about those driving in the state.

Commercial Driver Licenses (CDLs)

Commercial driver licenses permit individuals to operate high-capacity or large vehicles and have different testing requirements than non-CDL licenses.³⁰ The Boston Globe recently published several high public-interest stories on the role preferential treatment and bribes played in granting such licenses.³¹ Adequately reporting these stories, which requires an individual's driving history, can no longer occur given the WFMA and corresponding regulations.

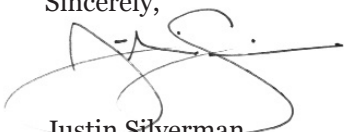
Example 3

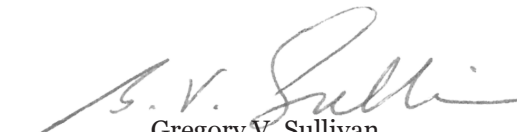
Prior to July 1, 2023, redacted individual records similar to those requested by you could have been released as public records. On July 1, 2023, however, Chapter 81 of the Acts of 2022, the Work and Family Mobility Act ("WFMA"), became effective*. The WFMA provides that any "information provided by or relating to the holder of a Massachusetts license issued under section 8 of said chapter 90" shall "neither be a public record nor be disclosed by the registrar, except as authorized by regulations promulgated by the attorney general." The individual records you have requested comprises "information...relating to the holder of a Massachusetts license issued under section 8 of said chapter 90," and is therefore presumptively no longer a public record under the WFMA.

Example 3: An official's response to a request by Crimaldi at the Globe for records related to an individual's: driving history; applications for a CDL or permit; correspondence with the RMV; and receipts for RMV fees. (emphasis added)

The WMFA never intended to burden journalists and other members of the public with such secrecy. We are hopeful the regulations can be amended to make clear to the RMV that records previously public should continue to be released — especially as many of the rejected requests have no relation to the immigration status of Massachusetts residents. We would be grateful for an opportunity to discuss this issue and possible solutions in more detail. Thank you for your consideration.

Sincerely,


Justin Silverman
NEFAC Executive Director


Gregory V. Sullivan
NEFAC President

Citations

- 1 To learn more about NEFAC, and explore the full list of its Board of Directors and Advisory Committee Members, please visit nefac.org.
- 2 See generally *Controversial Boston City Councilor Driving with 'Revoked License' Crashes Car with Son Inside Into House*, New York Post, July 1, 2023, <https://nypost.com/2023/07/01/kendra-lara-crashes-car-into-house-with-son-inside> (last visited Sept. 4, 2024)
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- 7 Work and Family Mobility Act, 2022 Mass. Acts ch. 81, <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter81> (last visited Sept. 4, 2024)
- 8 *Beacon Hill Set to Vote on Driver's Licenses For Undocumented Immigrants*, WBUR, Feb. 13, 2022, <https://www.wbur.org/news/2022/02/13/beacon-hill-set-to-vote-on-drivers-licenses-for-undocumented-immigrants> (last visited Sept. 4, 2024)
- 9 *Mass. Votes 'Yes' on Question 4, Upholding Driver's License Law for Unauthorized Immigrants*, WBUR, Nov. 9, 2022, <https://www.wbur.org/news/2022/11/09/massachusetts-question-4-ballot-results-immigrants-licenses> (last visited Sept. 4, 2024)
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- 11 *Driver's Licenses for Immigrants Without Status — How Would It Affect Massachusetts?*, Massachusetts Budget and Policy Center, March 17, 2020, https://massbudget.org/wp-content/uploads/2021/04/DriversLic4briefs_2021_FINAL.pdf (last visited Sept. 4, 2024)
- 12 Work and Family Mobility Act, 2022 Mass. Acts ch. 81
- 13 *Id.* at Section 7(a).
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