

52 N.J.R. 1615(a)

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RULE ADOPTIONS

Reporter

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Agency

LABOR AND WORKFORCE DEVELOPMENT > OFFICE OF THE COMMISSIONER

Administrative Code Citation

Adopted New Rules: N.J.A.C. 12:6

Text

Confidentiality of Complainant's or Witness' Personally Identifiable Information

Proposed: March 16, 2020, at 52 N.J.R. 502(a).

Adopted: July 17, 2020, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Filed: July 17, 2020, as R.2020 d.079, **without change**.

Authority: N.J.S.A. 34:1A-3(e).

Effective Date: August 17, 2020.

Expiration Date: August 17, 2027.

Summary of Hearing Officer's Recommendations and Agency's Response:

A public hearing regarding the proposed new rules was scheduled to occur on April 8, 2020, at the Department of Labor and Workforce Development. However, the public hearing was cancelled due to the state of public health emergency declared by Governor Murphy in response to the COVID-19 pandemic. Cancellation of the public hearing was announced on the Department's website. The period for submission of written comments to the Department's Office of Legal and Regulatory Services regarding the proposed new rules ended on May 15, 2020. No written comments were received. Therefore, the hearing officer recommended that the Department proceed with the new rules without change.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are not subject to any Federal standards or requirements. Specifically, the adopted new rules are governed by State statutes. It is under these State statutes that the Department receives and investigates complaints and interviews witnesses to alleged violations. It is exclusively as a matter of State law and not Federal law that the Department seeks to protect the PII of such complainants and witnesses who are often central to the Department's enforcement efforts. Accordingly, no Federal standards analysis is required.

Full text of the adopted new rules follows:

CHAPTER 6

CONFIDENTIALITY

SUBCHAPTER 1. CONFIDENTIALITY OF COMPLAINANT'S OR WITNESS' PERSONALLY IDENTIFIABLE INFORMATION

12:6-1.1 Purpose and scope

(a) The purpose of this subchapter is to ensure that, except under certain limited circumstances (enumerated at N.J.A.C. 12:6-1.4), the PII of any individual who files a complaint with the Department under any statute enforced by the Department, or under any chapter of Title 12 of the New Jersey Administrative Code, shall be kept confidential by the Department and shall not be disclosed; and to ensure that, except under certain limited circumstances (enumerated at N.J.A.C. 12:6-1.4), the PII of any witness who has provided a statement to the Department, as part of a Department investigation, to determine whether a violation of any statute enforced by the Department or of any chapter of Title 12 of the New Jersey Administrative Code has occurred, shall be kept confidential by the Department and shall not be disclosed.

(b) The provisions of this chapter shall apply to each government record of the Department and to each request for access to a government record of the Department.

12:6-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development, or his or her authorized representative.

"Department" means the Department of Labor and Workforce Development.

"Government record" means "government record," as that term is defined at N.J.S.A. 47:1A-1.1.

"Personally identifiable information" or "PII" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, including, but not limited to, first and last name, Social Security number, home and work address, home and work phone number, and home and work email address. The definition of PII is not anchored to any single category of information or technology. PII requires a case-by-case assessment of the specific risk that an individual can be identified.

12:6-1.3 Disclosure of complainant or witness PII; general prohibition

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(a) The PII of any individual who files a complaint with the Department under any statute enforced by the Department, or under any chapter of Title 12 of the New Jersey Administrative Code, shall be kept confidential by the Department and shall not be disclosed, except as authorized by the Commissioner under N.J.A.C. 12:6-1.4.

(b) The PII of any witness who has provided a statement to the Department, as part of a Department investigation to determine whether a violation of any statute enforced by the Department or of any chapter of Title 12 of the New Jersey Administrative Code has occurred, shall be kept confidential by the Department and shall not be disclosed, except as authorized by the Commissioner under N.J.A.C. 12:6-1.4.

12:6-1.4 Authorized disclosure of complainant or witness PII

(a) Under the following circumstances, the Department shall be permitted to disclose information otherwise prohibited from disclosure pursuant to N.J.A.C. 12:6-1.3(a) or (b):

1. When such disclosure is deemed necessary by the Department for the purpose of administering any statute enforced by the Department, or any chapter of Title 12 of the New Jersey Administrative Code, including when such disclosure is deemed necessary by the Department to conduct its investigation into whether a violation of statute, or of any chapter of Title 12 of the New Jersey Administrative Code, has occurred;

2. To officers or employees of an agency of the Federal government, or a State or local government, if such a disclosure would not impede the enforcement of, and are not inconsistent with the purposes of, any statute enforced by the Department or any chapter of Title 12 of the New Jersey Administrative Code, provided the following:

i. The agency of the Federal government or a State or local government requesting the information is not the entity against which the complaint was filed;

ii. Requests by law enforcement agents shall be made in writing, the identity of the requestor shall be verified prior to the release of information by the showing of a badge, warrant, written and signed request on agency letterhead, or some other similar indication of official purpose, and the law enforcement agent certifies in writing that the confidentiality of the disclosed information shall be maintained; and

iii. Public officials shall establish that the information requested is to be used in furtherance of their public duties and shall certify in writing on agency letterhead that the confidentiality of the disclosed information shall be maintained.

[page=1616] 3. When such disclosure has been ordered by a court or tribunal of competent jurisdiction.