

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty-second day of July, in the year two thousand and sixteen:

present,

<u>HON. RALPH D. GANTS</u>)	Chief Justice
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<u>HON. FRANCIS X. SPINA</u>)	
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<u>HON. ROBERT J. CORDY</u>)	Justices
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<u>HON. MARGOT BOTSFORD</u>)	
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<u>HON. FERNANDE R.V. DUFFLY</u>)	
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<u>HON. BARBARA A. LENK</u>)	
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<u>HON. GERALDINE S. HINES</u>)	

ORDERED: That Chapter One of the Rules of the Supreme Judicial Court is hereby amended as follows:

Rule 1:24 By inserting the new Rule 1:24, attached hereto.

The 2009 Interim Guidelines for the Protection of Personal Identifying Data in Publicly Accessible Court Documents are repealed.

The amendments accomplished by this order shall take effect on November 1, 2016.

ORDERED:

<u>RALPH D. GANTS</u>)	Chief Justice
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<u>FRANCIS X. SPINA</u>)	
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<u>ROBERT J. CORDY</u>)	Justices
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<u>MARGOT BOTSFORD</u>)	
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<u>FERNANDE R.V. DUFFLY</u>)	
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<u>BARBARA A. LENK</u>)	
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<u>GERALDINE S. HINES</u>)	

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, the unwarranted invasion of privacy, 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 or debit 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 surname shall be redacted.

(c) **Financial Account Numbers and Credit Card Numbers.** If a financial account number or credit or debit 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 or made visible. 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 (i) to the court promptly upon request, and (ii) to any party promptly upon that party's request, or if such a request is refused, the court may order production upon the requesting party's motion showing good cause and affirming that the information will be secured in a manner sufficient to avoid misuse or disclosure to third parties.

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 another court proceeding, filed by that court.

(c) The document including the personal identifying information is a record of administrative adjudicatory or quasi-adjudicatory proceedings, filed by the administrative agency, and the applicable department of the Trial Court or other court has adopted its own rule or standing order governing redaction of personal identifying information in such records.

(d) 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.

(e) 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. In criminal and youthful offender cases, 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:

(a) 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;

(b) an arrest or search warrant; or

(c) 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 will not review each filed document for compliance.

Section 8. Noncompliance.

(a) In the event of a filer's noncompliance with this rule, the court, on its own initiative or on motion of a party or the person whose personal identifying information is at issue, may require corrective action. Corrective action may include, but is not limited to: (i) striking and returning to the filer any noncompliant document, with or without an order that a properly-redacted copy be filed in its place; (ii) requiring the filer to file a redacted

version of the document and move to impound the unredacted version; (iii) forfeiting any protection under this rule for the filer's own personal identifying information, if the information has become public or if other parties or persons would be unduly prejudiced by treating the information as protected, or if the filer's noncompliance is either willful or repeated; (iv) entering orders to ensure the filer's future compliance or to protect the interests under this rule of other parties and persons; and (v) imposing monetary sanctions, if the filer's noncompliance is either willful or repeated.

(b) The filer shall have the burden to prove any claim that the noncompliance was inadvertent. The filing of a document that contains the filer's personal identifying information does not by itself make this rule inapplicable to that information. If a filer files a document that includes another person's personal identifying information, that person or any other interested person may still move for an order impounding the document or requiring that it be returned to the filer and that a properly-redacted copy be filed in its place. 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. 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 (a) is specifically required by law, court rule, standing order, or court-issued form or (b) is necessary to serve the document's purpose.

Section 10. 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. 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. 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 an exception in Section 5 or 6, the party that wants to include the document in the record appendix shall redact it as required by Section 3, unless the party obtains leave of the appellate court to include the document in unredacted form.