



# Criminal Record Review Board Annual Report July 1, 2016 – June 30, 2017

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Department of Criminal Justice Information Services  
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THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

*Department of Criminal Justice Information Services*

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Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Daniel Bernett  
Secretary of Public Safety and Security

James F. Slater, III  
Commissioner

March 12, 2018

The Honorable William F. Welch  
Clerk of the Senate  
State House, Room 335  
Boston, MA 02133

The Honorable Steven T. James  
Clerk of the House  
State House, Room 145  
Boston, MA 02133

Dear Mr. Welch and Mr. James:

Pursuant to M.G.L. c. 6, §§ 168 and 172 enclosed please find the Department of Criminal Justice Information Service's annual reports. The first report is provided in accordance with G.L. c. 6, § 168 and summarizes the status of the complaints reviewed by the Criminal Record Review Board. The second report in accordance with G.L. c. 6, § 172 addresses incidences when the Commissioner has provided access to criminal offender record information to persons other than those entitled to obtain access under this section.

We hope you find this information helpful. Please let us know if we may be of further assistance.

Sincerely,

James F. Slater, III  
Commissioner

Enclosure



## **Background**

The Criminal Record Review Board was formed in August 2010 as a result of Chapter 256 of the Acts of 2010. More commonly known as the CORI Reform Law, the statute required the formation of an eighteen member Criminal Record Review Board (CRRB), which was to replace the Criminal History Systems Board (see Appendix A for the full text of M.G.L. c.6, § 168). The mission of the CRRB is to review and investigate complaints alleging violation of the CORI law and/or regulations and to issue appropriate findings. The CRRB is authorized to issue civil and administrative sanctions including but not limited to, civil fines of up to \$5,000.00 for each offense and/or revocation or suspension of CORI access.

The Massachusetts Department of Criminal Justice Information Services (DCJIS) provides legal and administrative support to the CRRB. All complaints are initially reviewed by the DCJIS' Office of the General Counsel (OGC). Complaints that meet the filing requirements are then assigned to a DCJIS staff attorney for investigation. Separate processes are followed for incorrect CORI complaints versus complaints alleging improper access to, and/or dissemination of, Criminal Justice Information System (CJIS) data and/or violations of laws or regulations pertaining to CORI.

Incorrect CORI complaints are reviewed by the DCJIS OGC. The DCJIS accepts complaints for review that allege inaccurate CORI data. It should be noted that only the Court or the Office of the Commissioner of Probation have the authority to change or update information on the CORI record. Therefore, the DCJIS' ability to fully resolve complaints related to incorrect CORI issues is limited. The DCJIS actively assists individuals that file incorrect CORI complaints by researching the discrepancy and requesting court docket sheets and/or other police records that may assist the individual with correcting the CORI. If the DCJIS finds these documents show that the CORI may include inaccurate information, the DCJIS will contact the Office of the Commissioner of Probation on the complainant's behalf to request that the record be updated. The DCJIS then informs the applicant of the outcome of this inquiry. In some cases, an individual may need to appear in person at the court or may need to be fingerprinted to distinguish him or herself from the information in the record. These types of cases are referred to below as "unresolved" because the individual will need to take further steps to resolve the alleged inaccuracy on the CORI.

Complaints alleging CORI, CJIS, or Regulatory violations are reviewed by the OGC. Complaints that meet the filing requirements are assigned for investigation to a staff attorney. When an investigation pertaining to an allegation of a CORI law or regulation violation is completed, an investigative report is prepared and presented to the CRRB for review. The CRRB reviews the report, the complaint, and all supporting documentation and determines whether a show cause order should issue against any parties that allegedly have violated the laws or regulations. If a show cause order is issued, the complaint is also assigned to either a Hearing Officer or Subcommittee for hearing. The party is notified of the show cause order and provided an opportunity to respond to the allegations. A hearing is then scheduled to consider the complaint. In some cases, upon agreement of the parties, a complaint may be resolved through a consent agreement in lieu of a hearing, whereby the parties agree to certain findings or sanctions. All consent agreements are reviewed by the CRRB and a vote is taken on whether to approve the agreement. When a complaint proceeds to a hearing, findings are prepared and a formal order and decision of the Hearing Officer or Subcommittee is presented to the CRRB. A vote is then

taken to determine whether to approve the order and decision.

## Complaint Activity for State Fiscal Year 2017

The table below shows the complaint activity for State Fiscal Year (SFY) 2017. In total, the DCJIS/CRRB processed 82 complaints. Of this number 94% were closed. The other complaints were still under review at the start of SFY-18.

| Activity Type                                     | Count |
|---------------------------------------------------|-------|
| Violation Complaints Received *                   | 16    |
| Violation Complaints Closed                       | 12    |
| a. Violations found but no fines issued           | 4     |
| b. Violations found and fines issued              | 0     |
| c. No violations found                            | 8     |
| d. Closed upon satisfaction of conditions         | 6     |
| Complaints Received Alleging Incorrect CORI Data* | 66    |
| Incorrect CORI Complaints Closed                  | 65    |
| a. Complaints resolved                            | 29    |
| b. Complaint which were unable to be resolved**   | 36    |
| c. Pending                                        | 1     |

\*Total complaints may not correspond with numbers shown in individual categories as a complaint disposition could be pending investigation or could fall within more than one category.

\*\*Unresolved complaints are usually the result of the lack of available information with which to prove or disprove that CORI belongs to the complainant.

## APPENDIX A

### *Full text of M.G.L. c.6, s.168*

(a) There shall be a criminal record review board within the department of criminal justice information services consisting of the following persons: the secretary of public safety and security, who shall serve as chair, the attorney general, the secretary of labor and workforce development, the chair of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chair of the parole board, the commissioner of correction, the commissioner of probation, the commissioner of youth services, the colonel of state police and the presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs' Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom shall serve ex officio, and 5 persons to be appointed by the governor, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall have experience in the areas of workforce development or ex-offender rehabilitation and 2 of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of 3 years.

The chair shall hold regular meetings, 1 of which shall be an annual meeting, and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chair upon written application of 9 or more members. Members of the board shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their official duties.

(b) The board may hear complaints and investigate any incidents alleging that a person that has requested or received criminal offender record information has failed to provide the subject with the criminal offender record information in his possession prior to questioning the subject about his criminal history in connection with a decision regarding employment, volunteer opportunities, housing or professional licensing or in connection with an adverse decision on such an application on the basis of the criminal offender record information. The board may hear complaints and investigate any incidents alleging any other violation of sections 168 to 178A, inclusive, or violation of board rules and regulations. The board may charge and collect a fee, established by the secretary, as a condition for filing a complaint, which fee may be waived upon a finding of indigency. Any complaint filed with the board shall be supported by a written declaration by the complainant that it is made under the penalties of perjury. An answer filed by a responding party shall be signed under the penalties of perjury by an individual with personal knowledge of its contents. In conducting investigations and hearings, the board, or department staff designated by the board, shall have the power to summons witnesses, compel their attendance and testimony, require the production of books, records and documents, administer oaths and have access to all criminal offender record information. The chair of the board may appoint a member, panel of 3 board members or a hearing officer to conduct hearings, according to the standard rules of adjudicatory procedure or other rules which the department may adopt, in consultation with the board. Following review of a complaint by a member, panel or hearing officer, the board, by a vote of two-thirds of the members present and voting, shall issue a ruling as to the findings of the board. In accordance with its findings, the board may issue orders and sanctions enforcing this section and the board's rules and regulations, including, but not limited to, a remand for additional fact finding, the imposition of civil fines payable to the commonwealth not to exceed \$5,000 for each knowing violation and conditions on continued access to criminal offender record information or revocation of access; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain, or communicates or seeks to communicate criminal offender record information in the furtherance of the officer's official duties. The board may at any time refer a complaint for criminal prosecution under section 178 of this chapter.

The board shall make an annual report of the volume and disposition of complaints without identifying data on any complainant or other information that would include criminal offender record information relative to any person reviewed by the board to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate. The annual report shall also be available to the public upon request.



Annual Report:  
Commissioner Approved Access  
to  
Criminal Offender Record Information  
(CORI)  
July 1, 2016 – June 30, 2017

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## Background

The Criminal Offender Record Information (CORI) Law was amended by Chapter 256 of the Acts of 2010 (commonly referred to as the “CORI Reform Law”). The CORI Reform Law significantly changed the level of CORI access available for the purposes of employment, housing, licensing, and volunteering, and made CORI available to the general public. The law also increased the penalties for violations, and provided greater protections for individuals with a CORI. M.G.L. c. 6, § 172 is the primary statutory reference which outlines the extent and availability of CORI information. Only organizations provided access in § 172 may access the Department of Criminal Justice Information Services’ (DCJIS) iCORI Service to obtain CORI information.

When drafting the CORI Reform Law, the Legislature provided some discretion to the DCJIS Commissioner to grant access to CORI information if the Commissioner finds that such dissemination of CORI serves the public interest. Specifically, M.G.L. c. 6, § 172(a)(6) provides, “...(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under this section, if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest...”. The Commissioner has exercised this authority judiciously.

The purpose of this report is to identify those cases where the DCJIS Commissioner has provided access pursuant to § 172(a)(6) for the time period of July 1, 2016 through June 30, 2017. Accordingly, the DCJIS reports the following:

| Commissioner Approved CORI Access – FY17            |   |
|-----------------------------------------------------|---|
| Requests for Commissioner Approved Access Received: | 2 |
| Requests for Commissioner Approved Access Granted:  | 1 |

Since the main provisions of the CORI Reform Law went into effect in May of 2012, five Commissioner Approved Grants of CORI access have been approved. In FY16, one request was received and expanded CORI access was denied. In FY15, one request for Commissioner Approved access was granted. No requests were received in FY14. In FY13, one request for Commissioner Approved Access was submitted and granted. The Commissioner also approved two requests in May 2012.

## APPENDIX A

### *Full text of M.G.L. c.6, § 172*

(a) The department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the world wide web. Except as provided otherwise in this chapter, access to the database shall be limited as follows:

(1) Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms licensing in accordance with sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.

(2) A requestor authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under clause (3) may obtain such information to the extent and for the purposes authorized to comply with said statute, regulation or accreditation requirement.

(3) A requestor or the requestor's legally designated representative may obtain criminal offender record information for any of the following purposes: (i) to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers; (ii) to evaluate applicants for rental or lease of housing; (iii) to evaluate volunteers for services; and (iv) to evaluate applicants for a professional or occupational license issued by a state or municipal entity. Criminal offender record information made available under this section shall be limited to the following: (i) felony convictions for 10 years following the disposition thereof, including termination of any period of incarceration or custody, (ii) misdemeanor convictions for 5 years following the disposition thereof, including termination of any period of incarceration or custody, and (iii) pending criminal charges, which shall include cases that have been continued without a finding until such time as the case is dismissed pursuant to section 18 of chapter 278; provided, however, that prior misdemeanor and felony conviction records shall be available for the entire period that the subject's last available conviction record is available under this section; and provided further, that a violation of section 7 of chapter 209A and a violation of section 9 of chapter 258E shall be treated as a felony for purposes of this section.

(4) Any member of the general public may upon written request to the department and in accordance with regulations established by the department obtain the following criminal offender record information on a subject: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more, for 10 years following the disposition thereof, including termination of any period of incarceration or custody; (ii) information indicating custody status and placement within the correction system for an individual who has been convicted of any offense and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following the disposition thereof, including any period of incarceration or custody; and (iv) misdemeanor convictions for 1 year following the disposition thereof, including any period of incarceration or custody.

(5) A subject who seeks to obtain his own criminal offender record information and the subject's legally designated representative may obtain all criminal offender record information from the department pertaining to the subject under section 175.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under this section, if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy of the report with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting all access provided under this paragraph, without inclusion of identifying data on a subject. The annual report shall be available to the public upon request.

(7) Housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating applications for housing owned by such housing authority, in order to further the protection and well-being of tenants of such housing authorities.

(8) The department of telecommunications and cable and the department of public utilities may obtain from the department all available criminal offender record information for the purpose of screening applicants for motor bus driver certificates and applicants who regularly transport school age children or students under chapter 71B in the course of their job duties. The department of public telecommunications and cable and the department of public utilities shall not disseminate such information for any purpose other than to further the protection of children.

(9) The department of children and families and the department of youth services may obtain from the department data permitted under section 172B.

(10) A person providing services in a home or community-based setting for any elderly person or disabled person or who will have direct or indirect contact with such elderly or disabled person or access to such person's files may obtain from the department data permitted under section 172C.

(11) The IV-D agency as set forth in chapter 119A may obtain from the department data permitted under section 172D and section 14 of chapter 119A.

(12) A long-term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and any continuing care facility as defined in section 1 of chapter 40D may obtain from the department data permitted under section 172E.

(13) The department of early education and care may obtain from the department data permitted under section 172F.

(14) Operators of camps for children may obtain from the department data permitted under section 172G.

(15) An entity or organization primarily engaged in providing activities or programs to children 18 years of age or younger that accepts volunteers may obtain from the department data permitted under section 172H.

(16) School committees or superintendents that have contracted with taxicab companies to provide for the transportation of pupils pursuant to section 7A of chapter 71 may obtain from the department data permitted under section 172I.

(17) The commissioner of banks may obtain from the department data permitted under section 172J, section 3 of chapter 255E and section 3 of chapter 255F.

(18) A children's camp or school that plans to employ a person or accept a volunteer for a climbing wall or challenge course program may obtain from the department data permitted under section 172K.

(19) A victim of a crime, a witness or a family member of a homicide victim, as defined in section 1 of chapter 258B, may obtain from the department data permitted under section 178A.

(20) The motor vehicle insurance merit rating board may obtain from the department data permitted under section 57A of chapter 6C.

(21) The department of early education and care, or its designee, may obtain from the department data permitted under sections 6 and 8 of chapter 15D.

- (22) The district attorney may obtain from the department data permitted under section 2A of chapter 38.
- (23) A school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district, may obtain from the department data permitted under section 38R of chapter 71.
- (24) The Massachusetts Port Authority may obtain from the department data permitted under section 61 of chapter 90.
- (25) The department of children and families may obtain from the department data permitted under section 26A of chapter 119, section 3B of chapter 210 (26) The state racing commission may obtain from the department data permitted under section 9A of chapter 128A.
- (27) A court, office of jury commissioner, and the clerk of court or assistant clerk may obtain from the department data permitted under section 33 of chapter 234A.
- (28) The pension fraud unit within the public employee retirement administration commission may obtain from the department data permitted under section 1 of chapter 338 of the acts of 1990.
- (29) Special education school programs approved under chapter 71B may obtain from the department all criminal offender record information provided for in paragraph (3) of subsection (a).
- (30) The department shall configure the database to allow for the exchange, dissemination, distribution and direct connection of the criminal record information system to criminal record information systems in other states and relevant federal agencies including the Federal Bureau of Investigation and Immigration and Customs Enforcement that utilize fingerprint or iris scanning and similar databases.
- (31) Navigator organizations certified by the commonwealth health insurance connector authority under 42 U.S.C. § 18031(i) may obtain from the department data permitted under section 172L.
- (31) A person licensed pursuant to section 122 of chapter 140 may obtain from the department data permitted under section 172L.
- (b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are punishable by a term of incarceration in state prison shall remain in the database permanently and shall be available to all requestors listed in paragraphs (1) through (3), inclusive, of subsection (a) unless sealed under section 100A of chapter 276.
- (c) The department shall specify the information that a requestor shall provide to query the database, including, but not limited to, the subject's name, date of birth and the last 4 digits of the subject's social security number; provided, however, that a member of the public accessing information under paragraph (4) of subsection (a) shall not be required to provide the last four digits of the subject's social security number. To obtain criminal offender record information concerning a subject pursuant to subsection (a)(2) or (a)(3), the requestor must certify under the penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's criminal offender record information. The requestor must also certify that he has verified the identity of the subject by reviewing a form of government-issued identification. Each requestor shall maintain acknowledgement forms for a period of 1 year from the date the request is submitted. Such forms shall be subject to audit by the department. The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database; provided, however, that such additional rules and regulations are not in conflict with the state and federal Fair Credit Reporting Acts.

In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant's criminal offender record information shall provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source, (a) prior to questioning the applicant about his criminal history and (b) if the person makes a decision adverse to the applicant on the basis of his criminal history; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information. Failure to provide such criminal history information to the individual in accordance with this section may subject the offending person to investigation, hearing and sanctions by the board.

(d) Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

(e) No employer or person relying on volunteers shall be liable for negligent hiring practices by reason of relying solely on criminal offender record information received from the department and not performing additional criminal history background checks, unless required to do so by law; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's identifying information consistent with the requirements set forth in this section and in the department's regulations.

No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department, if the employer would not have been liable if the information had been accurate; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the individual's information consistent with the requirements set forth in this section and the department's regulations.

Neither the board nor the department shall be liable in any civil or criminal action by reason of any criminal offender record information or self-audit log that is disseminated by the board, including any information that is false, inaccurate or incorrect because it was erroneously entered by the court or the office of the commissioner of probation.

(f) A requestor shall not disseminate criminal offender record information except upon request by a subject; provided, however, that a requestor may share criminal offender record information with individuals within the requesting entity that have a need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and provided further, that upon request, a requestor shall share criminal offender record information with the government entities charged with overseeing, supervising, or regulating them. A requestor shall maintain a secondary dissemination log for a period of one year following the dissemination of a subject's criminal offender record information. The log shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii) date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the dissemination. The secondary dissemination log shall be subject to audit by the department.

Unless otherwise provided by law or court order, a requestor shall not maintain a copy, electronic or otherwise, of requested criminal offender record information obtained from the department for more than 7 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(g) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the

department shall establish a mechanism that will notify a subject, or an advocate or agent designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log and query log shall not be considered a public record.

(h) Notwithstanding the provisions of this section, the motor vehicle insurance merit rating board may disseminate information concerning convictions of automobile law violations as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor vehicle while under the influence of intoxicating liquor that results in assignment to a driver alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or policyholders to be used exclusively for motor vehicle insurance purposes.

(i) Notwithstanding any other provisions of this section, information indicating custody status and placement within the correction system shall be available to any person upon request; provided, however that no information shall be disclosed that identifies family members, friends, medical or psychological history, or any other personal information unless such information is directly relevant to such release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law.

(j) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

(k) Notwithstanding any other provision of this section or any other general or special law to the contrary, members of the public who are in fear of an offender may obtain from the department advance notification of the temporary or permanent release of an offender from custody, including but not limited to expiration of a sentence, furlough, parole, work release or educational release. An individual seeking access to advance notification shall verify by a written declaration under the penalties of perjury that the individual is in fear of the offender and that advance notification is warranted for physical safety reasons.

(l) Any individual or entity that receives or obtains criminal offender record information from any source in violation of sections 168 through 175 of this chapter, whether directly or through an intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose.

(m) Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

(n) The commissioner, upon the advice of the board, shall promulgate rules and regulations to carry out the provisions of this section.