

Important State Privacy and Confidentiality Protections for Low Income Immigrants and Citizens Served by Community-Food Programs

Recent news reports have highlighted a growing fear among immigrants seeking necessary services, such as food assistance, health care, and police protection. Some of these fears are based on immigrants concerned their personal information will be shared with immigration officials.¹

MLRI is providing basic guidance to help Massachusetts food pantries and community feeding programs understand state privacy and confidentiality laws. It is important to ensure all persons seeking your services – both U.S. citizens and immigrants – receive the fullest protection required under the law.

- **Many nutrition programs are available to low-income Massachusetts residents regardless of their immigration or citizenship status.** This includes food pantries and community feeding programs that distribute donated food or federal and state emergency food assistance (TEFAP/MEFAP). It includes public school meals, the WIC nutrition program as well as many public health services. These programs are often based on financial need of Massachusetts residents, but not on their immigration or citizenship status.²
- **Massachusetts' privacy laws require all agencies or organizations that collect personal client information to ensure it is kept confidential and private.** Personal information includes information such as an individual's name, address, age, SSN, driver license, immigration number, bank account information or other personally identifying information.
 - The Massachusetts Privacy Act applies equally to all persons, regardless of citizenship status. Every person has a right of privacy.³
 - Massachusetts law requires organizations that collect any personal data to protect it, and not release it without a client's express consent.⁴
 - Organizations that collect personal data must carefully safeguard it, and create systems to protect such data.⁵
 - Organizations that share personal information without written client consent may face fines and penalties.⁶
- **In addition to Massachusetts state laws, certain federal laws and programs also limit the information that may be collected about individuals and limit how that information can be used.** Many federal laws and programs, such as WIC, FERPA (education privacy) and HIPAA (healthcare privacy) provide specific privacy and confidentiality protections. For example, under WIC, an individual's information cannot be disclosed for purposes other than the administration or enforcement of the program without the individual's consent or unless specific statutory exceptions are met.⁷

- **Organizations can take steps to reduce fears by reducing the amount of personal information collected from people who seek services.** In general, it’s best to avoid collecting personal information about immigration status or citizenship, unless this information is required by a state or federal law that governs that program. For organizations that help households apply for other benefits, it is best to both limit what information is kept in the client files and let clients know what additional information is required to apply for SNAP or other government benefits for themselves or their dependents.
- **Under Massachusetts law, community-based organizations must create policies to limit and protect all personal information collected.**⁹ MLRI encourages organizations to display posters or give clients information on how their personal information is protected.
- **Immigration enforcement officials cannot demand personal client information, nor enter any private space in your organization, without a court-ordered warrant.**
 - Requests for information by immigration are simply that – requests. You are not required to turn over personal information to immigration officials unless the request is accompanied by a judicial warrant or subpoena. These documents must be signed by a judge, not an immigration supervisory agent. Be sure to carefully inspect any warrants presented by any immigration officer before releasing any information.
 - Immigration officers also cannot enter the private spaces of your organization without your permission or a court-ordered warrant, signed by a judge. Be sure to carefully review any warrants presented by an immigration officer before allowing them to enter your premises.
- **You should consult an attorney immediately if Immigration officials request information from your organization, or attempts to conduct enforcement activity on your premises.** For more information and legal resources, contact: ACLU of Massachusetts - (617) 482-3170 (<https://aclum.org/>); American Immigration Lawyers Association (<http://aila.org/>); National Immigration Law Center (<https://www.nilc.org/>)

Reference notes:

¹ *Immigrants, refugees too afraid to seek critical help from food pantries, domestic violence resources*, Boston Globe, April 26, 2017. <https://www.bostonglobe.com/metro/2017/04/26/immigrants-refugees-too-afraid-seek-critical-help-from-food-pantries-domestic-violence-resources/JrOJqOrYtHYeedLid9I69N/story.html>

² See, for example, the following federal regulations for: 7 C.F.R. 251.5(b), which establishes the criteria for determining recipient eligibility for the emergency food assistance program (TEFAP) based on household income and residing (primary address) in the service area; 7 C.F.R. 246.7(c), which establishes the eligibility criteria for the Women, Infants, and Children (WIC) program based on residency (primary address) in the service area, meeting income criteria, and being at “nutritional risk”; 7 CFR Part 245.e, which establishes eligibility for free and reduced price meals and free milk in schools as based on enrollment of the child in the school and family-size income standards. None of these nutrition programs have eligibility restrictions based on immigrant or citizenship status.

³ M.G.L. c.214, s.1B (Massachusetts General Laws)

⁴ M.G.L. c.66A

⁵ M.G.L. c.93H

⁶ M.G.L. c.214, s.1B; MGL c.66A; MGL c.93H

⁷ 7 C.F.R. §246.26

⁹ M.G.L. c. 93H

Best Practices Recommendations:

- Only collect information that is necessary and relevant for the administration of the programs you provide to your clients.
- Protect the privacy and confidentiality of all records containing personal identifying information, and ensure your staff understand and follow all federal and state privacy and confidentiality laws.
- Create a process for reviewing all external requests for information.
- Ensure that a requesting official has obtained the proper legal authority for a request, such a judicial warrant or subpoena before complying.
- Consider posting signage indicating that you are a welcoming organization.
- Consider posting signage indicating that your organization protects the confidentiality of everyone's information.

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“CLIENT” EXAMPLE - FOOD PANTRY

Sunny Day Food Pantry in Greater Boston provides low-income households a combination of donated food and MEFAP/TEFAP funded food. On May 1st, a mother with two children contacts the food pantry for the first time. The food pantry asks for her name, local address, her date of birth, the number and ages of her children and her monthly gross income. The pantry gives her a “membership card” for the food pantry and schedule of when she can get food.

The food pantry staff also asks her if she is getting SNAP (food stamps), and offer to schedule an appointment to help her fill out the application. She says that she is not getting SNAP and confides that she is an immigrant from El Salvador and does not have immigration documentation. You learn that her two children are U.S. citizens.

WHAT INFORMATION SHOULD YOU RECORD AND PROTECT?

Answer

- Only record information that is necessary and relevant for running your food pantry program. An individual's country of origin or immigration status is not required for food provided by the MEFAP/TEFAP programs or other donated food.
- If you assist with a SNAP application, the mother can apply for just her children - and opt out herself. Do not collect or record any information about the mother's immigration status.
- Protect all information that has been collected from individuals, and not release any information unless compelled by court order or you have the individual's consent.