

MASSACHUSETTS

Workforce Investment Act

WIA Communication No. 05-76

Policy **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Associate Directors
DCS Field Managers

cc: WIA State Partners

From: Jane C. Edmonds, Director
Department of Workforce Development

Susan V. Lawler, Commissioner
Division of Career Services

John P. O'Leary, Commissioner
Division of Unemployment Assistance

Date: October 19, 2005

Subject: **Policy to Protect Confidential Information**

Purpose: To provide guidance and instruction to all Local Workforce Investment Boards, One-Stop Career Center Operators and Workforce Investment Partners related to the protection of confidential job seeker, employer and wage information in carrying out official duties for the workforce investment system.

Background: As an important and inherent part of the services provided to customers, One-Stop Career Center staff and other workforce development partner staff must necessarily collect a wide variety of confidential personal information from customers. While the information collected as a matter of routine is often critical to effectively serving our customers and providing them with the best possible service, collection of personal data also brings with it a serious moral and statutory responsibility to safeguard customers' personal data from unauthorized use or disclosure. As various employees and workforce development partners have changed jobs or assumed new responsibilities, recent information requests have highlighted the need for all of us to revisit both how and on what legal basis employees and workforce development partners are accessing, and using job

seeker, employer information, and other data and information contained in UI databases, MOSES as well as other systems.

While the sharing of information, even the personal information of particular customers under appropriate circumstances, is critical to the seamless and effective delivery of services envisioned by the enactment of the Workforce Investment Act and vital to successfully carrying out the mission of the system's various partnering organizations, protecting the confidentiality of customer information accessed by staff in carrying out official functions of the workforce development/labor exchange system is imperative to its overall integrity.

Recent changes in staffing and organizational structure both on the state and local level make it both an appropriate and an opportune time for confidentiality policies and procedures governing our workforce system and its partners in the One-Stop Career Center system to be updated. In order to accomplish that goal, Director Jane Edmonds convened an internal working group to update confidentiality policies. In so doing, she also directed that policies and procedures regarding confidentiality and data access be updated in such a way as to ensure that all necessary and legally permissible data continue to be available to all staff and partner staff who are legally authorized to make use of the data in the discharge of their official duties. Where individual personal information or data may no longer be available, DWD will seek to create procedures that continue to meet legal requirements of protecting confidentiality, but that will also allow other important goals of the workforce development system and partners to be achieved. For example, while individual customer or employer contact information may not be available directly to some partners or parties outside the workforce system for certain outreach and marketing efforts, under appropriate circumstances DUA and/or DCS may assist by including information or flyers in direct mailings or other direct contacts of its own with these entities. This WIA Communication is the result of the workgroup's efforts and is intended as beginning, not the end, of a continuing dialogue on the subject of confidentiality and data access and sharing in the workforce development system.

A formalized policy relating to the use of information and data is necessitated by the existence of strong safeguards against the unauthorized and improper use of individual and business information as codified in Massachusetts state law.

Statutes ensuring the confidentiality of information related to activities associated with the workforce investment system include:

- Massachusetts General Laws (MGL) Chapter 23H, §6(b) - prohibits the unauthorized use and disclosure of employment service information
- MGL Chapter 151A, §46(a) and (e) - prohibits the unauthorized use and disclosure of any confidential unemployment insurance information.
- MGL Chapter 62E, §12 - authorizes the Massachusetts Department of Revenue to provide wage information to DUA and DCS.
- MGL Chapter 66A - prohibits the unauthorized access of personal data

Violation of either MGL 23H or 151A is punishable by a fine of up to \$100 (per offense) or by imprisonment for not more than six months, or both. Injunctive or non-monetary relief for violation of MGL 66A is covered under MGL Chapter 214, §3B and data subjects may claim damages under the Massachusetts Tort Claims Act. Violation of MGL Chapter 62E, §12 is punishable by a fine of \$100 (per offense).

Local practitioners of workforce investment services need to be aware that information and data included in the Massachusetts One-Stop Employment System (MOSES) database (as well as other information data sources available through DCS and DUA) is subject to the requirements of these confidentiality

statutes. Therefore, particular care must be taken to assure that the information and data accessible through the MOSES database, as well as other data and information sources accessible by workforce investment staff is protected and used appropriately.

Remember: Although an employee may be authorized to access this data, the employee may access the data *only in connection with the performance of his/her official duties*.

Permissible and Impermissible Uses of Information and Data

Employment Service Information/Data

Confidential employment service information covered under MGL Chapter 23H, §6(b) includes, but is not limited to:

- *job seeker's name and address*
- *job seeker's demographic characteristics*
- *job seeker's employment history*
- *employer's name and address*
- *specific job order information*

Examples of permissible uses include:

- *job order information where the employer has authorized disclosure*
- *referral of a job seeker to a job opening*
- *referral of a customer to an appropriate training program*

Examples of impermissible uses and unauthorized disclosure include:

- *providing a list of job seekers to a private placement agency*
- *providing a list of job seekers to a marketing company*
- *providing layoff information pertaining to a particular employer to a non-workforce development entity.*

Unemployment Insurance Information/Data

Confidential unemployment insurance information covered under MGL Chapter 151A, §46(a) and (e) includes, but is not limited to:

- *Name and address of claimant*
- *Claimant's weekly benefit amount, amount of benefit credit and amount of benefits received*
- *Amount of wages paid by a specific employer*
- *Number of employees reported by a specific employer*
- *Summary UI information at a level in which a claimant or employer would be identified*

Examples of permissible uses include:

- *Processing a claim for unemployment benefits*
- *Processing a claim under the Trade Act*
- *Applying for and administering a National Emergency Grant*
- *Providing claimants with Rapid Response services*

Examples of impermissible uses and unauthorized disclosure include:

- *Providing claims information to an outside entity*
- *Providing claims information to the Local Workforce Investment Board*
- *Providing claims information to the claimant's spouse or other relative*

Wage Record Data

Confidential wage information includes, but is not limited to:

- *Employee's name and social security number*
- *Employee wages*
- *Name of employee's employer*

Examples of permissible uses and authorized disclosure include:

- *Processing a claim for unemployment benefits*
- *Cross-matching of U.I. claimant information against wage records to detect claimants working and collecting*
- *Evaluating outcomes of Massachusetts workforce development programs by approved state-level staff*

Examples of impermissible uses and unauthorized disclosure are:

- *Accessing wage record information (QDOR) for non-U.I. related reasons*
- *Providing individual wage record information with personal identifiers to an administrator of a workforce development program (state or local level)*

Personal Data

Personal data is data which because of name, identifying number, mark or description can be readily associated with a particular individual. Access to this data requires specific authorization and is covered under the Fair Information Practices Act, MGL Chapter 66A. Such personal data includes:

- *Claimant and applicant data but not corporate data*
- *Personnel information such as employee work evaluations, disciplinary documents and medical records*

The same permissible and impermissible use and disclosure limitations that apply to both employment service and unemployment insurance data also apply to personal data.

Policy: All employees of the Department of Workforce Development, including those within the Division of Career Services (DCS) and the Division of Unemployment Assistance (DUA), and any employees of Local Workforce Investment Boards, One-Stop Career Centers, and other Career Center Partners and any subcontractors to each will maintain and protect the confidentiality of information and data in accordance with the policy and statutory requirements described, herein.

In conjunction with the aforementioned policy all employees of the Department of Workforce Development, including those within the Division of Career Services (DCS) and the Division of Unemployment Assistance (DUA), and any employees of Local Workforce Investment Boards, One-Stop Career Centers and other Career Center Partners and any subcontractors, who by virtue of their position may access any of the forms of information described above in carrying out their official duties must sign and submit the attached Confidentiality Policy form.

In addition, MOSES will be modified to include the same Confidentiality Policy form. All MOSES users must indicate their acceptance of the Confidentiality Policy on an annual basis to maintain their access to MOSES.

To help assure consistent implementation of this policy, an e-learning module has been developed that specifically covers the issues of information confidentiality and security. The module is currently available to workforce investment organizations and staff and may be accessed by going to the MassWorkforce website at www.massworkforce.org/ResourceCenter/Training/Policy.htm or the DCS/DUA website at http://intranet.detma.org/training/e-learning_page.htm. For those individuals who lack the technical capacity to access the training module via the internet, the training module is also available in CD format and may be requested through the local DCS Field Manager or directly from the DWD Training Department.

Action

Required: DCS Field Managers, working in conjunction with the local Workforce Investment Boards, One-Stop Career Center Operator(s), workforce investment partners and service providers, will be responsible for compiling a complete list of local workforce investment personnel (including staff of Local Workforce Investment Boards, One-Stop Career Center employees/staff and other local partnering organizations) who by virtue of their position must or may have access to the types of information described above.

The list must identify:

- each individual,
- identify the workforce investment organization or service provider by whom the individual is either employed or to whom he/she is under contract, and
- identify the individual's primary worksite.

In addition to compiling the list of local personnel, the Field Manager will have overall responsibility for assuring that personnel of other local organizations that do not receive notice of the posting of the WIA Communication Series, but, by the nature of their job responsibilities, are subject to the requirements of this policy are informed of the content of this policy communication, the requirement to sign the Confidentiality Policy form and of the available training described above.

The DCS Field Manager will also be responsible for assuring that each individual completes the attached Confidentiality Policy form and forwarding completed forms to:

Director of Internal Control & Security
Charles F. Hurley Building, 4th Floor
Boston, MA 02114

All completed Confidentiality Policy forms must be received by the Director of Internal Control & Security no later than November 14, 2005.

Copies of each signed Confidentiality Policy form must be maintained by the DCS Field Manager and the file updated as new employees are hired and complete the Confidentiality Policy form.

Any employee having data access privileges who is terminated or ceases to be employed by a board, One-Stop Career Center or other workforce development partner or contractor must also be reported to the DCS Field Manager as soon as possible, not to exceed 24 hours after separation, in order to ensure the prompt termination of any potential continued access to confidential data.

All personnel hired after November 14, 2005 who meet the parameters described in this issuance must submit a signed Confidentiality Policy form within two weeks of their start date to the local DCS Field Manager. It will be the responsibility of the DCS Field Manager to assure that new employees of the local workforce investment system who are subject to the terms of this policy complete the Confidentiality Policy form. It will also be the responsibility of the local Field Manager to forward the completed forms to Lisa Soltero as cited above. If completed confidentiality forms are not received in a timely fashion, data access privileges for personnel who do not have a current Confidentiality Policy form on file with Internal Control & Security may be restricted or revoked.

Local Workforce Investment Boards, One-Stop Career Center Operators and local workforce development partners and service contractors must assure that appropriate procedures are in place to ensure that the data access and use privileges of employees and contractors are reviewed annually by appropriate management personnel.

The Director of Internal Control & Security will be responsible for ensuring that other state agency personnel who do not work at the local field level and who have access to information covered under this policy (MOSES users for example) complete and submit the Confidentiality Policy form.

Effective: Immediately

References: Massachusetts General Laws (MGL) Chapter 23H, §6(b);
MGL Chapter 151A, §46(a);
MGL Chapter 62E, §12.
MGL Chapter 66A

Inquiries: Please email all questions to PolicyQA@detma.org. Also, indicate Issuance number and description.

Filing: Please file this in your notebook of previously issued WIA Communication Series Issuances as #05-76.

Q & A Policy Issuance 05-76

Policy to Protect Confidential Information

Issuance

Q 1. Given the growing concern regarding the confidentiality of personal data and protecting individual's privacy rights, are staff who have access to personal data under greater scrutiny as to how they use such data?

A Yes, organizations (whether public or private) have a vested interest in assuring that personal information/data to which they have access is used in such a manner as to comply with all confidentiality and privacy statutes and regulations. As publicly funded resources and by the nature of the types of information/data to which they have access, the organizations that comprise the workforce investment system need to be particularly cognizant of confidentiality/privacy requirements. To maintain public confidence and trust, workforce investment entities must assure that staff are knowledgeable of and carry out their official duties in a manner consistent with all legal requirements relating to access and use of customer information.

Q 2. Are there plans to provide notification to Career Center customers and potential Career Center customers of the policies relating to protecting the confidentiality and privacy of their information, possibly through a website posting?

A DWD, its member organizations (DCS and DUA) and other workforce investment institutions are exploring potential options that will assist customers and potential customers to be informed of the commitment to maintaining the confidentiality of information provided by them.

Q 3. Will training regarding the information confidentiality be provided to staff?

A In conjunction with the implementation of the policy an e-learning training module has been developed specifically covering the issues of information confidentiality and security. The training module is currently available to all Massachusetts workforce investment system staff. As cited in [WIA Communication No. 05-76](#) the e-learning module can be accessed via the internet or intranet by going to the

- MassWorkforce website at massworkforce.org/ResourceCenter/Training/Policy.htm or
- the DCS/DUA website at intranet.detma.org/training/e-learning_page.htm.

Training specifically for executive/management level staff of LWIBs, One-Stop Career Centers, and other local workforce investment entities will also be scheduled. Notification of the training schedule for executive/management level staff will be forwarded under separate cover.

Q 4. What organizations, specifically, are considered the 'workforce' investment entities' whose employees and/or contracted personnel are subject to signing the Confidentiality Policy form by virtue of their position or responsibilities must or may have access to the types of information covered under the Confidentiality Policy?

A Local entities include: Workforce Investment Boards, One-Stop Career Centers, Title I Administrators, Fiscal Agents, Career Center Partners, local organizations with access to MOSES, workforce investment service providers who serve customers under Title I and/or Title III (Wagner-Peyser) or other funding sources administered through the Department of Workforce Development, the Division of Career Services, the Division of Unemployment Assistance or the Commonwealth Corporation.

Q 5. Should One-Stop Career Centers initiate/implement written information release forms to be signed by customers authorizing use of their information and data for official duties?

A A signed release form does not necessarily protect an organization (or a staff member) from sanction should a customer's information be improperly used or accessed. Generalized release forms that do not fully specify the exact uses for which information may be accessed or used by an organization's staff may not pass legal scrutiny in meeting the requirements of a customer's 'informed consent' that may likely be applied in a legal action relating to an alleged breach of information confidentiality and/or privacy.

Q 6. If a customer signs an information release form, what specific information can be released?

A While the release form signed by the customer should fully specify the information elements for which release is authorized, only information that is relevant to the specific service or action being considered at that time by the staff person should be accessed or released. For instance, if a customer is an ex-offender and that information is recorded in the case management notes in MOSES, if a staff person is looking to access child care services (under supportive services) for the individual while going on job interviews it would not appear that the customer's status as an ex-offender is relevant and should not be divulged . However, if in the course of conducting job development on behalf of the individual it might be relevant to discuss the customer's status as an ex-offender with a potential employer in light of a specific job requirement that the employee be 'bondable' in relation to the availability of the federal Bonding Program.
[Note: see previous Q & A]

Q 7. Is personal information that is already part of a 'public record' (such as a customer's status as a Level III sex offender) subject to the confidentiality and privacy requirements described in this policy? What about in terms of a personal safety issue for the career center staff, themselves' should the career center staff be made aware of the individual's status?

A To the extent the information is not relevant to carrying out the official duties and responsibilities of the staff person accessing the information, such information is subject to the confidentiality/privacy requirements covered under this policy issuance.

Regarding the personal safety issue of career center staff, the situation should be dealt with in accordance with the policies and procedures as implemented under the career center's Workplace Safety Plan.

Q 8. Can customer information, such as sensitive personal information discussed as part of the case management process, be kept confidential in MOSES?

A While MOSES is not configured to automatically keep all customer information 'confidential', staff should use the 'Confidential' button to secure the confidentiality of case management 'notes' where sensitive personal information should be recorded in MOSES. Use of the 'Confidential' button restricts access to the information to the 'case manager' and to supervisory staff with a higher MOSES security level.

It should be noted that recording of any customer's sensitive personal information should be recorded in MOSES only if it is relevant to effectively serving the customer's needs.

Q 9. How far reaching is the Confidentiality Policy?

A Anyone who, by the nature of his/her position may acquire or have access to confidential information, including access through MOSES must sign the Confidentiality Policy form.

Q 10. If a 'boilerplate' Confidentiality Statement is already included in vendor contracts, will that suffice?

A All staff of subcontractors who, by virtue of their position may access confidential information in carrying out their official duties under the terms of the contract must sign and submit the Confidentiality Policy form.

Q 11. Must ITA (Individual Training Account) vendors sign the Confidentiality Policy form?

A Generally, by virtue of a WIA customer having chosen the ITA vendor from the state listing of approved ITA training vendors, it may be inferred that the customer has authorized the sharing of pertinent information. If, however, an ITA approved training vendor has MOSES access, vendor staff who would have access to information through MOSES must sign the Confidentiality Policy form.

Q 12. Are One-Stop Career Center partners able to share any confidential information with each other in the center?

A The WIA Communication [No 05-76](#) provides the parameters that govern access to and the sharing of information among the various workforce partners and stakeholders that comprise the Massachusetts workforce development system, including One-Stop Career Centers.

Q 13. Should there be two distinct and separate policies ` one for One-Stop Career Center employees and another for contractors, other partners and vendors

A No. While all forms of data/information described in the Confidentiality Policy may not apply to everyone, the characteristics of the data do not change depending upon who has possession of the data. The data remains confidential and, therefore, a single, uniform policy regarding accessing this information is appropriate.

Q 14. Title I is not mentioned in this policy; thus there is no mention of WIA income/eligibility information. Is that confidential?

A WIA income/eligibility information linked to a particular person would be considered confidential under G.L. c. 66A (State Privacy Act).

Q 15. If WIA vendors collect eligibility information on behalf of customers (including income information and UI status if necessary) are they allowed to give it to the One-Stop Career Center/WIB/other?

A This question is outside the scope of this Confidentiality Policy. What vendors may disseminate would depend upon the contract between the vendor and the contracting entity.

Q 16. What is the definition of `non-workforce development entities`?

A A `non-workforce development entity` is an entity that is not part of the Massachusetts workforce development system. Examples may include, but are not limited to marketing companies, fraternal veterans` organizations, proprietary training schools.

Q 17. Hypothetically, if a career center staff person is working with an ex-offender (who happens to be a convicted murderer, rapist or otherwise dangerous person) and under some circumstances, such as through a CORI check or other legal avenue, this background is discovered or comes to light, are we allowed and/or obligated to share this information with staff? Or, by law are we forbidden to share this information with staff. What about our obligation to employers? Also, is there a difference in `handling` this information if the person self-certifies to the information?

A Access to information regarding the specific nature of an individual`s criminal history acquired as a result of a CORI check is specifically limited to individuals who have an approved `Individual Agreement of Non-Disclosure` form on file with the Massachusetts Criminal History Board. However, should the specific nature of an individual`s offense become known through either the results of a CORI check performed by staff of a career center (or other local workforce development organization covered by WIA Communication No. 05-76) or through other, legal means such information is to be considered `personal` information subject to the same confidentiality protections/limitations as other `personal` information or data and said information should only be accessed or conveyed by a staff person if necessary to carry out his/her professional duties and responsibilities. Staff should take caution to convey only the level of information (such as to a potential employer) that is minimally required to perform and complete their duties in a professional manner.

Regarding the personal safety issue of career center staff, the situation should be dealt with in accordance to the policies and procedures as implemented under the career center`s Workplace Safety Plan.

Q 18. This policy communication appears to establish distinct silos in which One-Stop Career Center partners do not and will not have access to information. Please clarify?

A [WIA Communication No 05-76](#) provides the parameters that govern access to and the sharing of information among the various workforce partners and stakeholders that comprise the Massachusetts workforce development system, including One-Stop Career Centers.

Q 19. Must One-Stop Career Center employees use only a private setting to discuss a customer's personal information?

A Yes, whenever possible One-Stop Career Center employees should use a private setting to discuss a customer's personal information. An office type setting is best, but if only cubicle type settings are available to conduct business, employee cubicles should be located far enough away from public areas of the OSCC so that conversations may not be overheard by visitors or customers. In centers where space does not permit a sufficient separation of employee areas from public areas, offices or conference rooms should be used when circumstances require or a customer so requests. One-Stop Career Center operators (as well as any other Massachusetts workforce development entity) must take all reasonable care to assure the confidentiality of customer information consistent with statutory requirements. The policy assumes that reasonable care is being taken to protect the confidentiality of the information and to ensure that confidential information is not discussed or conveyed in an inappropriate setting or manner.

Q 20. My staff are already covered under the MOSES Confidentiality Agreement, why must they also sign the Confidentiality Policy form?

A MOSES is only one data source of confidential information. This policy is broader and intends to raise awareness concerning proper information practices and procedures designed to ensure customer confidentiality with paper records, telephone conversations, meetings, etc. To assure that individuals, who by the nature of their position and functional responsibilities have read, understand and agree to comply with the policy it is necessary to initially obtain, and maintain on file, a hard copy of the individual's signature. The MOSES Confidentiality Agreement does not provide for acquisition of an original signature.

Q 21. Under the policy, why is the DCS Field Manager in charge of getting employees on and off the list? It makes more sense that this should be centralized at the local One-Stop Career Center or other city entity. This way it would eliminate an extra step and prevent employees from possibly being incorrectly added or deleted from the list. The list should be managed by someone on-site. If kept locally then policies and procedures would be written and internal reports compiled to ensure that the data access and the use privileges of employees and contractors are reviewed annually by the local One-Stop Career Center staff.

A While the policy places overall responsibility for the identification of staff who must sign the Confidentiality Policy form and the collection/maintenance of Confidentiality Policy form signatures on the local DCS Field Manager, nothing in the policy prohibits local areas from assigning or delegating specific procedural tasks to other local staff under the overall oversight and responsibility of the Field Manager to see that those tasks are carried out and that the overall policy is followed. The local workforce partners are encouraged to work together under the leadership and guidance of the Field Manager to implement procedures that most effectively meet the needs of the local area in complying with the requirements of the policy.

Q 22. Local Workforce Boards have access to MOSES data and would need to be under the same policies as other partners. Under the UI data it is impermissible to provide claim information to the LWIB

A Employees may access UI information identifying a single individual or business only in connection with the performance of their official duties. As a volunteer Board charged with the planning and oversight responsibility of the One-Stop Career Center system in their areas, the LWIBs do not require identifying UI information as part of their official responsibilities. LWIBs may still be furnished with summary UI Information unless a specific aggregated data element or elements are sufficient to identify a specific individual or business entity.

Q 23. With regard to wage record data, is it the DCS One-Stop Career Center staff or the state level DCS staff that would provide the cross-matching of U.I. claimants' information against wage records to detect claimants who are working and collecting UI benefits at the same time?

A The cross-matching of UI claimant information against wage records to detect claimants working and collecting is a DUA function. DCS employees are not involved.

Q 24. If we have specific questions about confidentiality that we may need answered in a timely manner, who do we call?

A Specific questions regarding information confidentiality and security may be submitted to PolicyQA@detma.org. A timely response will be provided.

Q 25. What if a staff person of a partner organization does not want to sign (the language about imprisonment and fines might scare some away)?

A Failure to sign the Confidentiality Policy form does not exempt a staff person from the statutory provisions. The purpose of the policy is to provide basic information about the statutes that pertain to release and access of information and data and to provide a number of examples to illustrate permissible and impermissible uses. Signing the form acknowledges receipt and understanding of the policy and agreement to abide by its provisions.

A staff person who is a registered MOSES user jeopardizes his/her MOSES access if a signed Confidentiality Policy form is not submitted.

Q 26. I have some concerns that specific UI information needed to assist a career adviser in evaluating the ability of a customer to sustain him or herself during training may not be requested in planning individual services.

A One-Stop Career Center employees may continue to have access to UI information for the purpose of providing claimants with employment and training related services.

Q 27. I am also concerned that we should be given positive examples of permissible information that we could give to LWIBs, etc. in their role of review and oversight of services. Our local Workforce Issues Committee occasionally asks for general trends and non-specific information to better serve target populations including UI recipients. What is allowable?

A Generally, the related statutes, regulations and the WIA Policy Communication, itself do not prohibit the use of aggregated, non-specific information/data to allow for the analysis of local, regional or national trends pertinent to the operation of the Commonwealth's workforce development system either at the state or local level. However, in the case where the cohort used to produce the aggregated data is so small that the data element, itself would in fact allow for the identification of a specific individual or employer, that data element must be kept confidential.

Q 28. As a local DCS manager I receive requests from my Title I/NEG/Trade partners for printouts of the QSGN screen for U.I. status verification in determining an individual's program eligibility. May I provide them with the QSGN printouts?

A Employees whose official responsibilities require them to verify UI status as a condition of eligibility under Title I/NEG/Trade programs may receive UI information.

Q 29. May staff of the Food Stamp Unit and TAFDC caseworkers request information from DCS if the customer has filed a claim or is collecting U.I.?

A G.L. c. 151A, '46 authorizes disclosure of U.I. information to the Department of Transitional Assistance in order to carry out its official duties.

Q 30. May DUA or DCS staff comply with a local City/Town Veterans' Agent's request as to the status of a veteran's U.I. claim, specifically if the veteran has exhausted his/her claim in order to determine eligibility for other locally provided services?

A DCS employees, including Local Veterans' Employment Representatives (LVERs) and Disabled Veterans' Opportunities Program staff (DVOPs) working in OSCCs, are authorized to receive U.I. information in the performance of their official duties. DUA or DCS staff may also provide UI Claims information/data to City/Town Veterans Agents if the agents need such data in the performance of their official duties.

Q 31. If a claimant calls the One-Stop Career Center and requests that a copy of his/her claim history be mailed to him/her at the address shown on the claim, can this be done?

A Such a request should be forwarded to Lisa Soltero, Director of Internal Control and Security, C. F. Hurley Building, 4th floor, Boston, MA 02114. Ms. Soltero will respond to the request.

Q 32. We mail out employer follow-up letters every month with a list of individuals who had been referred to the employer to determine whether or not they were hired. The follow-up letters lists the referred customers by name and includes their Social Security Numbers. Is this allowable?

A For the purpose of determining the outcome of a referral, DCS/OSCC employees may send a follow-up letter to the prospective employer. However, the follow-up letter should not contain the Social Security Number unless authorized by the customer.

Q 33. Will we be provided with a consent form that could be used by the customer when requesting U.I. information for other program services?

A Yes. The Legal Department in conjunction with the Department of Internal Control and Security (ICS) will be drafting a Model Consent Form.

In the interim, career centers may continue to use existing release forms. Please note that no release form will protect against possible sanction for impermissible use. A release form only authorizes the data holder to release the information to another person for the purpose specified on the form.

Q 34. We receive requests from Housing Authorities for U.I. information on a release form signed by the customer. The Housing Authorities use the information in determining eligibility for low-income housing and fuel assistance. Is this method acceptable?

A U.I. Claimants may authorize the release of the U.I. information to third parties. We understand that some of the forms used by Housing Authorities and other organizations may not be specific enough to constitute an authorized release. Consideration is being given to centralizing with Internal Control and Security (ICS) the handling of these requests and to standardizing the release forms.

ICS will be working with the Housing Authorities and other entities that request data on a regular basis to standardize the request and response process.

Q 35. Several CBOs that JCS contracts with have staff members who will be trained on MOSES in the near future (Nov., Dec., Jan). Should those staff members sign a confidentiality form now, or will that be handled at their training?

A There is nothing in the Confidentiality Policy that prohibits an individual from signing the Confidentiality Policy form in advance of MOSES training and gaining MOSES access. Conversely, neither are they required under the provisions of the policy to sign the Confidentiality Policy form at this time unless they currently have access to confidential information/data through another media source (emails, customer conferences, etc.) in which circumstance they should sign and submit the form immediately.

Q 36. Who should an employee contact with any questions or concerns about the confidentiality of data, data sharing, particular data practices or data sharing requests?

A The employee should address their questions or concerns with his/her manager. If the manager needs assistance in responding to those questions or concerns, the manager should contact the Director of Internal Control and Security at gsoltero@detma.org.

Q 37. What are the limits on a Release of Information (ROI) form used by a Career Center either to request information or share information with another One-Stop partner or agency?

A In addition to the customer's name, signature and date, the ROI form must contain sufficient information to constitute an 'informed consent.' This means that the form must inform the customer what information will be requested and from whom; what information will be shared and with whom; the purpose of such request or sharing; and the consequences if the customer does not authorize the release of information. The Legal Department is working with ICWS in developing a Model Consent Form.

Q 38. It would help if more clarification could be provided on what we can share and/or not share with each other in the Career Center. For example, Case Example #10 indicates that we cannot ask the UI Walk-In claims taker to use QDOR to determine if a customer has returned-to-work.

A Confidential information may be shared within a Career Center only if authorized either through informed consent or by statute. The Unemployment Insurance Law allows for the sharing of UI information with DCS

and OSCC employees. The Employment Service Law allows for the sharing of ES data for the purpose of administering the public employment service program. Finally, the Privacy Act allows the holder of personal data to share that data with another entity provided that such sharing is authorized by statute. In all cases, employees may request and receive confidential data only in the performance of their official duties. Wage record information is furnished to DUA and DCS by the Department of Revenue pursuant to an Agreement that contains strict confidentiality provisions. DUA employees may use the wage record information in administering the UI program. DCS employees may use the wage record information for the purpose of evaluating the employment and earnings outcomes of its programs. Without a release from the customer, DUA and DCS employees may not share wage record information.

Q 39. Of the partner agencies, like Project ABLE, Mass Rehab, or where our staff use offices of a partner agency, are the employees of the partner agency covered by the terms of the Confidentiality Policy and are they required to sign the Confidentiality Policy form? Do the terms of the Confidentiality Policy and the requirement to sign the Confidentiality Policy form apply to staff/personnel who merely see the information (such as on an open MOSES screen or from a memorandum viewed on another staff person's desk), or do they apply only to individuals who have direct access to MOSES?

A As stated in Policy Communication No. 05-76 all MOSES users must sign the Confidentiality Policy form. All employees of the Department of Workforce Development, including DCS and DUA must sign the Confidentiality Policy form. In addition, staff of Local Workforce Investment Boards, One-Stop Career Centers, and other career center partners and any subcontractors to each who, by virtue of their position may, in carrying out their official duties, may access any forms of information covered under the policy must sign and submit the Confidentiality Policy form.

The information covered under the policy is not limited only to that accessed through MOSES. In addition to MOSES, information covered under the policy may become known or communicated to an individual staff person through a variety of methods that include but are not limited to written reports, official organization notices, memoranda or emails, personal conversations with other staff or customers, themselves (both job seeker and employer customers). Notwithstanding the source or form of confidential information or data, if the information or data is generated as a function of the individual job seeker's or the employer's status as a customer of the workforce development system staff of any of the aforementioned organizations or entities who, in the course of conducting their official responsibilities may receive or access covered information are subject to the provisions of the policy to protect the confidentiality of such information/data and are required to sign and submit the Confidentiality Policy form.

Q 40. Are employers that are provided job seeker information in the course of discussing or making a referral to one of its job openings required to sign the Confidentiality Policy form?

A No, generally speaking employers are not required to sign the Confidentiality Policy form.

While there would be no requirement to sign the Confidentiality Policy form based on the 'job referral' scenario described, theoretically, the circumstance might arise, such as in the case of a 'dislocated worker' situation where workforce investment services might be provided on-site at a company location in a 'partnership' arrangement with the employer. In such cases, the provisions of the policy would be applicable to any workforce investment staff working at the on-site location. Depending upon the nature of the 'partnership' the circumstances may warrant that at least some of the employer's staff would be required to sign the Confidentiality Policy form.

For instance, if a service center was established at the company location that included co-management and co-staffing with both workforce investment and company personnel, and in regular service review meetings that included company personnel in which the discussion of individual cases would likely include a review of an individual's UI claim information related to the individual's pursuit of training opportunities, it would be necessary for any company personnel who would access such information (per the discussion) to have signed the Confidentiality Policy form. Or, if a company staff person was assigned the responsibility for entering all participant information into MOSES (based on MOSES access being established at the on-site location) the staff person would also have to sign the Confidentiality Policy form.

Q 41. In conducting 'job development' activity can a career center staff person provide 'Employment Service Information' (e.g., an applicant's name & address, demographics, employment history, etc.) to an employer without the applicant's knowledge or prior authorization? When we run job matches based on employers' job orders and we match people to these job orders, can we provide information to the employer without the applicant's prior knowledge/approval, even if, in MOSES, the Confidential YES button (which relates to

JobQuest searches - see below) has been selected?

Do you want your contact information confidential?*

- Yes** - Your contact information will not be displayed to employers when they browse your profile via the internet. Employers will not be able to contact you directly about possible job openings.
- No** - Your contact information will be displayed to employers when they browse your profile via the internet. Employers will be able to contact you directly about possible job openings.

A If the 'applicant' is a registered customer of the Massachusetts One-Stop Career Center system at the time the job development activity is being conducted, the Confidentiality Policy does not prohibit the use of customer 'Employment Service Information' in conducting the 'job development' activity (defined in the classic sense as 'cold calling' potential employers on behalf of a specific job seeker to identify possible employment opportunities without benefit of a specific, job order from the employer) as long as the information elements are relevant to the job development transaction process.

In the case of a career center staff person generating through the MOSES 'matching' functionality a list of job seekers that potentially meet the requirements of an employer's job order, again there is no prohibition from utilizing the customer information, so derived, in the course of transacting a referral to the employer as long as only that information relevant to the referral process is used.

In generating such MOSES job matching lists, a special circumstance regarding the Massachusetts JobQuest functionality warrants discussion in relation to the provisions of the Confidentiality Policy. JobQuest is an internet based application available to any person with internet access. A JobQuest user is not required to be a registered One-Stop Career Center customer in order to utilize JobQuest (although the JobQuest website provides the capacity for an individual to register as a One-Stop Career Center customer, if he/she so chooses). When an individual registers as a JobQuest user, the personal profile information that he/she submits automatically populates the data fields in the MOSES 'Basic' and 'Full' registration tabs and creates a MOSES customer record for that individual (the JobQuest user is not notified of this occurrence and he/she is not automatically registered as a One-Stop Career Center customer).

Because the individual has a MOSES record, it is possible for the individual to 'match' against an employer's job order when a career center staff person conducts a MOSES job seeker match (generating a list of individuals who may meet the listed job requirements), even if the individual is not a registered career center customer. In such cases, is the staff person who is utilizing the 'match' list to generate possible referrals to the employer's job opening required to obtain the individual's authorization to provide information to the prospective employer prior to transacting the referral?

The answer is yes. The JobQuest customer who is not a registered One-Stop Career Center customer is not informed through the JobQuest website that profile information he/she submits may be used in any context other than an employer conducting a search for potential job applicants. Until such time as the JobQuest website is updated to include such notification, One-Stop Career Center staff generating MOSES 'Match' lists must determine if any individual in the list is not a current One-Stop Career Center customer and must receive the individual's express authorization to provide profiled information to a prospective employer in advance of any communication with the employer about the individual.

Q42. What information, if any, can be discussed or provided to a training provider prior to a customer enrolling in the vendor's program? Once a customer has enrolled in a training program, must written authorization be obtained in order to communicate with the vendor regarding the customer?

A In carrying out one's professional/official duties, discussion of information appropriate to transacting a potential referral to a training program on behalf of a job seeker customer is consistent with the provisions of the Confidentiality Policy as described in WIA Communication No. 05-76. However, only information relevant to carrying out the transaction should be discussed. In this scenario, it might be appropriate to discuss the person's name, city or town of residence (if a commuting issue existed), educational or prior training experience and former job title or work history. It would not likely be appropriate to discuss the individual's telephone number, specific street address, age, birth date, marital status or UI claim status in transacting the referral process.

Additionally, as cited in a prior response, if the training vendor in question is an ITA approved training vendor, and the customer's choice of that vendor from the state listing is the basis for the discussion, the act by the customer 'choosing' the vendor implies authorization to discuss relevant information with the training vendor. Furthermore, even in the case where the training vendor is not an ITA approved provider, and whether or not the discussion occurs prior to or post enrollment, if the discussion is conducted in the course of carrying out one's official workforce investment duties, the inclusion in the discussion of relevant customer information is consistent with the permissible uses of information as described in the Policy.

Q 43. As a staff person who is a MOSES user, why do I have to use the 4 digits of my Social Security number to obtain MOSES access? I believe my SS# should be protected as well.

A There is no technical requirement that a MOSES user employ his/her Social Security number to obtain MOSES access. Use of any 9-digit identifier is technically feasible and permissible as long as the user follows the established annual procedures for activating MOSES access. If you so choose, you may change the 9-digit identifier the next time you are scheduled to renew your MOSES user registration.

Q 44. I used to be a career center customer and am now a career center employee. What provisions if any is the state undertaking to protect my identity as a previous career center customer? My UI and MOSES case management notes are available to all staff members including my salary, home address, home phone number, etc.

A Federal regulations pertaining to One-Stop Career Center performance require career center customers to be tracked for two years following exit from a WIA funded program or from the last receipt of a WIA funded service. This requirement necessitates that a customer's record be retained in MOSES for the required tracking period, whether the record remains 'active' or 'inactive'. Additionally, per the request of the entities that comprise the Massachusetts One-Stop Career Center system, current policy related to the administration of MOSES does not provide for 'archiving' customer records after a specified time period.

Q 45. Does our Career Center Membership form need to be updated to include a clause giving us permission to discuss the information with other internal resources and outside training vendors?

A What information is included in a One-Stop Career Center's membership form is not within the purview of the provisions of the Confidentiality Policy as delineated in WIA Communication 05-76. As cited in a prior response, information release forms (or clauses) do not necessarily protect an organization (or individual) from potential sanction if a customer's information is used in an impermissible way. The pertinent statutes already allow for the use of customer information in carrying out one's official workforce investment duties and responsibilities without the need for the customer's authorization to do so.

Q 46. Do outside vendors who conduct workshops and networking events in a One-Stop Career Center need to sign the confidentiality policy? What information can we share with them?

A To the extent that an 'outside' vendor may access customer information covered under the provisions of the Confidentiality Policy delineated in WIA Communication No. 05-76, in the course of conducting its workforce investment related business in agreement with (or under contract to) a Massachusetts workforce investment entity subject to the provisions of the confidentiality policy, the vendor's representative must sign the Confidentiality Policy form.

Q 47. What is the policy on identifying ourselves when initially contacting a customer to schedule an appointment? If the spouse of the customer or other family member answers and asks the purpose of the call or would like additional information as to why I am calling, or what services are available, etc. what is allowable? Does the policy impose any specific limitations as to what information may be left in a telephone message if the customer is not available?

A With regard to sharing a customer's information with the customer's spouse or family members (such as in the case of a telephone inquiry to the customer's home), the 'Unemployment Insurance Information/Data' section of the Confidentiality Policy delineated in WIA Communication 05-76 as well as 'Case Example # 11' specifically cite the prohibition of sharing a customer's UI claim information with any individual (including a spouse and family members) without express written authorization from the customer. With regard to customer personal information/data that is not UI claim related, WIA Communication No. 05-76 also specifically states that 'the same permissible and impermissible use and disclosure limitations that apply to both employment service and unemployment insurance data also apply to personal data'.

Q 48. May we slightly alter the Confidentiality Policy form by adding producing it on our Career Center letterhead for our staff to sign?

A No, the form itself may not be printed on career center (or other organizational) letterhead. You may, however attach a cover page printed on your career center letterhead.

Q 49. May we add numbering to the pages of the Confidentiality Policy form such as 'one of four', 'two of four', etc. and have staff initial each page?

A The Confidentiality Policy form as posted on the Massachusetts Workforce System website at www.massworkforce.org includes page numbers. The Confidentiality Policy includes no requirement that each staff person initial each page in addition to signing the form. As long as the initialing of each page is 'requested' and not 'required' and there is no sanction implied or imposed against an employee or staff person for not initialing each page the Commonwealth has no reason to prohibit such a request. However, while there is no prohibition from making such a request, such a request is not advised in order to lessen any apprehension on the part of employees and/or staff with regard to signing the Confidentiality Policy form.

Q 50. If EAS staff see in MOSES that an EAS customer has attended a Career Center Seminar, indicating that the customer is receiving U.I. benefits, can the EAS staff person furnish this information to DTA?

A An EAS customer's attendance in a Career Center Seminar does not necessarily indicate that the individual is also receiving U.I. benefits as EAS customers are regularly encouraged to attend Career Center Seminars as part of their case management activities in order to learn about employment related services available through the One-Stop Career Center system. Additionally, under certain circumstances, it is possible that a U.I. eligible individual, because of his/her low weekly U.I. benefit rate, may in fact also be eligible for DTA benefits, and would not constitute an issue of potential fraud.

However, if in carrying out his/her official responsibilities an EAS staff person learns that a current EAS customer is, in actuality, concurrently receiving UI benefits and notwithstanding if a clear issue of fraud is evident, MGL c.151A 46 authorizes disclosure of UI information to the Department of Transitional Assistance in order to carry out its official duties (see response to Question # 29, above).



CONFIDENTIALITY POLICY

I, _____, an employee of the
(Print Full Name)

_____, hereby
(Print)

acknowledge that as part of my official duties I may acquire or have access to confidential information including unemployment insurance information (including wage records) and employment service information as well as personal data (the "Information").

I agree to comply with all laws relating to confidentiality of the Information, including, the following:

1. General Laws Chapter 151A, §46(a) and (e) prohibits the unauthorized use and disclosure of any confidential unemployment insurance information. Violation of this statute is punishable by a fine of up to \$100.00 per offense or by imprisonment for not more than 6 months, or both.

Unemployment insurance (UI) information includes, but is not limited to:

- name and address of the claimant
- claimant's weekly benefit amount, amount of benefit credit and amount of benefits received
- amount of wages paid by a specific employer
- number of employees reported by a specific employer
- summary UI information at a level in which a claimant or employer could be identified.

Some examples of permissible and authorized disclosure of this information are:

- processing a claim for unemployment benefits
- processing a claim under the Trade Act
- applying for and administering a National Emergency Grant
- providing claimants with Rapid Response services.

Some examples of impermissible uses and unauthorized disclosure are:

- providing claims information to an outside entity

- providing claims information to the Local Workforce Investment Board
- providing claims information to the claimant's spouse or other relative.

2. General Laws Chapter 23H, §6(b) prohibits unauthorized use and disclosure of employment service information. Violation of this statute is punishable by a fine of up to \$100.00 per offense or by imprisonment for not more than 6 months, or both.

Employment service information includes, but is not limited to:

- applicant's name and address
- applicant's demographic characteristics
- applicant's employment history
- employer's name and address
- specific job order information.

Some examples of permissible uses and authorized disclosure of this information are:

- job order information where employer has authorized disclosure
- referral of an applicant to a job opening or placement in appropriate training.

Some examples of impermissible uses and unauthorized disclosure are:

- providing a list of applicants to a private placement agency
- providing a list of applicants to a marketing company
- providing layoff information pertaining to a particular employer to a non-workforce development entity.

3. The Fair Information Practices Act (G.L. c. 66A) prohibits the unauthorized access of personal data. General Laws Chapter 214, §3B provides for injunctive and other nonmonetary relief for violation of this statute. Data subjects may also make a claim for damages under the Massachusetts Tort Claims Act.

Personal data is any information concerning an individual which because of name, identifying number, mark or description can be readily associated with a particular individual. Personal data includes:

- claimant and applicant data but not corporate data
- personnel information, such as, employee work evaluations, disciplinary documents and medical records.

The permissible and impermissible uses and disclosure of unemployment insurance and employment service data apply also to personal data.

4. General Laws Chapter 62E, §12 authorizes the Massachusetts Department of Revenue to provide the Department of Workforce Development (DWD) with wage record information. DOR provides the information to DWD for

verification by DWD of the financial eligibility of participants in its entitlement programs and to provide DWD with a post-audit mechanism enabling it to identify fraud, error and abuse regarding the administration of such entitlement programs. In addition, DWD may use the wage record information to evaluate employment and earnings outcomes of programs within the Massachusetts workforce development system. Violation of G.L. c. 62E is punishable by a fine of \$100 per offense.

Wage record information, includes, but is not limited to:

- employee's name and social security number
- employee's wages
- name of employee's employer.

Some examples of permissible uses and authorized disclosure of this information are:

- processing a claim for unemployment benefits
- cross-matching of U.I. claimant information against wage records to detect claimants working and collecting
- evaluating outcomes of Massachusetts workforce development programs by approved state-level staff.

Some examples of impermissible uses and unauthorized disclosure are:

- accessing wage record information (QDOR) for non-U.I. related reasons
- providing individual wage record information with personal identifiers to an administrator of a workforce development program(state or local level).

I will at all times maintain the confidentiality of the Information. I will not use it for any unauthorized purpose, and I will not, directly or indirectly, disclose or otherwise make the Information available to any unauthorized person or persons or access or use the Information for any unauthorized or illegal purpose. I will not access the Information for any non-business purpose. I will make no attempt to provide or publish the Information in a format by which it may be identified.

I understand that if I have any questions or concerns about the confidentiality of data, data sharing, or particular data practices or data sharing requests that it is my individual responsibility to bring the matter to the attention of my supervisor and to the attention of the Department of Workforce Development's Director of Internal Control & Security. The Internal Control and Security Department can be reached by calling Director of Internal Control at 617-626-5901.

I understand that any unauthorized use or disclosure by me of the Information described in this agreement may result in a fine, imprisonment and if applicable, appropriate discipline, up to and including immediate termination from employment and/or my continued access to such information.

Employee Acknowledgement

By signing below, I acknowledge that I have read, understand and agree to abide by the provisions set forth in the Confidentiality Policy

Signature

Date

Please Print:

Full Name: _____

Work Location: _____

Work Address: _____

Case Example #1

You are working with a 47-year old woman who was laid off from a local company and who has been receiving unemployment benefits for 7 weeks. The individual has not been successful in scheduling very many job interviews despite attending several career center workshops, sending out 150 resumes and cold calling companies that employ workers in the same job as her former position. She has told you that she has begun to feel depressed and is becoming less enthusiastic about her employment future and has curtailed most of her job search activity. She is also concerned because, as a single mother she tells you that the \$325 that she receives as her weekly benefit amount barely covers her family's expenses. Because of her depressed state, her physician has prescribed medication that she is now taking. You wish to refer her to the clinician from the Department of Mental Health who provides counseling services at your career center two days per month.

In making the referral to the counselor can you:

- identify the individual as a UI recipient?
- discuss with the counselor the specific amount of her unemployment benefits?
- discuss with the counselor that she is currently taking medication?

Case Example #1 Discussion

The need to identify her status as a UI recipient would not be relevant to making the referral to the clinician. The discussion with the clinician could involve a general summary of the issues underlying the need for the referral: her job loss, her lack of job search success, the pressures of her status as a single parent, etc. The discussion should not include a specific identification of her status as a UI recipient and must never identify the amount of her benefit. While these may, in fact be contributing factors to her need for the referral, these should be more appropriately posed in a generalized way as "issues related to her financial situation". Neither should you discuss with the clinician the fact that the woman is taking medication for her condition.

Any discussion of the specific personal information regarding the woman's status as a UI recipient, the specific amount of her UI benefit and her medication should only be provided to the clinician by the customer, herself.

Case Example #2

You are a staff person of a non-profit, community based organization (cbo) that is an approved ITA (Individual Training Account) provider of training services under Title I of WIA. The cbo has MOSES access and you are a registered MOSES user. In the course of carrying out your responsibilities as designated by your superior, one of your responsibilities is to search the MOSES database each day to identify individuals who have newly registered as job seekers with three career centers located in your area. The search is designed to develop a list of individuals who may be in need of training services. The search provides each new registrant's name, address, telephone number, age, gender, veteran status, educational background, employment history (including prior salary/wage) and UI recipient status and amount of weekly UI benefit (if applicable). You provide this list to the Marketing Director of the cbo, who will review the list and decide which individuals will receive direct marketing materials regarding the specific training services offered by your organization.

- Must you sign the Confidentiality Policy form?
- Must the Marketing Director of the cbo also sign the Confidentiality Policy form?
- Can the information derived from MOSES be utilized for the purpose described?

Case Example #2 Discussion

All users of MOSES must register as a MOSES user and be assigned a unique MOSES user ID number. All MOSES users must sign the Confidentiality Policy form.

In order to use (access) personal information provided by an individual in the course of registering as a customer of a Massachusetts One-Stop Career Center (whether or not the personal information is generated through MOSES or another information source), the user of the information must have signed the Confidentiality Policy form.

A staff person of an organization that is part of the Massachusetts workforce development system (such as an approved ITA training provider) may, generally, use the personal information of a customer of the Massachusetts workforce development system (such as a One-Stop Career Center Operator customer) in carrying out his/her official functions. However, the staff person is entitled to use only information or data elements that are pertinent to satisfactorily completing the specific task at hand. For instance, in this case where the information is generated by you directly through MOSES, in a discussion you might have with the organization's Training Services Director regarding the potential registration of a career center customer into one of your organization's training courses, it would likely be pertinent to discuss the person's name, the town of residence, highest level of education completed and work background.

It would not necessarily be pertinent to discuss the individual's age, full street address, or telephone number. In some cases it may be pertinent to discuss the individual's general status as a UI recipient (but not the amount) in cases where enrollment in a training program within a specified time frame is a requirement of maintaining the person's benefit eligibility. Discussion of either the specific amount of the individual's weekly UI benefit rate (if a UI recipient) and/or the number of weeks the individual has remaining on his/her claim may be relevant in cases

where there is a question regarding the individual's ability to complete the course based on its length and/or the lack of other, necessary financial support available to the customer.

It must also be noted in the instance described above, that the Training Services Director would had to have also signed the Confidentiality Policy form.

Case Example #3

You are a counselor at a local One-Stop Career Center. After attending his orientation and learning about training opportunities available through the center, a young man who is a first-time customer of the center discusses with you his strong desire to attend a specific technology training course offered by one of the local training providers. Based on his previous work history you believe that he has skills that are currently in demand in the local area and suggest that he needs to explore the current job market before it can be determined that he is in need of training services. He becomes very agitated and relates to you that when he becomes angry he sometimes resorts to force. He tells you about the guns that he owns and in a threatening manner states that he "knows to use them." Based on his reaction you suggest he might want to discuss the situation with the clinician who schedules sessions at the career center. You offer to initiate a referral, but he refuses. You ask that he speak with the center director which he does. After the discussion with the director, the individual leaves and never returns to the career center. .

- Should you inform other staff of the center about this individual and his implied "threat"?
- Should other career centers be informed about the individual in case he should choose to pursue assistance through another center?
- What information about the individual should you enter in MOSES regarding this individual?

Case Example #3 Discussion

In the case of any customer (or non-customer) who makes threatening statements you should follow the policies and procedures as described in your career center's written Safety Plan.

While uttering a personal "threat" would not be considered personal information protected by "confidentiality" statutes and referencing the threatening statement in the Notes section of MOSES would be allowable as long as it relates only the "facts" of what was said and observed, caution should be taken with respect to transmitting the specifics of what occurred to third parties (in this example to other career centers).

Case Example #4

You are a counselor at the One-Stop Career Center. At her initial counseling session, after having been referred to the Title I program, a woman customer relates to you that her husband is a functioning alcoholic who has become more and more abusive. She tells you that she is afraid of him and that she buys his beer so he will drink at home and not be driving on the road. He holds a full time job. She tells you she wants help, but has too many issues that need to be resolved before she can be job ready, and she wants training.

- How should you document the counseling session in her MOSES record?

Case Example #4 Discussion

While stating the specific facts of the discussion in MOSES Notes is allowable and as the issues with her husband may, in fact be relevant to both her ability to undertake either job search activities or participate in and complete a training program, summarizing the potential barriers to her successful participation in these career center services under the general category of “domestic issues” may be a more prudent approach. Such an approach would provide another counselor/staff person who may be working with the woman in the future with sufficient information relevant to potential barriers that may affect her capacity to undertake and complete training (or other career center services) so as to assure that such issues will be identified and potential solutions discussed so as to mitigate their effect on her successful participation as a career center customer.

Case Example #5

A man attends the Career Center Seminar and subsequently meets with you, the career center counselor, for WIA Title I assessment. The session goes well. He would like to attend training as a Class A truck driver, and meets all criteria for training approval. At the end of the session, just before leaving, he lets you know that he was fired from his last job. After some further discussion he admits that he was fired because he beat up a co-worker. No criminal action was taken against the man as a result of the altercation and he has no other history of violence.

- What information should you note in his MOSES record?
- What information may you provide to other workforce development staff in servicing the customer’s employment and training needs?

Case Example #5 Discussion

While it is permissible to state the specific facts of the discussion in MOSES Notes (with appropriate MOSES confidentiality restrictions engaged), the basis for the firing from his previous job would not be relevant to a discussion you have with the career center training coordinator as to the customer’s potential referral to providers of Class A truck driving training courses in the area and would, therefore, not be permissible.

Case Example #6

You are the Director of a Massachusetts One-Stop Career Center. A private employment agency would like to use space in your career center to recruit workers for 250 temporary positions for the area's local agricultural exposition. The agency has a contract to provide the temporary help and the recruitment would be conducted on a daily basis over a two week period. The exposition lasts for a full month and would provide full-time employment opportunities for up to 6 weeks. The workers will not be charged a fee.

The agency will advertise the openings and the recruitment process in the newspaper and will provide signage in your career center to generate interest among your center's walk-in traffic. As they anticipate that between 800 and 1,000 people will apply for the positions, they are asking for career center staff to perform pre-screening services as part of the recruiting effort. In conjunction with the recruiting effort, the agency also requests that it be provided with a list of currently unemployed career center customers in order that its staff can conduct direct marketing of the positions to them.

- As part of the pre-screening services can you discuss the personal information of pre-screened candidates with the staff of the private employment agency when referring the candidate to the next screening level?
- Can you provide the private employment agency with a list of currently unemployed customers for direct marketing purposes?

Case Example #6 Discussion

There is no prohibition against career center staff providing relevant information to representatives of a private employment agency in carrying out referral related duties in conjunction with a mutually agreed upon recruitment initiative. (Remember, there is a general prohibition against working with private employment agencies if the job seeker will be charged a fee by the agency for its "service"). Under such agreements, staff must always be cautious to assure that only *relevant* customer information be provided. In this case, an applicant's name, city/town of residence and work history may be pertinent to the agreed upon pre-screening and referral process, whereas the applicant's UI status, specific street address and telephone number may not be relevant. An individual's age may be relevant for certain specific positions, such as the Commonwealth's statutory age limitations for operating certain machinery or serving alcoholic beverages (it must be remembered that any age qualifications placed on the hiring of an individual by an employer must be for a *bona fide* reason).

While sharing of relevant information among career center staff and representatives of the private employment agency as part of a referral procedure is allowable, the request to provide a list of the center's unemployed customers for use by the private employment agency's staff for direct marketing purposes is not allowable.

In working with private employment agencies (or any other outside entity desiring to partner with a career center for recruiting initiatives), it is strongly recommended that the allowable information sharing parameters be included in negotiating the specific agreement between the

career center and the private employment agency or other entity in order that all parties understand and are in full agreement as to any limitations regarding what information and data can and can not be shared.

Case Example #7

You are an employer account representative at a One-Stop Career Center. One of your primary responsibilities is to develop relationships with and market career center services to companies in the bio-technology sector, which has been identified as an “emerging” industry in your workforce area. You are particularly focused on developing relationships with new “start-ups” who have small administrative staffs and limited resources.

During an initial visit with the Operations Director of a prospective business customer, a new start-up, the Director had indicated that during the fourteen months since the company had begun operations, he was having difficulty retaining technical staff. He had told you that of the fifteen technicians that he had hired and trained, seven had left the company to join ACMEGen, Inc., a more established competitor in a nearby city. You had informed him that ACMEGen was also a customer of your career center who had recently been adding employees as it geared up to bring a new product to market. The competitor had regularly been listing job openings with your center and had even used space in your center to recruit a number of production workers.

A week following your initial visit you receive a telephone call from the Operations Director. He indicates that he has thought more about the retention issue and has concerns that while he believes his company offers competitive starting salaries, there may be an issue of the competitive level of the pay increases offered to employees after the probationary period and after the first year anniversary date. He does not have the resources to conduct either an in-house wage survey of his competitors or to hire an outside consultant to conduct a survey. He asks if you would be able to help by providing copies of the competitor company’s job orders so that he could compare how the competitor’s wage and salary levels compare to his own.

- Can you comply with the Operations Director’s request?

Case Example #7 Discussion

No, you may not provide a company with hard copies of the specific job orders of another company without written authorization from the company. Neither may you relate in oral or written form the wage/salary amounts of specific job openings or job titles of another company (without written permission). Based on your experience with local employers, you may provide informal or anecdotal information about the general wage ranges for similar positions in the local area as long as the information can not be used to identify specific employers or you may provide specific industry level wage and salary data from formal surveys as long as the generalized information or data is insufficient to identify specific companies.

If your center has the resources and expertise, it may offer to conduct formal wage/salary surveys of local industry sectors on either a no-cost or fee-based service, but data specific to a particular company’s wage levels derived from the company’s “business” dealings with your career center

must not be directly provided to another company, unless formally authorized by the company itself.

Additionally, it was improper to identify the named competitor, ACMEGen as a customer of your career center. Such information of the business is covered under the statutory requirements. Without expressed official authorization from the company, its status as a customer or non-customer of the center should not be divulged.

Case Example #8

You are the Director of a Massachusetts One-Stop Career Center. The Human Resources Director for a local manufacturing company with whom you have a personal relationship through membership in the local PTA calls you to inform you that she has received formal notice from the parent company in Illinois that it plans to move one of the company's production lines to a subsidiary in California within eight months and that she had been instructed to prepare an outplacement plan for the 150 affected workers. She asks your assistance as she is interested in integrating your career center services into her overall outplacement plan. She will send you (informally) a summary of the workers' job titles, pay levels, ages and place of residence in order that you might begin to develop a plan for serving the needs of the workers. She also asks that you keep the information confidential as no formal notice to the employees will be issued for several months. She will submit the required WARN Notice to the appropriate state-level personnel, but again, per corporate instructions it will be coordinated with the formal notice to the employees.

Subsequent to the call from the HR Director, you are contacted by the Local Workforce Investment Board Director who asks you about rumors he has heard from a WIB member that the manufacturing company in question will be having a significant layoff. The WIB Director asks for a detailed written summary of the situation in order to determine the potential for his developing and submitting a National Emergency Grant (NEG) proposal on behalf of the affected workers.

Several weeks later you are contacted by the business reporter for the local newspaper who has been a strong supporter of your career center over the years, promoting the center's services in his column on numerous occasions. He asks what you know about potential layoffs at the manufacturing company.

- What information can you provide to the WIB Director
- What information can you provide to the reporter?

Case Example #8 Discussion

As the Director of a Massachusetts workforce development entity, the LWIB Director is authorized to access/receive information regarding the planned layoff at the manufacturing company in order to carry out his/her official responsibilities that may include developing NEG proposals for submission to the U.S Department of Labor. It is strongly recommended that in discussing any potential, but "officially" unannounced layoff activity with a representative of an

affected company, that workforce development system staff will provide the company representative with information regarding other workforce development personnel (such as the local Rapid Response Team representative, WIB Directors, etc.) he/she may need to share the information with in order to formulate an appropriate response to the particular situation, but also assuring the representative that the information will not be shared with unauthorized individuals or organizations.

Regarding the request from the local reporter, the layoff information that you have received from the HR Director, whether received via the telephone conversation or the written summary, may not be provided to the reporter as he is not authorized to receive such information from you.

If, however, the request from the reporter came after a WARN Notice had been received from the company, the information in the WARN Notice could be provided as the WARN Notice is considered to be public information, not subject to confidentiality requirements. Local workforce development organizations are notified of the submission of WARN Notices by the Commonwealth's Rapid Response Unit's published list. It should be noted, that in practice most companies coordinate the submission of the WARN Notice to the designated state and local officials with the 60-day employee notice period. Under the rare circumstance that you gain access to a copy of a WARN Notice in advance of the date the affected employees are officially notified, contact your local Rapid Response representative for instruction as it is not consistent with state policy that general public notice of a WARN related layoff event should precede official notice to the affected workforce.

Case Example #9

You are a counselor of a private, non-profit community service organization providing counseling and referral services to the local community. You are working with a young man who dropped out of the local high school in the 11th grade to help pay expenses for his child. Your client is currently working part-time at a local gas station/convenience store, but would like a full-time job. Your client is not married to the child's mother and they do not live together. He tells you she is receiving Transitional Assistance for Needy Families benefits. He also tells you she has gotten a restraining order against him, but he tells you that he made no threat against her but she got it because she was mad at him for not watching the baby as much as she wanted him to.

You call a contact you have at the local One-Stop Career Center to make a referral. Your organization is not a formal partner with the career center (no MOU) but you have worked with the counselor of the career center in the past to assist your clients with their job search. Your organization does not have a policy requiring clients to sign an information "release" form in order to provide client information to other service organizations.

- What information about your client can you provide to the career center counselor?
- Is the One-Stop Career Center counselor prohibited from receiving/accessing any specific information regarding your client?

Case Example #9 Discussion

Generally, the information that you may provide to third party organizations in servicing your client's needs would be covered by the policies of your organization. The statutes referenced in WIA Communication No. 76 specifically cover information held by state agencies and their agents and by contractors and subcontractors of state agencies that gain access to the information in carrying out the formal duties and responsibilities on behalf of a state agency. In this specific case it would appear that there would be no formal prohibition against your providing any of the information told to you by the client to the career center counselor. Information pertinent to making a referral may be shared. This may include name, address telephone number, educational and work background, known barriers to employment (such as lack of a high school diploma or lack of transportation), if any. While there would not be a statutory prohibition against informing the career center counselor of the restraining order, your organization's policy and discretion should dictate whether you need to share that information instead of suggesting to the client that he, himself, provide that information to the career center counselor at the time of their meeting.

If, in this case, the client had signed an information release form the policy that is the basis for the release form should dictate the level of information that may be shared. It should be pointed out, that while use of a release form may provide some level of legal protection to an organization, the level of protection may be lessened in direct proportion to the lack of specificity regarding the information elements described on the release form, itself.

Case Example #10

You are a career center case manager conducting follow-up activity on your customers. You have been unable to reach one individual and despite having left three messages on her voicemail she has not returned your calls. You ask the UI Walk-in claims taker to look up the customer's record on QDOR to see if she is now working.

- May the UI Walk-in claims taker comply with your request?

Case Example #10 Discussion

No, QDOR may only be used in taking an unemployment claim. Any other use of QDOR is prohibited.

Case Example #11

You are a UI Walk-in claims taker. A woman comes to you and requests a printout of her husband's UI payments as he needs them for tax purposes.

- May you comply with her request?

Case Example #11 Discussion

No, an individual's claim information may only be provided to either the individual or to an individual with documented proof that he/she has been authorized by the individual to have access to such information.

Case Example #12

You are a job specialist in a One-Stop Career Center. While interviewing a customer for employment opportunities in your cubicle, the customer begins to tell you in a loud voice about his criminal history.

- Are you required to inform the customer that he can not tell you his criminal history?
- Are you required to move the discussion to a more soundproof location in the career center?

Case Example #12 Discussion

Nothing in the statutes referenced in WIA Communication No. 76 specifically requires you to move to a more soundproof, secure location in the career center in a case where the customer is, him or herself, relating sensitive personal information to you. It is up to each local workforce investment area and/or organization to develop policies and procedures to cover such circumstances. However, it is strongly recommended that staff should inform the customer that in such circumstances privacy may be an issue and you should suggest moving the interview to a more private setting.

In the situation where you, the job specialist subsequently discusses the customer's case with another staff person in the career center, all due care must be taken to maintain the confidentiality of the customer's personal information. If that means moving the discussion to a fully enclosed, private office or meeting room, such precautions should be taken.

Case Example #13

You are the intake person for the One-Stop Career Center. You sit at an open reception desk in the main foyer of the career center which has a waiting area with seating for up to 12 individuals. As a matter of regular procedure, it is one of your responsibilities to ask each person who enters the center for his her social security number in order to check the MOSES database to determine if the individual is already registered as a customer.

- Does this practice violate any statutory requirements for protecting the confidentiality of personal information?

Case Example #13 Discussion

While the practice, itself, is not a technical violation of the statutes, it is a very poor and suspect business practice. If an individual who has been victimized by identity theft is able to demonstrate in a legal action that the practice contributed to the identity theft, both you and your employing organization may be vulnerable to the available legal sanctions. All due care must be taken to protect the personal information and data (such as social security numbers) of customers. Local policies and procedures should be reviewed with regard to any unintended contribution to potential unauthorized disclosure of personal information and revised as necessary.