

**IMPOUNDED**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT

Docket No.

IN RE INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL

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**OFFICE OF THE INSPECTOR GENERAL'S MEMORANDUM OF LAW IN SUPPORT  
OF THE MOTION TO COMPEL PRODUCTION OF MATERIAL PURSUANT TO  
M.G.L. c. 12A, § 9**

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The Office of the Inspector General (OIG) submits the following memorandum of law in support of its motion for this court to compel the Committee for Public Counsel Services ("CPCS") to produce certain records and data to the OIG within seven days.

**I. Relevant Facts and Law**

*A. Legislative Mandate and OIG Access Authority*

On August 5, 2025, Governor Maura Healey signed into law Chapter 14 of the Acts of 2025. Section 82 of that Act (the Act) commands the OIG to examine and report on multiple aspects of the public defense system and use of "bar advocates" to represent indigent defendants. A copy of Section 82 of the Act is attached hereto as Exhibit A. Among the issues the Act requires the OIG to examine and report on is "the caseload of counsel involved in representation of indigent defendants and the efficacy thereof." The Act requires the OIG to submit a report detailing the OIG's findings to the Legislature no later than June 30, 2026.

In furtherance of this statutory mandate, the OIG began identifying and requesting relevant

records and data from public bodies pursuant to its access rights under Chapter 12A of the General Laws. Section 9 of Chapter 12A states, in relevant part, as follows:

The inspector general in carrying out the provisions of this chapter **shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence**, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body, **and any other data and material that is maintained by or available to any public body described in section seven which in any way relate to the programs and operations with respect to which the inspector general has duties and responsibilities** except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six.

M.G.L. c. 12A, § 9 (emphasis added). “Public body” is broadly defined in M.G.L. c. 12A, § 7 as “agencies, bureaus, divisions, sections, departments, offices, commissions, institutions and activities of the commonwealth, including those districts, authorities, instrumentalities or political subdivisions created by the general court and including the cities and towns.” CPCS, as a body established by M.G.L. c. 211D, § 1, and funded primarily by state appropriations, clearly falls within this definition and is therefore required to provide the OIG access to its records.

*B. OIG Request for Docket/Case Numbers*

Shortly after the Act was signed into law, representatives of CPCS reached out to the OIG to offer cooperation with the OIG’s review. The OIG and CPCS met on September 17 and October 10, 2025. Shortly thereafter, the OIG made informal requests for certain records and information, with which CPCS has largely complied.

Among the information the OIG is requesting from CPCS are docket numbers for each case “where (CPCS) counsel was requested and/or assigned” from January 1, 2023, until the present. *See Exhibit B*. This information is essential to the OIG’s ability to examine and report on the caseload of counsel and the efficacy of their representation as required by the Act.

On November 3, 2025, CPCS General Counsel Lisa M. Hewitt issued a letter to the OIG outlining the “challenges CPCS faces with respect to complying with” the OIG’s request and

requesting additional meetings to “discuss how CPCS can provide [the OIG] with information the OIG needs in order to meet its [sic] obligation to conduct a fulsome investigation while being mindful of these other considerations.” As discussed in greater detail below, CPCS raised concerns regarding compliance with Rule 1.6(a) of the Rules of Professional Conduct, various statutes governing juvenile and other cases, and state laws governing criminal offender record information (CORI). CPCS did not represent at that time that it was refusing to produce or was precluded from producing this information to the OIG. A copy of the November 3<sup>rd</sup> letter is attached hereto as Exhibit C.

*C. OIG Efforts to Resolve Issue without Court Intervention*

Following receipt of the November 3<sup>rd</sup> letter, the OIG and CPCS met multiple times and communicated via email regarding this issue. On November 13, 2025, the OIG General Counsel and the Honorable Timothy S. Hillman, who is working with the OIG on this matter, contacted CPCS to outline the OIG’s legal position and explore possible solutions. CPCS made an incomplete production to the OIG on November 20, 2025, which failed to include the docket numbers necessary to the OIG’s analysis. On November 26, 2025, without conceding the OIG’s legal position and in an effort to reach agreement, the OIG General Counsel contacted the CPCS General Counsel to propose protections to the docket numbers, including a binding agreement wherein the OIG would agree in writing to isolate the requested information to an internal firewalled team and refrain from specific disclosure in any public report. On December 1, 2025, CPCS responded by email, declining these proposals and failing to propose any alternative. *See Exhibit D*. On December 2, 2025, the OIG General Counsel replied to the most recent email indicating that the OIG would seek redress by this Court. *See Exhibit D*.

While the OIG’s position is that the concerns raised by CPCS are not applicable, the OIG

has acted in good faith to address these concerns and resolve the issue without inconveniencing the Court.

## II. Argument

As set forth below, CPCS is required by law to produce the docket numbers at issue to the OIG and is improperly invoking the Rules of Professional Conduct, state statutes, and state CORI laws to prevent this disclosure. In doing so, CPCS is hindering the investigation ordered by the Legislature and Governor.

1. *CPCS is required to produce the requested information to the OIG pursuant to M.G.L. c. 12A, § 9.*

The OIG has a statutory mandate to prevent and detect fraud, waste, and abuse of public funds. M.G.L. c. 12A, §§ 2 and 8. To achieve this mandate, the Legislature, by statute, has given the OIG broad power to examine the records of state agencies. Section 9 of Chapter 12A of the General Laws unambiguously states as follows:

The inspector general in carrying out the provisions of this chapter shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body, and any other data and material that is maintained by or available to any public body described in section seven which in any way relate to the programs and operations with respect to which the inspector general has duties and responsibilities except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six.

M.G.L. c. 12A, § 9 (emphasis added). Compliance with an OIG request pursuant to this statute is not optional:

[The Inspector General] may request such information, cooperation and assistance from **any state, county or local governmental agency** as may be necessary for carrying out his duties and responsibilities. Upon receipt of such request [the agency] **shall** furnish to the inspector general or his authorized agent or representative such information, cooperation and assistance.

M.G.L. c. 12A, § 9 (emphasis added). Further, the Massachusetts Governor and Legislature have,

via Chapter 14 of the Acts of 2025, ordered the OIG to apply its mandate to this specific issue and examine the public defense aspect of the criminal justice system.

2. *CPCS is not precluded by law or ethical obligation from producing the requested information.*

The OIG is entitled to access this information by statute and has served CPCS with a formal request, but has not received all of the requested information. CPCS has suggested that there are “challenges” to providing the OIG with the requested material. The three legal issues they have presented to the OIG were laid out in their November 3<sup>rd</sup> letter. See Exhibit C. In brief, they are: (1) that providing client names would violate Rule 1.6 of the Massachusetts Rules of Professional Conduct; (2) that state statutes mandate confidentiality in certain CPCS cases; and (3) that providing the requested information would violate CORI laws. None of the issues raised serve as a valid reason for CPCS to refuse to provide the material at issue for the reasons enumerated below:

- a. The Rules of Professional Conduct do not preclude CPCS from producing the requested information to the OIG.

CPCS relies on Rule 1.6(a) of the Rules of Professional Conduct in support of their position that ethical obligations to their clients preclude them from producing the docket numbers for their clients. Rule 1.6(a) states as follows:

**A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent**, the disclosure is impliedly authorized in order to carry out the representation or **the disclosure is permitted by paragraph (b)**. "Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (i) protected by the attorney-client privilege, (ii) likely to be embarrassing or detrimental to the client if disclosed, or (iii) information that the lawyer has agreed to keep confidential. "Confidential information" does not ordinarily include (A) a lawyer's legal knowledge or legal research or (B) information that is generally known in the local community or in the trade, field, or profession to which the information relates.

Supreme Judicial Court Rule 3:07, Rules of Professional Conduct, R. 1.6(a) (emphasis added).

The very language of paragraph (a) confirms that this restriction is not absolute, as it anticipates and permits disclosure of information in accordance with paragraph (b). Rule 1.6(b) states, in relevant part, as follows:

**A lawyer may reveal confidential information relating to the representation of a client to the extent the lawyer reasonably believes necessary**, and to the extent required by Rules 3.3, 4.1(b), 8.1 or 8.3 must reveal, such information. . . to the extent permitted or required under these Rules or **to comply with other law** or a court order . . .

Supreme Judicial Court Rule 3:07, Rules of Professional Conduct, R. 1.6(b) (emphasis added).

CPCS's statutory obligation to comply with OIG document requests clearly constitutes such "other law" pursuant to Rule 1.6(b), and CPCS may not invoke Rule 1.6(a) in order to avoid complying with their duties under Chapter 12A of the General Laws.

Even if CPCS could properly invoke Rule 1.6(a), the specific circumstances here demonstrate that the information at issue – docket and case numbers for CPCS cases – is not confidential information in these circumstances, and refusal to provide such information to the OIG is not reasonable. Disclosure of docket numbers to the OIG is not "likely to be embarrassing or detrimental" to CPCS clients in any way, as required in order to be considered "confidential information" under Rule 1.6(a). The OIG is not seeking any additional substantive, private information about the clients or their representation beyond the docket number; the existence of a criminal case and fact of representation by CPCS is not inherently embarrassing, particularly given the OIG will not publicly disseminate such information. While CPCS claims that the names and docket numbers of their clients are secret and subject to an attorney's duty of confidentiality, this is not the case here.<sup>1</sup>

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<sup>1</sup> Massachusetts courts have not definitively stated whether client names and docket numbers are "confidential information" in this context. The information at issue in cases that have discussed Rule 1.6, however, has largely been

In order to be considered “confidential information,” under Rule 1.6(a), the information in question must not be “generally known in the local community or in the trade, field, or profession to which the information relates.” When a defendant is charged with a crime, the information at issue in such matter – the defendant’s name, the associated docket number, and identity of the attorney representing them – become a record of the court. Given the OIG’s statutory access to records of Commonwealth agencies, including the courts, case docket numbers are within the scope of information to which the OIG is entitled to know and obtain. The OIG is seeking for CPCS to provide this information due to its scale as it is not feasible to procure this through a manual review of every court record, which would then need to be cross-referenced with other sources. CPCS is the only reliable source of the docket numbers for CPCS clients.

Further, OIG records, including those it receives pursuant to its statutory record access and summons authority, are by law deemed “confidential” and disclosure of such information by OIG employees is punishable by civil fines and imprisonment. M.G.L. c. 12A, § 13. Likewise, the OIG is precluded from identifying individuals in its public reports unless there has been an “official disposition” by the OIG, Attorney General, or U.S. Attorney. Thus, there is no risk that the OIG will publish the docket numbers and identities of CPCS clients in its mandatory report to the Legislature and therefore no risk of embarrassment to the CPCS clients. As set forth above, the OIG has made this clear to CPCS and offered to enter into a binding agreement to assuage CPCS’s concerns.

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sensitive information beyond the mere name of a client. *See, e.g., Matter of Kelley*, 489 Mass. 300 (attorney disclosed client’s prior arrest history in court filing); *see also Matter of Ablitt*, 486 Mass. 1011 (2021) (attorney disclosed the subject of client representation when reassigning cases); *Commonwealth v. Tate*, 490 Mass. 501 (2022) (counsel disclosed the location of incriminating evidence to prosecutor). Other jurisdictions have held that a client’s identity is not privileged. *See, e.g. In re Horn*, 976 F.2d 1314 (9th Cir. 1992) (finding that the identity of a client is usually not protected by the attorney-client privilege); *see also, In re Conduct of Conry*, 368 Or. 349, XXX (2021) (finding that a client’s identity is not ordinarily considered privileged); *see also Com. v. Tahli*, 479 Mass. 1012 (2018) (producing evidence the Commonwealth had already seen and knew of did not violate Rule 1.6).

Finally, the underlying mandate the OIG is seeking to accomplish does not require or anticipate publication of any individual client information, only aggregated information. The Act requires the OIG to examine high-level issues in order to draw conclusions and make recommendations. While the OIG needs to review underlying individual case data to conduct the examination, the report does not call for the OIG to report on individual cases.

CPCS is not precluded by Rule 1.6 nor any other rule of professional conduct from turning over the records at issue as required by law.

- b. State law regarding certain types of cases does not preclude CPCS from producing the requested information to the OIG.

As a second concern, CPCS highlights several statutes that mandate confidential treatment of cases that fall in several specific categories, such as Child and Family Law (“CAFL”) cases. These statutes likewise do not preclude CPCS from providing the OIG with the necessary docket numbers. With respect to CAFL cases, for example, M.G.L. c. 119, § 38 states that they are “closed to the general public. . . It shall be unlawful to publish the names of persons before the court in any closed hearing.” CPCS’s reliance on these statutes to deny the OIG the material at issue is misplaced; as previously discussed, the OIG is regulated by a comprehensive confidentiality statute that ensures confidentiality of the records at issue can be properly maintained. Further, the OIG is aware of the legal obligations attached to the requested material, such as the statutory prohibition of publishing the names of persons before CAFL courts, and will certainly adhere to the law.

- c. State CORI law does not preclude CPCS from producing the requested information to the OIG.

Finally, CPCS has referenced Massachusetts law regarding criminal offender record information (CORI). While disclosure of docket numbers in conjunction with other personally identifying information may be considered CORI under Massachusetts law, this is not grounds for

CPCS to refuse production to the OIG. Further, the case law CPCS cites as a basis for its concern<sup>2</sup> is inapplicable. The cases cited by CPCS relate to circumstances where a private entity, such as the Boston Globe, has requested records from a criminal justice agency, such as a district attorney's office. By contrast, in the instant matter, one criminal justice agency (the OIG) has requested CORI material from another criminal justice agency (CPCS); this is explicitly permitted by state regulations. 803 CMR, § 7.10(1).

### **III. Conclusion**

It is clear that CPCS is required by law to produce the requested docket numbers to the OIG, and that there is no good faith basis to withhold such information grounded in statutory or ethical considerations. The OIG has been more than reasonable in proposing solutions to assuage CPCS's concerns about public disclosure of client names – including a binding confidentiality assurance and internal firewall protections – but CPCS has repeatedly declined these proposals without proposing any feasible alternative. The OIG is now in a position in which it is unable to access data to which it is entitled by law and is essential to accomplishing a legislative mandate.

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<sup>2</sup> See Attorney General v. District Attorney for the Plymouth District, et al., 484 Mass. 260 (2020); Globe Newspaper Company v. District Attorney for the Middle District, et al., 439 Mass. 374 (2003)

The OIG respectfully requests that this Court issue an order requiring CPCS to produce all information and data requested by the OIG, including but not limited to docket and case numbers, within seven days of such order.

Dated: 12/05/2025

Respectfully submitted,

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