

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION NO.

NEW ENGLAND POLICE BENEVOLENT
ASSOC., INC., AND DANIEL
GILBERT

Plaintiffs

v.

MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING COMMISSION,
Defendant

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

PARTIES

1. The Plaintiff New England Police Benevolent Association, Inc. ("NEPBA") is a labor organization that acts, pursuant to G.L. c. 150E, as the certified bargaining representative for approximately 3,500 Massachusetts law enforcement officers, including thousands which are employed by more than eighty (80) cities and towns throughout the Commonwealth.
2. The Plaintiff Daniel Gilbert ("Gilbert") is a resident of Spencer, Massachusetts, in the County of Worcester. At all times relevant hereto, Gilbert has been employed as a police officer by the City of Worcester, has served as

President of the Worcester Police Patrol Officers' Association, NEPBA Local 911, and is an Executive Vice President of the Plaintiff NEPBA.

3. The Defendant Massachusetts Peace Officer Standards and Training Commission ("POST") is a commission within the Executive Branch of the Commonwealth. POST was established pursuant to the criminal justice reform legislation set forth and enacted in Chapter 253 of the Acts of 2020. Upon information and belief, the Defendant's offices are located at 100 Cambridge Street, 14th Floor, Boston, MA 02114.

JURISDICTION AND VENUE

4. Jurisdiction is proper pursuant to G.L. c. 231A, sec. 1.
5. Venue is proper pursuant to G.L. c. 223, sec. 1.

FACTUAL BACKGROUND

6. The Plaintiffs incorporate all previous paragraphs herein.
7. The Plaintiff NEPBA, by virtue of its constitution and bylaws, is an association established for the betterment of law enforcement officers, and its organizational purposes are to better the lives of its members in law enforcement, improve legislation that protects and affects public safety officers, and represent the needs of law enforcement officers and support personnel.
8. Upon information and belief, pursuant to the U.S. Bureau of Justice Statistics' 2008 *Census of State and Local Law*

Enforcement Agencies, the Commonwealth of Massachusetts has more than 350 law enforcement agencies that, as of 2020, became subject to the jurisdiction of the Defendant POST.

9. The Plaintiff NEPBA has in excess of 2,000 individual members who, as individual law enforcement officers subject to the statutory jurisdiction of POST, have standing to sue the Defendant POST in their own right.
10. The interests that the Plaintiff NEPBA seeks to protect are germane to its organizational purpose; and neither the claims asserted nor the relief requested by NEPBA require the participation of its individual members.
11. G.L. c. 6E, sec. 4(a)(1) establishes a Division of Police Certification within POST and further requires that said division, together with the Municipal Police Training Committee established in G.L. c. 6, sec. 116, establish minimum standards for the certification of all law enforcement officers.
12. G.L. c. 6E, sec. 4(f) sets forth a number of minimum certification standards such as, for instance, attaining the age of 21 (sec. 4(f)(i)); completing a high school education or equivalent (sec. 4(f)(ii)); and completing a basic training program (sec. 4(f)(iii)).
13. In addition, pursuant to G.L. c. 6E, sec. 4(f)(1)(viii), in order to be certified, an officer must demonstrate

"successful completion of an oral interview administered by the commission."

14. Pursuant to G.L. c. 6E, sec. 4(f)(1)(ix), an officer must establish "being of good moral character and fit for employment in law enforcement, as determined by the commission."

15. Upon information and belief, in order to discharge its statutory duty to establish and assure minimum certification standards, POST has issued a directive to all law enforcement agencies within the Commonwealth requiring the agency to designate an "Evaluator" - who could also be the Agency Head - and has instructed the agencies as follows:

The Evaluator(s) should ensure that the officer has answered certain questions on a written Questionnaire provided by the POST Commission . . . , review the answers and take other steps necessary to diligently complete a thorough examination of whether the officer satisfies all criteria for recertification, including possessing the requisite character and fitness for employment. The determination as to an officer's character and fitness for employment as a law enforcement officer should be based on the totality of the information obtained, including a review of the officer's personnel file and disciplinary records, if applicable.

16. Exhibit 1 is a true and accurate copy of the POST Recertification Packet, Part 1.

17. Officers seeking recertification are required to complete the written questionnaire provided by POST ("the POST questionnaire"). The POST questionnaire sets forth the following questions, required to be answered in writing:

1. Are you current in all tax payments? This includes federal and state taxes as well as property and excise taxes. (Note: if you are subject to and in compliance with a payment plan established by the federal or state government, you may answer "yes" to this question.) If no, please explain.

2. Have you ever received a license or permit to possess or carry a firearm of any type? If so, for each such license or permit, please indicate the issuing jurisdiction or official; indicate whether any such license or permit has ever been revoked or suspended; and if it has been revoked or suspended, provide details.

3. Have you ever been a defendant in a civil suit in which it was alleged that you acted violently or abusively, or utilized excessive force, towards another person? If so, please provide details as to each such suit.

4. Have you ever been the subject of a restraining order or any other court order that restricted, or imposed consequences based on, your conduct? Have you ever been found in violation of either? If so, please give the details regarding each order, including the time frame in which it was issued and the identity of the court that issued it.

5. Have you ever been subjected to disciplinary action, consisting of a suspension of more than 5 days with or without pay, OR where bias or excessive force was found by investigation, in connection with any employment, including employment by your current law enforcement agency? If yes, please give details as to each such incident and the nature of the disciplinary action taken.

(Officers must then certify as follows): To my knowledge, all disciplinary records, if any, have been submitted to POST.

6. In the last five years, have you ever sent or displayed a public communication on social media that you believe could be perceived as biased against anyone based on their actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, or socioeconomic or professional level, provided you were at least 18 years old at the time? If yes, please provide each such public communication, and details. For these purposes, "communications" include, without limitation, posts, comments, and messages; and "public" communications are those that were made available to three or more people other than you.

7. Do you currently belong, or have you ever belonged, to any organization that, at the time you belonged, unlawfully discriminated (including by limiting membership) on the basis of actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, age or socioeconomic or professional level? If so, please provide details regarding each such organization.

8. Thinking broadly, do you have any knowledge or information, in addition to that specifically addressed in the preceding questions, which may be relevant, directly or indirectly, to your eligibility or fitness to be recertified as a law enforcement officer with this law enforcement agency? This would include, but is not limited to, knowledge or information concerning your character, temperament, habits, employment, education, criminal records, traffic violations, residence, or otherwise. If so, please provide details.

18. Exhibit 2 is a true and accurate copy of the POST questionnaire.

19. The POST questionnaire must be signed by the officer seeking recertification under the pains and penalties of perjury.
20. Pursuant to POST's directive, an "Evaluator" may gather data and corroborate data related to the subject officer, and may provide a recommendation for or against recertification, "but it is ultimately the Agency Head who will make that attestation to POST."
21. Exhibit 3 is a true and accurate copy of the POST directive referenced in the preceding paragraph.
22. The Agency Head must attest to one of the following regarding each officer seeking recertification:

I attest that, to the best of my knowledge, the Officers named on the Submission Template (that have not been listed in Submission 2 of this section) are of good moral character and fit for employment in law enforcement.

[or]

Based on the information considered, and the requirements of the statute, I believe the Officer named above and identified on the Submission Template as not attested to, does not possess the required good moral character and/or is not fit for employment as a law enforcement officer.

[Exhibit 1].

23. The Plaintiff Gilbert is a police officer employed by the City of Worcester who, like many other officers similarly situated, must, by virtue of his last name beginning with

the letter G, apply for recertification prior to July 1, 2022.

24. On April 12, 2022, the Worcester Police Department ("WPD") began notifying its officers, including Gilbert, that it was beginning the process of recertification through POST, and it provided officers with a copy of the POST questionnaire.
25. The WPD instructed the Plaintiff Gilbert and others that they "must" fill out the POST questionnaire, and that the POST questionnaire "is the basis for the 'Evaluator' to assess your fitness for recertification."
26. Also on April 12, 2022, the WPD advised its officers, including the Plaintiff Gilbert, that they (1) must complete the POST questionnaires by June 1, 2022; (2) the Worcester Police Chief would decide if an officer would be approved for recertification or not; (3) a lieutenant would be assigned to administer the process; and (4) officers' completed responses to the POST questionnaires would likely be disclosed to future public records requests.
27. Exhibit 4 is a true and accurate copy of the WPD communication with its officers.
28. The Defendant POST has advised the WPD and all other law enforcement agencies within its jurisdiction that they must not submit officers' completed POST questionnaires to

POST, and that they should retain the officers' completed POST questionnaires on file with the department "unless the agency head or designee is not attesting to their good moral character. If not attesting to their good moral character, the questionnaire must be submitted to POST." [Exhibit 1].

29. The Defendant POST advised the WPD and all other law enforcement agencies within its jurisdiction that they must retain the completed questionnaires "in the officer's PERSONNEL FILE," adding, without explanation, that "POST presently intends to use such questions, the answers it receives, and related materials for other assessment instruments." [Exhibit 3].

30. On April 12, 2022, in accordance with the POST directive, the WPD advised its officers, including the Plaintiff Gilbert, that the POST questionnaire "is for internal purposes only unless the Chief does not approve your recertification. In that situation the form will be sent to POST. Otherwise [the Department] will retain the questionnaire in electronic form." [Exhibit 4].

31. As a result of the April 12, 2022 notification to WPD's police officers, the Plaintiff Gilbert the following day notified the city of Worcester and the WPD that the

obligations related to the POST questionnaire constituted a substantial change in working conditions.

32. On April 13, 2022, on behalf of NEPBA Local 911, the Plaintiff Gilbert demanded that the city of Worcester and WPD (1) bargain with the union pursuant to G.L. c. 150E; (2) maintain the *status quo* during such bargaining; and (3) respond to the union's detailed request for information regarding officers' rights and obligations *vis-a-vis* the POST questionnaire.
33. Within his request, the Plaintiff Gilbert requested the city of Worcester and WPD provide the union members information regarding the new moral character requirements, as well as information related to the protection of officers' privacy rights.
34. The Plaintiff Gilbert's April 13, 2022 request asked that the city of Worcester and the WPD provide, *inter alia*: (1) the Department's process for determining whether an officer is of good moral character and fit for duty; (2) the standard that will be used and all factors that will be considered in such determinations, and in particular what weight the officers' answers or refusal to answer the POST questionnaire would have; (3) all circumstances that could result in or justify a negative recommendation by the Department regarding moral character or fitness for duty;

(4) the efforts the Department would take to protect the confidentiality of the officers' responses to the POST questionnaire, including the notes and records of the interviews; (5) whether such materials would be produced in response to a public records request; (6) whether such records would be maintained, and if so, for how long; and (7) whether the Department consider the records exempt from public records disclosure, and if so, why.

35. Exhibit 5 contains Plaintiff Gilbert's request for information.

36. Neither the WPD nor the city of Worcester responded to Plaintiff Gilbert's requests for information.

37. On April 19, 2022, the WPD again provided the Plaintiff Gilbert and his members with the POST questionnaire and notified them that (1) they are required to fill out the POST questionnaire; (2) the responses to the questionnaire will be used by the WPD Police Chief to make a recommendation to POST about whether or not officers should be recertified; and (3) the WPD would move forward with the POST questionnaire process "absent an injunction issued by the courts to stop this line of inquiry" so that WPD officers do not "risk being decertified and unable to work."

38. The Plaintiff NEPBA is the certified collective bargaining agent for thousands of Massachusetts law enforcement officers whose employers have ordered them to provide written, sworn answers to the POST questionnaire as a condition of continued employment.
39. As the Plaintiff Gilbert demanded on behalf of NEPBA Local 911, other NEPBA represented bargaining units have demanded information from their employers pursuant to G.L. c. 150E, to which law enforcement agencies have issued inconsistent and non-uniform responses.
40. For example, on April 21, 2022, the Everett Police Department informed NEPBA Local 95 (Everett's Police Supervisors' Association) that it should direct their questions about the POST questionnaire to "the authorized and enabled certifying authority," but, in the same response, added that negative recommendations regarding moral character or fitness for duty "would always be determined on an informed and reasoned basis dependent on the specific facts and circumstances of each such question or issue."
41. Exhibit 6 is a true and accurate copy of the Everett Police Department's response to the NEPBA request for information.

42. On April 27, 2022, the Billerica Police Department advised the members of NEPBA Locals 5A & 5B (Billerica Police Supervisors and Patrol Associations) that a failure to answer the POST questionnaire could result in Billerica's Police Chief declining to recommend recertification.
43. The Billerica Police Department advised that it would determine whether an officer has good moral character based on the POST questionnaire responses, officers' personnel files and disciplinary records, and other undefined factors.
44. In addition, the Billerica Police Department advised that its officers may be subject to further investigation based on their mandatory responses to the POST questionnaire.
45. In response to the NEPBA request that the Department articulate when an officer could decline to answer based on a privilege or legal protection or right, the Billerica Police Chief directed his officers to a website - lawinsider.com - and its definition of legal terms as a basis for when it would be appropriate for officers to assert particular rights or legal privileges.
46. When asked to provide officers with the events or circumstances that might result in a negative recommendation by the department as to moral character and fitness for duty, the Billerica Police Department directed

its officers generally to "refer to our Department's Rules and Regulations."

47. Exhibit 7 is a true and accurate copy of the Billerica Police Department's response to the NEPBA request for information.
48. On May 6, 2022, the Carver Police Department, in response to the NEPBA's requests for similar POST-related information, advised its officers, members of NEPBA Local 89A & 89B, that pursuant to G.L. c. 6E, sec. 4(f)(1)(viii) officers seeking recertification "must complete an oral interview administered by the commission."
49. The Carver Police Department told its officers that the POST's "approach" to satisfying the requirement that POST perform an oral interview is for the individual department heads, or a designee, to provide the POST questionnaire to their officers, and then after reviewing the officer's written answers, attest or not attest to an officer's good moral character.
50. Despite NEPBA's request that it do so, Carver did not provide the criteria upon which it would determine a positive or negative recommendation as to an officer's moral character; however, Carver did advise its officers that it cannot attest to their moral character unless officers complete the POST questionnaire, and that "the

completion of the questionnaire is a requirement of officers' continued service as a law enforcement officer."

51. Exhibit 8 is a true and accurate copy of the Carver Police Department's response to the NEPBA request for information.
52. On or about May 14, 2022, the Northampton Police Department, in response to the G.L. c. 150E request for information by NEPBA Local 187, advised its officers, among other things, that (1) answering the POST Questionnaire "is a condition of employment and all union members are being ordered to complete the Officer Questionnaire as required by POST;" and that "failure to complete the questionnaire will result in discipline consisting of a three-day suspension for insubordination" and also, if not certified, then they will be terminated.
53. Concerning the standard to be applied to determine moral character, Northampton advised it will use a "totality of the circumstances," which will include "disciplinary records" and "what is currently known about those employees, and any new information that is learned from the questionnaire and any resulting internal investigation that results in sustained findings would also need to be considered."
54. Northampton advised that officers could be disciplined for answers they provide; that they could not answer the

questions orally, that POST has not provided guidance on when an officer might assert a privilege or legal right not to answer; that in certain circumstances officers might be subject to criminal prosecution based on their answers to the POST questionnaire; and that POST has not provided any guidance on "the definition of good moral character and fitness for duty" and that the department is not at liberty to define the terms.

55. Exhibit 9 is a true and accurate copy of the Northampton Police Department's response to the NEPBA request for information.

56. The Plaintiffs and Defendant have an actual controversy as the Plaintiff Gilbert and members of the Plaintiff NEPBA have an identifiable property interest in the maintenance of their ability to continue to serve as law enforcement officers within the Commonwealth.

COUNT 1

CLAIM FOR DECLARATORY RELIEF AND INJUNCTION PURSUANT TO G.L. C.

231A SECTION 2

DUE PROCESS VAGUENESS

57. The Plaintiffs incorporate all previous paragraphs herein.

58. The statutory requirement, codified at G.L. c. 6E, sec. 4(f)(1)(ix), that an officer be "of good moral character and fit for employment in law enforcement" is impermissibly vague under both the Due Process clause of the U.S.

Constitution and the Massachusetts Declaration of Rights as it forbids and/or requires the doing of an act or acts in terms so vague that persons of ordinary intelligence must necessarily guess at its meaning and differ as to its application.

59. By mandating a practice and procedure that each agency - based upon their own subjective touchstones - is required to certify an officer's "good moral character" without any explicit or objective standard - POST has assured arbitrary and discriminatory application of the statutory requirement on an *ad hoc* and subjective basis.

60. Question 8 of the POST questionnaire itself is also impermissibly vague.

61. Because the statutory requirement and actions of POST violate the U.S. Constitution and Massachusetts Declaration of Rights, this Court should enjoin POST from its unconstitutional practice and procedure pursuant to G.L. c. 231A, sec. 2.

WHEREFORE, the Plaintiffs request that POST be enjoined from requiring the Plaintiff Gilbert and members of the Plaintiff NEPBA and other Massachusetts law enforcement officers to answer the POST questionnaire for review by an individual at each separate law enforcement agency in the Commonwealth.

COUNT II
CLAIM FOR DECLARATORY RELIEF AND INJUNCTION PURSUANT TO G.L. C.
231A SECTION 2
ILLEGAL, ULTRA VIRES PRACTICE AND PROCEDURE

62. The Plaintiffs incorporate all previous paragraphs herein.
63. Pursuant to G.L. c. 6E, sec. 4(f)(1)(viii), in order to be certified, an officer must demonstrate "successful completion of an oral interview administered by the commission."
64. The practice and procedure of having the head of each local law enforcement agency administer the POST questionnaire, "review the answers and take other steps necessary to diligently complete a thorough examination of whether the officer satisfies all criteria for recertification, including possessing the requisite character and fitness for employment," is inconsistent with the statutory requirement that POST administer an oral interview and is therefore ultra vires and illegal. The requirement that officers complete the written POST questionnaire and sign it under the pains and penalties of perjury is also ultra vires and illegal.
65. Because the statutory requirement and actions of POST are inconsistent with the requirements of the G.L. c. 6E, sec. 4(f)(1), this Court should enjoin POST from its illegal procedure pursuant to G.L. c. 231A, Section 2.

WHEREFORE, the Plaintiffs request that POST be enjoined from requiring law enforcement officers answer the POST questionnaire administered separately by the heads of each law enforcement agency in the Commonwealth and that POST be enjoined from requiring that such POST questionnaire be signed under the pains and penalties of perjury.

COUNT III
CLAIM FOR DECLARATORY RELIEF AND INJUNCTION PURSUANT TO G.L. C.
231A, SECTION 2
RIGHT TO PRIVACY, CONVERSATIONAL PRIVACY AND ASSOCIATIONAL
PRIVACY

66. The Plaintiffs incorporate all previous paragraphs herein.
67. Questions 1, 2, 3, 4, 5, 6, 7 and 8 of the POST questionnaire all engender the gathering and dissemination of information of a highly personal and intimate nature.
68. The questions also unreasonably interfere with the Plaintiffs constitutionally protected autonomy of thought, solitude, and seclusion.
69. The gathering of this information will result in an unreasonable, substantial, and serious interference with the privacy rights of the Plaintiffs.
70. The Defendant has no legitimate, countervailing interest that outweighs the privacy interest of the Plaintiffs or otherwise justifies the proposed intrusion into, and dissemination of, the Plaintiffs' private information.

71. Because the practices or procedures are in violation of the U.S. Constitution or of the constitution and/or laws of the Commonwealth, or are in violation of rules or regulations promulgated under the authority of such laws and said violations shall be repeated, the Plaintiffs request that POST be enjoined from requiring law enforcement officers from answering Questions 1, 2, 3, 4, 5, 6, 7 and 8.

WHEREFORE, the Plaintiffs request that the Court declare POST's practice and procedure violative of the Plaintiffs' right to privacy and that POST be enjoined from requiring law enforcement officers answer the subject questions 1, 2, 3, 4, 5, 6, 7 and 8.

COUNT IV
CLAIM FOR DECLARATORY RELIEF AND INJUNCTION PURSUANT TO G.L. C.
231A, SECTION 2
FREEDOM OF SPEECH AND ASSOCIATION

72. The Plaintiffs incorporate all previous paragraphs herein.

73. The U.S. Constitution and the Massachusetts Declaration of Rights establish and protect the freedom to associate and the choice to enter into and maintain certain intimate human relationships.

74. Individuals also have the right to associate for the purpose of engaging in those activities protected by the First Amendment such as speech, assembly, petition for the redress of grievances, and the exercise of religion.

75. The POST questionnaire questions 6, 7 and 8 and process infringe upon the privacy of association, belief and speech guaranteed by the First Amendment and Massachusetts Declaration of Rights.

76. The POST questionnaire questions 6, 7 and 8 and process infringe upon the Plaintiffs' right to conversational privacy guaranteed by the United States Constitution and Massachusetts Declaration of Rights.

77. There is no relevant correlation or substantial relation between any legitimate interest of POST and the information required to be disclosed sufficient to outweigh the chilling of the Plaintiffs' constitutionally protected rights.

78. Because the practices or procedures are in violation of the U.S. Constitution or of the constitution and/or laws of the Commonwealth, or are in violation of rules or regulations promulgated under the authority of such laws and said violations shall be repeated, the Plaintiffs request that POST be enjoined from requiring law enforcement officers from answering Questions 6, 7 and 8.

WHEREFORE, the Plaintiffs request that the Court declare POST's practice and procedure violative of the Plaintiffs' right to free speech and association and that POST be enjoined from

requiring law enforcement officers answer the subject questions 6, 7 and 8.

CONCLUSION

WHEREFORE the Plaintiffs request that judgment be entered on all Counts, together with attorneys fees and costs associated with this action and whatever other relief this Court deems just and appropriate.

The Plaintiffs claim a right to trial by jury.

VERIFICATION

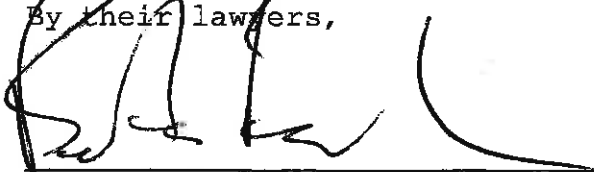
I DANIEL GILBERT HEREBY VERIFY THAT THE FACTS ALLEGED HEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION OR BELIEF.



DANIEL GILBERT

DATED: May 17, 2022

Respectfully submitted,
The Plaintiffs
By their lawyers,



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(978) 454-3800

DATED: May 17, 2022

Exhibit 1

Peace Officer Standards and Training Commission

Recertification Packet: Part 1 Attestation Document

Agency Official's Attestation Regarding Law Enforcement Officer Recertification

General Instructions for Agency Head

To be recertified as a law enforcement officer by the Peace Officer Standards and Training (POST) Commission in accordance with Chapter 6E of the Massachusetts General Laws, an officer must meet certain specified standards. The POST Commission thus asks that you provide this Recertification Packet to the individual(s) within your Agency who has been charged with evaluating the officer to ensure the criteria set forth in the statute have been met (the "Evaluator(s)"). The Evaluator(s) should ensure that the officer has answered certain questions on a written Questionnaire provided by the POST Commission (Part 2 of the Recertification Packet), review the answers and take other steps necessary to diligently complete a thorough examination of whether the officer satisfies all criteria for recertification, including possessing the requisite character and fitness for employment. The determination as to an officer's character and fitness for employment as a law enforcement officer should be based on the totality of the information obtained, including a review of the officer's personnel file and disciplinary records, if applicable. After completing the above steps, the Evaluator(s) should document the results in the Submission Template and execute the attestation below.

Agency Heads may delegate the due diligence and data input required to complete the attestation to an Evaluator(s), but the Agency Head's signature must still be provided on the Attestation Signature Form page in Part 1 of the Recertification Packet. An Agency Head or Evaluator's intentionally providing misleading or false information will be considered a complaint subject to investigation and possible sanction by the POST Commission.

Signature Page

The Agency Head must submit a signature page separate from, and in addition to, the Submission Template, according to the instructions below. The Evaluator must read the instructions in this section but is not required to sign a document separate from the Submission Template.

Agencies may provide up to two submissions using the Submission Template:

Submission 1: Attestation Signature Page

All officers for whom the Agency Head can attest to the good moral character and fitness for employment, with or without exceptions to other requirements. This signature page is not required to be filled out for each officer and may be submitted as one document for ALL officers that are attested to per Submission.

Submission 2: Non-attestation Signature Page

Any officers for whom the Agency Head cannot attest to the good moral character and/or fitness for employment. If the Agency Head is unable to so attest, one page per officer is required.

For Submission 2, you must also complete the Justification Section for each such officer. Please note that the status as a Law Enforcement Officer of any individual without an attestation from the Agency Head may be categorized as "Pending/Not Certified" or "Conditionally Certified" and recertification of that individual officer will be delayed.

If information is provided in Submission 1 and Submission 2 for the same officer, Submission 2 will override any information from Submission 1.

Submission 1 and Submission 2 must account for all officers employed by your law enforcement agency with last names beginning with A-H who require recertification by the POST Commission by June 30, 2022.

Signature Instructions to Evaluator:

The Evaluator, as detailed in the definitions section above, may be any officer of higher rank than the officer being reviewed. The Agency Head may choose to also be the Evaluator. The Evaluator should read the section below. If an Evaluator's name is listed on the Submission Template, this is notification to the POST Commission that the Evaluator has read and understood the below statement.

I, the designated Evaluator, have reviewed the information collected relative to each officer evaluated by me. Such information includes the Questionnaire (Recertification Packet Part 2) completed by the Officer named on the Submission Template, as well as all records held by this Agency pertaining to the Officer, and hereby attest to the information provided. I have read this Recertification Packet and attest that the information provided herein is true and accurate to the best of my knowledge. Provision of my name on the Submission Template will serve as my attestation to the above for each officer evaluated by me.

A. Submission 1: Attestation Signature Page

Attestation to Good Moral Character/Fitness for Employment

Instructions: The Agency Head cannot recommend the Officer for recertification without attesting to the Officer's good moral character and fitness for employment. The Agency Head should enter "yes" to attest to the Officer's good moral character and fitness for employment under Column Y. The Agency Head will be required to list their name on the Submission Template in Column Z for the officers who they are providing the attestation for and provide a signature below with respect to ALL officers they are attesting to.

I attest that, to the best of my knowledge, the Officers named on the Submission Template (that have not been listed in Submission 2 of this section) are of good moral character and fit for employment in law enforcement.

Signature of Agency Head: _____

(e-signature acceptable)

B. Submission 2: Non-attestation Signature Page

NOT Attesting to Good Moral Character/Fitness for Employment

Instructions: Submission 2 is to be used if the Agency Head will not attest to the Officer's good moral character and fitness for employment. The Agency Head should enter "no" to not attest to the Officer's good moral character and fitness for employment under Column Y. The Agency Head will be required to also list their name on the Submission Template in Column Z as the authority who is unable to attest to such officers, and to provide their signature below, along with the justification.

If an Agency Head cannot attest to the good moral character and fitness for employment of a law enforcement officer, the POST Commission will require a report explaining the reason. Please provide this report in the "Justification" section below. The Agency must also provide a copy of this report to the Officer named and must inform the Officer that they have the right to submit a response to the POST Commission by June 30, 2022. Submit this Signature Page/Justification to the POST Commission along with the Submission Template.

Officer Name: _____ DOB: _____

Based on the information considered, and the requirements of the statute, I believe the Officer named above and identified on the Submission Template as not attested to, does not possess the required good moral character and/or is not fit for employment as a law enforcement officer.

Signature of Agency Head/Designee or Appointing Authority: _____
(e-signature acceptable)

Justification for Not Attesting to Good Moral Character and/or Fitness for Employment

Explanation:

2. Has the Officer: successfully completed a basic training program approved by the Municipal Police Training Committee (MPTC); **OR** received an exemption from the MPTC; **OR** successfully completed the MPTC Bridge Academy **AND** met the 2,400-hour work experience requirement?

Yes

No

3. Has the Officer passed an exam during basic training (to include exams administered by the MPTC or MPTC-authorized academies, the Massachusetts State Police, and the Boston Police Department)?

Yes

No

4. Is the Officer current with the last fiscal year (FY 2022) annual in-service training requirements to include 24 hours of specified training by the MPTC and 16 hours of elective training courses?

Yes

No

5. Has the Officer successfully completed, at any time prior to being hired by this Agency or at any time during employment by this Agency, and in connection with seeking or holding employment as a law enforcement officer, a physical fitness or medical evaluation?

Yes

No

6. Has the Officer successfully completed, at any time prior to being hired by this Agency or at any time during employment by this Agency, and in connection with seeking or holding employment as a law enforcement officer, a psychological evaluation by a licensed professional?

Yes

No

7. Has the Officer successfully completed, either prior to being hired by this Agency or during employment by this Agency, and in connection with seeking or holding employment as a law enforcement officer, a state and national background check,

including, but not limited to, fingerprinting and a full employment history check, and if previously employed in law enforcement, an evaluation of complaints and disciplinary records?

Yes No

8. Is the Officer in possession of current first aid and cardiopulmonary resuscitation certificates or the equivalent?

Yes No

9. Has the Officer ever been convicted of a felony in any jurisdiction?

Yes No

10. Is the Officer listed on the National Decertification Index (NDI)?

Yes No

11. Does the Officer have any disciplinary records on file with your Agency, or to your knowledge, any disciplinary records on file from prior employment as a police officer, in which a finding of misconduct was sustained?

Yes No

12. If the answer to Question 11 is "yes," have those records been submitted to the POST Commission? (If the answer to Question 11 is "no," answer N/A on the Submission Template for this Question.)

Yes No N/A

13. Is the Officer currently the subject of an open complaint or internal investigation that meets the criteria for submission to the POST Commission?

Yes No

14. If the answer to Question 13 is "yes," has the complaint or investigation notification been submitted to the POST Commission? (If the answer to Question 13 is "no," answer "N/A" on the Submission Template for this Question.)

Yes No N/A

15. Please provide the Officer with the Questionnaire (Recertification Packet Part 2) and review the responses. Are there exceptions (a term explained in the Instructions below) to the answers provided?

Yes

No

Narrative/Notes

Please use the space below for the Agency Evaluators to provide explanations for answers. This form will NOT be submitted to the POST Commission and is provided for Agency use only to aid in data collection. The information in this "Narrative/Notes" section should be written into the "Notes" section on the Submission Template in plain text format with NO bullets, etc.

DO NOT CREATE NEW ROWS – USE ONE ROW PER OFFICER. If multiple rows are created, the Submission Template will be returned to the Agency.

The following are examples of information an Agency may include in this section.

If answering "no" to Question 2 because a reserve officer has not completed the Bridge Academy or met the work experience requirement, provide an explanation with the anticipated date of completion of academy or hours worked.

If answering "no" to Question 4 because an officer is on leave (personal, medical, military, etc.) and is unable to fulfill annual in-service training requirements, describe the circumstances and anticipated date of return, if known.

If an officer has never had any type of physical or medical fitness evaluation for any employment as a police officer or psychological evaluation for any position as a police officer, at any time, please explain here.

Appendix 2. Instructions for Attestation Questions

The following is intended to be used as a guide in answering the attestation questions listed in Appendix 1.

Question 1: High School Education or the Equivalent

No submission of proof is required at this time by the POST Commission, but documentation should be maintained on file with the Agency. Enter "yes" to indicate verification that the Officer has obtained a high school degree or the equivalent.

Question 2: Basic Training, Bridge Academy, or Exemption

Enter "yes" if the Officer has successfully completed an MPTC-approved (or Criminal Justice Training Council-approved) full-time police academy or the equivalent.

Enter "yes" if the Officer has completed an MPTC-approved Bridge Academy AND has completed the 2,400 hours of law enforcement work experience.

Enter "yes" if the Officer has received an exemption from any requirement above by the MPTC.

Enter "no" if the Officer has completed the Bridge Academy but has not completed the work experience hours. Enter an explanation of circumstances under Notes (Column Z) on the Submission Template. The Officer must remain working in a part-time "reserve officer" capacity until completion. Upon completion, a "new hire" POST Commission Certification Packet available on the POST Commission website under "Certification Documents" should be filed with the Commission for full certification.

Question 3: Exam

Enter "yes" to indicate that the Officer has passed an exam "approved" by the POST Commission. For purposes of this recertification, this refers to any exam passed as a requirement to successfully complete basic training (full-time or Bridge Academy training).

Question 4: Annual In-Service Training

Enter "yes" to indicate that the Officer has successfully completed the fiscal year 2022 annual training to include 24 hours of MPTC-mandated training and 16 hours of training selected by the agency or officer. If not, enter "no" and indicate the reason and anticipated date of completion in the Notes column in the Submission Template.

The POST Commission may audit law enforcement agencies to verify annual in-service training compliance of any officer, not only those with last names beginning with A-H. Law enforcement agencies are required to ensure all officers fulfill annual requirements prior to the end of each fiscal year, not only upon recertification.

Question 5: Physical Fitness

Enter "yes" if the Officer completed a physical fitness or medical fitness evaluation at any time in the past in relation to employment at any police agency or completion of any law enforcement training.

If an officer had a medical fitness evaluation as part of the hiring process, regardless of how many years ago, this satisfies the criterion for the purposes of this recertification. The same applies to psychological evaluations (Question 6).

Question 6: Psychological Evaluation

Enter "yes" if the Officer at any time in the past completed a psychological evaluation by your Agency or if you have verified completion of such evaluation through the hiring or employment process of another department.

Question 7: State and National Background Check

Enter "yes" if the Officer has successfully completed a background check by your Agency, including state and national checks, fingerprinting, employment history, and a review of any disciplinary records if previously employed by another law enforcement agency.

Question 8: Current CPR and First Aid

Enter "yes" if the Officer is up to date with CPR and first aid training/certificates (copies to be maintained on file with the Agency).

Question 9: Felony

Enter "no" to indicate the Officer has never been convicted of a felony.

Question 10: NDI

Enter "no" to indicate the Officer is not listed on the National Decertification Index.

If you do not have a member conducting checks through the NDI, application for access may be made through IADLEST.org. Select "NDI" and "Request Access to the NDI".

Question 11: Investigation with finding of misconduct sustained

Enter "yes" if the Officer has been the subject of any internal investigation, whether prompted by an external/public complaint or initiated by the Agency, with a finding of misconduct sustained.

Question 12: Disciplinary records submitted

If the answer to Question 11 is "yes," confirm that such records have been submitted to the POST Commission and enter "yes" to this Question 12 in the Submission Template. If the answer to Question 11 is "yes," but such records have not been submitted to the POST Commission, file the reports following the instructions on the POST Commission website. If the answer to Question 11 is "no," then enter "N/A" for not applicable on the Submission Template.

Question 13: Open complaint or investigation

Enter "yes" if the Officer has an open complaint or open internal investigation. Types of complaints required to be filed with the POST Commission are detailed on the POST Commission website under Complaints and Incident Reports.

Question 14: Complaint/investigation submitted

If the answer to Question 13 is "yes," confirm the information was submitted to the POST Commission and enter "yes" in the column on the Submission Template. If the answer to Question 13 is "yes," but the complaint record was not forwarded to the POST Commission within 48 hours of receipt, then file the Misconduct Complaint Form following the instructions on the POST Commission website. If the answer to Question 13 is "no," enter "N/A" for not applicable on the Submission Template.

Question 15: Oral Interview and Questionnaire

Pursuant to M.G.L. c. 6E, § 4(f)(1)(viii), the Officer must successfully complete an “oral interview administered by the commission.” The provision of the Questionnaire (provided in Part 2 of the Recertification Packet) and discussion of the responses satisfies this requirement. Question 15 confirms that the Questionnaire was provided to the Officer, the Agency reviewed the responses, and they were discussed with the Officer. Exceptions are any answers that require following up such as the Officer’s indication that they are not current with tax payments or had a license to carry suspended for any reason. The answers to the questions must be reviewed and discussed if there are any exceptions. All Questionnaires must be maintained on file with the Agency. **DO NOT SUBMIT QUESTIONNAIRES TO THE POST COMMISSION UNLESS REQUESTED TO DO SO.**

- Enter “Yes,” with “No Exceptions” in the dropdown menu if the Questionnaire has been provided to the Officer and reviewed by the Agency, and no exceptions are identified.
- Enter “Yes,” with “Exceptions” if there are exceptions indicated. The POST Commission may request the Questionnaire from your Agency at a later time.
- Enter “Not Conducted” if the Questionnaire was not provided to the Officer or if the Officer was unable to fill out the Questionnaire for any reason (medical leave, military leave, etc.).

Exhibit 2

Peace Officer Standards and Training Commission

Recertification Packet: Part 2 Officer Questionnaire

**Questionnaire for
Law Enforcement Officer Recertification**

I. Instructions

A. Instructions for the Agency Head or Designee

To be recertified as a Law Enforcement Officer by the Peace Officer Standards and Training (POST) Commission in accordance with Chapter 6E of the Massachusetts General Laws, an Officer must meet certain specified standards.

The POST Commission thus asks that you provide this form to an individual (the "Interviewer") within your Agency who will be charged with providing this questionnaire to the Officer seeking recertification. The Interviewer may be any officer designated by the Agency Head of higher rank than the Officer being reviewed. An Agency Head or the designated Evaluator of Part 1 may also serve as the Interviewer. You should direct the Interviewer to do the following: provide the questionnaire below to the Officer; ensure that the Officer answers the questions listed; review the Officer's responses; and orally discuss the responses with the Officer. As discussed in other materials provided by the POST Commission, the Officer's answers and oral comments should be considered when evaluating whether the Officer satisfies the requirement to be of good moral character and fit for employment as a law enforcement officer, but any ultimate determination of character and fitness should be based on the totality of the information obtained. Also, no form of information that is provided by the Officer will automatically lead to a denial of recertification, but certain responses may prompt further review by the POST Commission. All the Officer's answers, and all notes from any discussion with the Officer concerning those answers, must be retained by the Agency. DO NOT submit this questionnaire to the POST Commission unless requested to do so.

B. Instructions for the Interviewer

Please provide this questionnaire to the Officer, ensure that the Officer answers the questions listed, and review the Officer's responses. Responses must be orally discussed with the Officer. If any written or oral responses by the Officer raise concerns in your mind, bring them to the attention of your Agency Head or their Designee. Follow any other instructions provided by your Agency Head. All the Officer's answers, and all notes from any discussion with the Officer concerning those answers, must be retained by the Agency.

C. Instructions for the Officer Seeking Recertification

To facilitate a thorough evaluation process for Law Enforcement Officer recertification in the Commonwealth, the POST Commission asks that each Officer answer the questions below and then participate in any related discussions required by a superior officer. If you have a good faith belief that you cannot answer a question completely and accurately without waiving a privilege,

protection, or right recognized by law, you may state that belief in lieu of answering. Any answer that you do provide must be complete and accurate. If you intentionally make any false statements, or intentionally omit any pertinent information other than as provided above, your application for recertification will be disqualified, reported to the POST Commission, and considered a complaint subject to investigation and possible sanction by the Commission. No form of information that is provided will automatically lead to a denial of certification, but certain responses may prompt further review by the POST Commission.

II. Identification of the Officer and Interviewer

Please provide the following information.

Officer Name: _____
Last First MI

Date of Birth: _____ ID #: _____

Agency: _____

Interviewer Name: _____

III. Questions

Please type or print clearly. Attach additional pages if necessary and number answers accordingly.

1. Are you current in all tax payments? This includes federal and state taxes as well as property and excise taxes. (Note: if you are subject to and in compliance with a payment plan established by the federal or state government, you may answer "yes" to this question.) If no, please explain. Yes No

2. Have you ever received a license or permit to possess or carry a firearm, of any type? If so, for each such license or permit, please indicate the issuing jurisdiction or official; indicate whether any such license or permit has ever been revoked or suspended; and if it has been revoked or suspended, provide details. Yes No

3. Have you ever been a defendant in a civil suit in which it was alleged that you acted violently or abusively, or utilized excessive force, towards another person? If so, please provide details as to each such suit. Yes No
4. Have you ever been the subject of a restraining order or any other court order that restricted, or imposed consequences based on, your conduct? Have you ever been found in violation of either? If so, please give the details regarding each order, including the time frame in which it was issued and the identity of the court that issued it. Yes No
5. Have you ever been subjected to disciplinary action, consisting of a suspension of more than 5 days with or without pay, OR where bias or excessive force was found by investigation, in connection with any employment, including employment by your current law enforcement agency? If yes, please give details as to each such incident and the nature of the disciplinary action taken.
- No, not suspended for more than 5 days Yes, suspended for more than 5 days
- No, not disciplined for bias/excessive force Yes, disciplined for bias/excessive force
- To my knowledge, all disciplinary records, if any, have been submitted to POST
6. In the last five years, have you ever sent or displayed a public communication on social media that you believe could be perceived as biased against anyone based on their actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, or socioeconomic or professional level, provided you were at least 18 years old at the time? If yes, please provide each such public communication, and details. For these purposes, "communications" include, without limitation, posts, comments, and messages; and "public"

communications are those that were made available to three or more people other than you. Yes No

7. Do you currently belong, or have you ever belonged, to any organization that, at the time you belonged, unlawfully discriminated (including by limiting membership) on the basis of actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, age or socioeconomic or professional level? If so, please provide details regarding each such organization.
Yes No

8. Thinking broadly, do you have any knowledge or information, in addition to that specifically addressed in the preceding questions, which may be relevant, directly or indirectly, to your eligibility or fitness to be recertified as a law enforcement officer with this law enforcement agency? This would include, but is not limited to, knowledge or information concerning your character, temperament, habits, employment, education, criminal records, traffic violations, residence, or otherwise. If so, please provide details. Yes No

IV. Officer Affirmation

I hereby swear or affirm under penalties of perjury that the information provided herein is true and complete.

Signature: _____

Date: _____

Initials: _____

Additional space to answer questions, if needed (Please number accordingly)

Exhibit 3

POST Commission Officer FAQs, Recertification Packet Outline & Instructions

The POST Commission will be accepting submissions for officers seeking recertification with last names beginning with A - H ONLY by June 15, 2022. Links to frequently asked questions (FAQs) regarding the recertification are included below.

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Requirements for Certification FAQs (#requirements-for-certification-faqs-)

Attestations FAQs (#attestations-faqs-)

Questionnaire FAQs (#questionnaire-faqs-)

In Service/Work Requirements FAQs (#in-service/work-requirements-faqs-)

Submitting Info to POST FAQs (#submitting-info-to-post-faqs-)

Download FAQs PDF Document (#download-faqs-pdf-document-)

Recertification Packet & Instructions (#recertification-packet-&-instructions-)

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Requirements for Certification FAQs

1. Who is required to be recertified by July 1, 2022?

ALL officers, including chiefs, with the last name beginning with the letters A-H. This includes reserve officers, retired officers working details for your department, and all other full-time and part-time officers (A-H).

If an officer graduated from a full-time academy after December 1, 2021, and your department has not filed an intake form and certification packet with POST because they worked in a reserve capacity prior to the academy (and were certified as an active officer on July 1, 2021), they must be recertified and included in this recertification phase if their name ends in A-H.

2. What do we submit for recertification?

Each department will submit a 1) Submission Template (may submit up to 2 spreadsheets), and 2) a Signature page for officers attested to.

If a chief is NOT attesting to an officer, then a separate signature is required PER officer (to include the written justification portion) and those signature pages would be submitted along with each officer's questionnaire.

Questionnaires are required to be submitted only if an agency head is NOT attesting to their good moral character/fitness.

If a chief's name falls in A-H, then a second signature page would be included with the Town Administrator/Chair of the Board of Selectmen (the hiring authority's) signature attesting to the chief's good moral character/fitness for employment.

3. We have retirees working details for our department. Do we need to recertify now? They do in service every year.

If their last name is A-H, they need to be recertified. If they're wearing your uniform and carrying your department-issued weapon and have the requisite training, submit their names for recertification according to their last name.

4. We have many officers who have not completed the psychological component. Will they be denied recertification? And what if we have some officers who had it 25 years ago, but we no longer have the names of the licensed professionals on file - may we answer "Yes"?

POST is asking if any such evaluation was conducted ever for any police employment. Answering no is not cause for denial of recertification or suspension.

If an officer has had an evaluation administered by your department, but you no longer have a record on file, you may still answer "yes" for purposes of this recertification.

5. In the event an officer is out with an injury for an extended amount of time and will not meet the requirements for recertification, how long would an officer have under a conditional certification to return to full duty in order to keep the basic certification? Is there a period of time after which the officer would have to go back through an academy?

Some officers may be out on leave, whether it is due to an injury, illness, military leave, etc., so you would not be able to check some boxes. Indicate in the "notes" column the reason(s) why and their anticipated date of return, if known. If the leave is for an extended period of time, the officer may remain "inactive" and receive a conditional certification upon return to allow the officer to complete requirements such as in-service, etc., but they would be "certified" to work as a police officer during that time. Not being recertified is very different from being decertified. No officer in this category would be decertified, assuming there are no grounds for that form of disciplinary action.

However, if an officer is out on leave in excess of 5 years, that is considered a break in service by MPTC and that officer would be required to attend a full-time academy upon return.

6. Several members of my department have not been subject to a physical fitness exam through the MPTC, but have had physical fitness exams through occupational health facilities prior to employment.

Do those count towards this?

Yes, the occupational health medical evaluations, assuming they were related to employment in law enforcement, for the purposes of this A-Z (all officer) recertification.

7. What happens if CPR training has not been completed?

If not completed, a conditional certification may be issued, in which case that officer would be required to complete the requirement within a specified period of time (TBD).

8. We are an SSPO department. Along with the POST requirements, are we still required to recertify through the state police licensing unit for the SSPO powers?

Yes, the process remains the same for state police warrants. SSPOs still receive their powers through the Colonel of the state police. If a warrant expires, but your POST Certification is active, there is no need to seek recertification; you would only renew your warrant through MSP.

For new SSPOs, the POST certification will be issued to the MSP and they will forward it to the SSPO along with the MSP warrant.

9. Is there further clarification of what constitutes the exam approved by POST?

Any exam that was administered during any of the academies would constitute an exam approved by POST. Those exams may be different depending on the type of academy the officer went to (reserve, bridge, MPTC, MSP) but they all qualify.

Attestations FAQs

1. As a chief of a town or college, who would attest to my good moral character and fitness for employment?

The Town Administrator or the Chair of the Board of Selectmen, or the Vice President of the college - the appointing/hiring authority.

2. What happens to officers a chief does not attest to?

The officer will be provided the signature page BY THE AGENCY HEAD stating that the agency head does not attest to their good moral character/fitness for employment as a police officer and the agency head must provide the explanation or justification for that on the same signature page. The officer will be allowed to respond to that before POST. Exact procedures are being drafted by POST at this time.

This would be cause for further review by POST and would not result in an automatic denial of certification.

3. I have 2 reserve officers that work in another town, do I need to attest to them?

If another department has that officer hired full-time, that department should provide the recertification documents to POST. If they are hired part-time equally by multiple departments, the department they worked for first should do so. All departments that employ that officer should ensure that the officer is being

"sponsored" by one department and complying with POST filings. The officer has the responsibility to ensure an attestation is being filed on their behalf as well.

Questionnaire FAQs

1. Can a non-sworn employee be the interviewer/evaluator for the officer questionnaire?

No, unless you are an agency head.

2. Who should administer the officer questionnaire?

The statute requires POST to "administer" an oral interview that should be carried out by a higher-ranking officer to the interviewee. The questionnaire may be emailed, handed to the officer, but then discussed with a senior officer.

3. Have there been any changes to the recertification questionnaire?

Yes, we have modified #5 about suspensions. It asks if an officer has been suspended for more than 5 days or due to allegations of bias. The phrasing has been revised, but the substance of the question remains the same.

4. Relative to Question #5 of the Officer Questionnaire, do you consider administrative leave pending investigation as a "paid suspension"?

No, the suspension referenced in this question is a suspension imposed as a disciplinary action after an investigation has been completed.

5. How does an officer answer Questionnaire #7 if they were/are affiliated with an organization or group that was known to participate in discriminatory practices?

Note that the question extends only to unlawful discrimination.

This is a standard of "reasonableness". If one did answer "yes", a description would be included under the question explaining the affiliation. Again, these are identified as topics to be discussed with the officer, and answers, independently, will not automatically decertify an officer.

POST would only further review this if a department expressed concern relative to an officer's particular affiliation.

6. What if an officer refuses to answer/fill out the questionnaire? May an officer have legal counsel present? May departments audio record the interview?

The questionnaire is POST's method of "administering" the oral interview. This questionnaire is one criteria that must be met to qualify the officer for certification and/or recertification as a police officer. If an officer elects not to answer the questions, for reasons not allowed in the instructions, they are not in compliance with POST requirements and the agency head must bring that to the attention of POST. The POST Commission would determine what action would be taken against that officer's certification.

POST is not responsible for recommending or denying legal counsel presence during an interview – this is the decision of the officer. POST is not involved in departmental policy relative to an audio recording of the interview and the audio recording would not be requested to be submitted by POST for the purposes of recertification.

An officer should be afforded at least 48 hours in which to complete the questionnaire.

IMPORTANT NOTE: If an officer elects to not check a “yes” or “no” box on the questionnaire but adds a statement in the narrative section of that question, this satisfies the requirement of answering the question according to POST. For example, it is acceptable for an officer to answer, “No, not to my knowledge” or “Yes, to the best of my recollection”.

In Service/Work Requirements FAQs

1. Is a person working as a Police Officer full-time at the Federal Reserve or for a federal agency allowed to have his work hours count towards the 2400 hours of work experience?

MPTC would make the determination re: work experience hours. Some may go before the MPTC to be voted on due to unique circumstances. If the hours qualify, MPTC would then issue an exemption and a training verification letter for that officer.

2. Please speak to the MACLEA release about those NOT attending the A-H Bridge Academy and how they must attend yearly in service for firearms regardless of whether their department carries a firearm.

MPTC has purchased firearms and will provide training facilities for those departments that do not carry them. Those officers will requalify every year through MPTC. Officers working in unarmed SSPO capacities who are unable to attend the firearms training prior to this A-H recertification phase may be issued a conditional certification. The conditional certification would not prevent any police duties other than carrying a firearm. When the condition is met, full certification will be issued.

3. What happens if an officer has not completed in-service by the time we submit the list for recertification?

If an officer has not completed any of the required FY 2022 in-service training and is considered “overdue” by your department, then answer “No”. This would be considered a “technical deficiency” and the officer would be issued a conditional certification allowing all police powers unless the department exercises discretion to limit the officer’s powers and duties in accordance with POSTC guidelines. The certification would be subject to the condition that they must complete the training within a specific time period (ex. 90 days). If the condition has not been met by that specified time, POSTC may take action against the officer’s certification if there are no articulable circumstances preventing them from completing the same.

If the officer is up-to-date, has completed FY 2021 in-service training, your department did not require completion of all training before the recertification documents are submitted to POST (because it was prior to the end of FY 2022), and that officer is deemed to be in compliance with your department requirements, you may answer “Yes” to that question.

4. Can you explain the 24 hours of specialized training and 16 hours of elective training?

24 hours of specialized "core" training is identified by MPTC. The 16 hours of additional training is training the officer elects to take or extra training the specific agency requires in addition to the "core" in-service MPTC requirements (which changes annually).

5. What if a reserve officer hasn't completed their hours yet?

If an officer works full-time, they have until 1/1/23 to complete the work hours, if part-time, they have until 1/1/27 to complete their work hours.

If an officer is A-H and has not completed their work experience hours, a conditional certification may be issued allowing that officer to work with full police powers. Upon completion of the hours, POST should be notified by that department and the condition would be removed and the officer would receive their full certification.

6. We have police officers (officers who attended a full-time academy or Bridge Academy) working as security officers. Would they be treated as "new employees/new hires" even though they have worked for the department?

If they have attended a full-time or Bridge academy in the past and were employed as an officer on 7/1/21, then they will be considered an active police officer and will be up for recertification according to their full name.

If they have the above training and were not employed as a police officer (full-time or part-time) on 7/1/21, then they would be treated as a new hire and the department would have to file the New Officer Hire Certification Packet located on the POST Commission website under Certification Documents.

Submitting Info to POST FAQs

1. What do LEA's do with the Recertification Documents? Are these records subject to public records requests?

Officer questionnaires are NOT submitted to POST. They remain on file with the department UNLESS the agency head or designee is not attesting to their good moral character. If NOT attesting to the good moral character, the questionnaire must be submitted to POST.

The questionnaires should be maintained in the officer's PERSONNEL FILE as it is considered confidential background investigation data. Note that POST presently intends to use such questions, the answers it receives, and related materials for other assessment instruments.

The attestations are worksheets used by your department to assist in filing the Submission Template. These documents are not required to be maintained on file. If a department chooses to maintain those documents, it is recommended by POST to store them in personnel files.

2. What will you be doing to improve communication by POST?

Director of Communications Cindy Campbell was recently hired to assist POST in this area.

We will post and update a FAQ section on the POST website.

POST plans on distributing joint "newsletters" with MPTC through MPTC's distribution list to provide POST updates and to offer more clarity on relevant issues on a regular basis.

Download FAQs PDF Document

[POST Commission Recertification FAQs Document \(/doc/post-commission-recertification-faqs-document/download\)](/doc/post-commission-recertification-faqs-document/download)

Recertification Packet & Instructions

The Recertification Packet consists of the following documents:

1) Part 1: **[Agency Attestation Document \(/doc/agency-attestation-document-2-0/download\)](/doc/agency-attestation-document-2-0/download)** *(Updated as of 5/12/2022)*

a. If you only seek the Attestation Signature Page **[click here \(/doc/attestation-signature-page-5-12-22/download\)](/doc/attestation-signature-page-5-12-22/download)**

b. if you only seek the Non-Attestation Signature Page **[click here](#)**

[\(/doc/non-attestation-signature-page-5-12-22/download\)](/doc/non-attestation-signature-page-5-12-22/download)

2) Part 2: **[Officer Questionnaire \(/doc/officer-questionnaire-part-2-updated-4-11-22/download\)](/doc/officer-questionnaire-part-2-updated-4-11-22/download)** *(Updated as of 4/11/2022)*

3) **[Submission Template \(Provided By POST Commission - DO NOT EDIT FIELD HEADERS\)](#)**

[\(/doc/submission-template-provided-by-post-commission-do-not-edit-field-headers-6/download\)](/doc/submission-template-provided-by-post-commission-do-not-edit-field-headers-6/download) *(Updated as of 5/12/2022 3:20 PM)*

Definitions as used in these materials:

1. "Agency" refers to the law enforcement agency that employs, or that serves as the appointing authority, for an officer seeking recertification.
2. "Agency Head" refers to the actual head of the Agency or that person's designee.
3. "Evaluator" refers to an officer who is senior to the officer seeking recertification and who has been charged by the Agency Head with evaluating whether the officer satisfies the criteria for recertification.
4. "Interviewer" refers to an officer who is senior to the officer seeking recertification and who has been charged by the Agency Head or by the Evaluator with orally interviewing the officer seeking recertification.

Please read and follow the instructions below carefully.

Instructions for the Agency Head

For each officer within the agency, we ask that you attest to the good moral character and fitness for employment as a law enforcement officer and whether or not they satisfy the statutory criteria for recertification. Please consider the information contained in the two documents provided (Part 1 and Part 2). Part 1 may be completed by an Evaluator who will review the Agency's records on the relevant criteria regarding the individual officers.

We further ask that Part 2 be distributed to each officer whose last name begins with A-H and who will be seeking recertification. You may delegate the tasks for data collection and due diligence to an Evaluator. The Evaluator may enlist the aid of an Interviewer. Large agencies may rely on more than one Evaluator or Interviewer in order to efficiently engage in this due diligence throughout the Agency.

After reviewing the officer data collected by the Evaluator, please submit one Submission Template for all officers with last names ending in A-H you are attesting to and ONE Signature Page for *ALL officers* listed on that Submission Template. The Officer Questionnaire shall be retained by the Agency and is not required to be submitted.

If you are unable to attest to an officer's good moral character and fitness for employment, you may choose to include the name(s) on the first Submission Template or submit a second Submission Template with those names listed and you will be required to submit a Signature Page for *EACH individual officer you are NOT attesting to*.

Instructions for the Evaluator and/or Interviewer

The Evaluator is responsible for reviewing the criteria in Part 1 and Part 2. The Evaluator will gather officer data and corroborate the answers to the 15 questions on Part 1, which will be entered onto the Submission Template. The Evaluator may enlist the aid of an Interviewer. The Evaluator may provide a recommendation for or against recertification, but it is ultimately the Agency Head who will make that attestation to POST. Large agencies may rely on more than one Evaluator or Interviewer in order to efficiently engage in this due diligence throughout the Agency.

Instructions for Officer Seeking Re-certification

The Agency will provide answers to the criteria outlined in the Part 1 document with your input. You should verify that such information is up to date and accurate. You will also be provided a Questionnaire (Part 2). Please answer the questions in the Questionnaire accurately and completely. You will be asked to discuss the answers to those questions with a higher-ranking Evaluator or Interviewer.

1. Agency Attestation Document (Part 1)

- a. Includes a signature page, where the Agency Head will attest to the information provided
- b. Consists of 15 questions/entries relative to the individual officer.
- c. Appendix 1: Agency Attestation Worksheet. Contains criteria and information that needs to be submitted using the Submission Template. This form is provided as a fillable document, but we are not asking that this worksheet be submitted to the POST Commission.
- d. Appendix 2: Instructions for Attestation Questions.

2. Officer Questionnaire (Part 2)

- a. The individual officer seeking recertification provides the answers to the Questionnaire.
- b. The Questionnaire must be provided to the officer seeking recertification by an Evaluator or Interviewer.
- c. Responses must be discussed between the officer and either the Evaluator or the Interviewer.
- d. The officer will sign and date the Questionnaire and affirm that information provided on the Questionnaire is true and complete.

3. Submission Template (spreadsheet)

- a. The Submission Template is the spreadsheet that Agencies will use to submit the requested information to the POST Commission.
- b. All officers with last names beginning with A-H should be listed on the Submission Template.
- c. The Submission Template must not be reconfigured in any way.
- d. Each officer's information should be entered in only one row.
- e. Extra rows should not be added in between officer records. This will result in a delay of recertification and require the Agency's resubmission of the spreadsheet.

The Agency Head should list an officer on the Submission Template if the Agency Head attests that the officer satisfies all the criteria for recertification, including the requirement to be of good moral character and fit for employment. It is possible that there may be one or more instances in which an Agency Head will not make such attestation. If the Agency prefers to separate the list of officers attested to from those not attested to, a Submission Template for each list is acceptable. These may be submitted at different times as long as the POST Commission receives those before June 15, 2022.

What has to be submitted to the POST Commission?

- 1. Signed Attestation Signature Page.**
- 2. Filled out Submission Template (spreadsheet) with information on all officers that are found by the Agency Head to satisfy all criteria for recertification.**
- 3. IF AND ONLY IF the Agency Head declines to attest that an officer(s) with last names beginning with A-H satisfy all criteria for recertification:**
 - a. **Submit one Non-attestation Signature Page for each officer who is not found to satisfy those criteria and enter the reason(s). Provide that page to the individual officer.**
 - b. **Include all individuals who are not found to satisfy the criteria in the same Submission Template or, if you choose to do so, submit one separate Submission Template (a second**

submission).

DATE PUBLISHED:

April 29, 2022

Exhibit 4

----- Forwarded message -----

From: Gilbert, Daniel J. <GilbertDJ@worcesterma.gov>
Date: Tue, Apr 12, 2022, 3:42 PM
Subject: Fw: Emailing: Officer Questionnaire Part 2_Final 4-5-2022
To: [REDACTED]

From: McKiernan, Michael A.
Sent: Tuesday, April 12, 2022 9:58:23 AM
To: [REDACTED]

Cc: Gilbert, Daniel J.; [REDACTED]
Subject: Emailing: Officer Questionnaire Part 2_Final 4-5-2022

Good morning,

We are beginning the process of recertification through POST. I have included the questionnaire that you must fill out. This questionnaire is for internal purposes only unless the Chief does not approve your recertification. In that situation the form will be sent to POST. Otherwise I will retain the questionnaire in electronic form. This form is the basis for the "Evaluator" to assess your fitness for recertification. You do not need to contact BOPS for your disciplinary history unless you are unable to recall specific dates and times. Please complete the attached questionnaire, "Save As" and rename the document with your name, and send it to me. I will then assign a Lieutenant to complete the process. Please feel free to approach me with any questions. We have asked to complete this before June 1, 2022 so please complete the questionnaire as soon as possible. I expect that like nearly everything else we do, this document will become a public record; however it is unlikely that it will be sent to POST.

Thank you,

Captain Michael A. McKiernan
Bureau of Investigative Services
[REDACTED]

Your message is ready to be sent with the following file or link attachments:

Officer Questionnaire Part 2_Final 4-5-2022

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain

Exhibit 5

From: Gilbert, Daniel J. GilbertDJ@worcesterma.gov

Subject: Subject To Bargain POST Questions

Date: April 13, 2022 at 3:11 PM

To: Sargent, Steven M. SargentS@worcesterma.gov, Davenport, Kenneth J. DavenportKJ@worcesterma.gov, Bagley, William BagleyW@worcesterma.gov



Dear Chief, Captain and Atty. Bagley:

This week the union members were given notice of their obligation to complete and provide information in response to a new POST questionnaire. Obviously this is a substantial change in working conditions, and the union has concerns about several aspects of the questionnaire. Attached is the union's formal demand under GL c. 150E, which includes a demand to bargain, demand to maintain the status quo, and demand for information.

Your earliest attention to this important matter is appreciated,

Dan



WPD Demand to
Bargai...NS.pdf

To: Chief Steven Sergeant, Worcester Police Department
Capt. Kenneth Davenport, Worcester Police Department
William Bagley, Director Human Resources, City of Worcester

From: Dan Gilbert, President NEPBA Local 911

Re: Request for Clarification regarding POST Re-Certification Packet
Officer Questionnaire and Demand to Bargain pursuant to G.L. c. 150E
Initial Request for Information Pursuant to G.L. c. 150E

Date: April 13, 2022

On behalf of the members of our Local 911, I am writing to seek clarification on the POST Re-certification / Officer Questionnaire. As you may know, some of our members received notice of the questions yesterday via email from Captain McKiernan, and other supervisors have sent separate emails. It is the union's position, based on an initial review of the questionnaire, that the process may impact several mandatory subjects of bargaining. The Union also believes that the requirement to respond to many, if not all, of the inquires in the questionnaire violates our members' rights to privacy and potentially other constitutionally protected rights.

Importantly, as you know, the Massachusetts Department of Labor Relations recently issued a complaint against the City over the unilateral changing of our BOPS Policy 500 to incorporate several aspects of the new Police Reform Law, where such aspects impacted such things as work duties, privacy rights, standards of performance and disciplinary procedures (see NEPBA Local 911 v. City of Worcester, DLR No. MUP-21-8790). Such subjects appear to be impacted here as well.

Pursuant to G.L. c. 150E, the union demands that the status quo be maintained until such time as all bargaining obligations are met. Moreover, because our union and the city are currently and actively engaged in successor contract bargaining, we demand that any such bargaining take place at the main table discussions. In the meantime, the following information is requested under GL c. 150E, the collective bargaining law:

1. *What are our members obligations relative to the Questionnaire? Is responding to it a condition of employment? Are the members ordered by the Worcester Police Department to complete the questionnaire, and if so, will discipline result for failing to answer (if so, what specific discipline will result)?*
2. *If the Questionnaire is voluntary (i.e not an order of the Police Department), what shall be the consequences, if any, for choosing not to answer some or all of the questions?*
3. *Provide any and all criterion that will be considered by all city evaluators' determinations as to "good moral character and fit for employment as a law enforcement officer."*

4. *Will any officer be subject to discipline or further investigation based on any responses given, and if so, provide all criteria upon which such discipline or further investigation can be based.*
5. *Does the officer have the option to answer the questions verbally, and if not, why not?*
6. *What efforts will the Department and evaluator take to ensure confidentiality of the officers' answers, as well as the notes and records of the interviews? Will such materials be produced in response to a public records request? Will the records be maintained, and if so, for how long? Does the Department consider the records exempt from public records disclosure, and if so, why?*
7. *What is the Department's process for determining whether an officer is of "good moral character and fit for duty?" Please provide the standard that will be used, and explain all factors that will be considered, and in particular, what weight the officers' answers - or refusal to answer - will factor into such determination.*
8. *The Questionnaire states that an officer may indicate that he/she has the option of not answering a question if they have good faith belief that they might waive a privilege, protection or right recognized by law. Please explain what will be accepted by the city as a "good faith belief" and what qualifies as a protection or right recognized by law.*
9. *Will the Department investigate or follow up to verify or corroborate the officers' responses, and if so, what process will be followed in doing so?*
10. *Explain in detail whether and, if so, why the Department has a compelling need to know if our members are current in all tax payments? If the department has no such need, please indicate that. Is providing this information to the Department a condition of employment?*
11. *Explain in detail whether and, if so, why the Department has a compelling need to know whether, through the questionnaire process, our members have ever received a permit or license to carry a firearm, and related details regarding the history of same, particularly in light of the department's existing knowledge on this issue. Is providing this information to the Department a condition of employment?*
12. *Explain in detail whether and, if so, why the Department has a compelling need to know whether, through the questionnaire process, our members have been defendants in a civil suit, and the details of such civil suits as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
13. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been the subject of*

- a restraining order, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
- 14. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been suspended for more than 5-days in connection with any employment, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
 - 15. Explain in detail whether and, if so, why the Department has a compelling need to know whether in the last 5-years, our members have sent or displayed a public communication on social as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
 - 16. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members currently or have ever belonged to any organization as set forth in Question No, 7 of the Questionnaire. Is providing this information to the Department a condition of employment?*
 - 17. Explain in detail whether and, if so, why the Department has a compelling need to know whether our members "thinking broadly" have and need to provide the information sought in Question No. 8, and also, is providing such information to the Department a condition of employment? Please also define what information in particular would meet the criteria described in the question.*
 - 18. Is an officer's attestation to the Form under the penalties of perjury a condition of employment? If so, why? Is the officer subject to criminal prosecution based on his or her answers (both for admissions to conduct, or for perjury)? Please provide information as to any process that would be employed in such circumstances.*
 - 19. Please list all events and circumstances that could result in or justify a negative recommendation by the Department regarding moral character or fitness for duty.*
 - 20. What is the Department's definition of good moral character and fitness for duty, what is the source of said definition?*

Please produce this information to the union as required by G.L. c. 150E within the timeframes contemplated by that statute. Upon receiving the information, the union demands bargaining as to any and all contemplated changes affecting mandatory subjects of bargaining. In the meantime, demand is made that the status quo be maintained.

Exhibit 6

To: Lt James Gabriel

From: Chief Steven A. Mазzie

Re: **(1) Request for Clarification regarding POST Re-Certification Packet Officer Questionnaire; (2) Demand to Bargain pursuant to G.L. c. 150E, and; (3) Union's Initial Request for Information Pursuant to G.L. c. 150E**

Date: 20 April 2022

On behalf of the members of our bargaining unit, I am writing to seek clarification on the POST Re-certification / Officer Questionnaire. It is the union's position, based on an initial review of the questionnaire, that the process may impact several mandatory subjects of bargaining. The Union also believes that the requirement to respond to many, if not all, of the inquires in the questionnaire violates our members' rights to privacy and other constitutionally protected rights.

Importantly, the Massachusetts Department of Labor Relations recently issued a complaint against a municipality that failed to bargain with the union over the implementation of several aspects of the new Police Reform Law, where such aspects impacted such things as work duties, privacy rights, standards of performance and disciplinary procedures (see NEPBA Local 911 v. City of Worcester, DLR No. MUP-21-8790). Such subjects appear to be impacted here as well.

Pursuant to G.L. c. 150E, the union demands that the status quo be maintained until such time as all bargaining obligations are met. Moreover, to the extent that our union is currently engaged in successor contract bargaining (or we are about to enter such negotiations), we demand that any such bargaining take place at the main table discussions.

In the meantime, the following information is requested under the collective bargaining law, G.L. c. 150E:

1. *What are our members obligations relative to the Questionnaire? Is responding to it a condition of employment? Are the members ordered to complete the questionnaire, and if so, will discipline result for failing to answer?*

RESPONSE- *The Questionnaire is required by statute and, as such is required to be completed. The result for a failure to answer will be decided by the authorized and enabled certifying authority.*

2. *If the Questionnaire is voluntary, what shall be the consequences for choosing not to answer some or all of the questions?*

RESPONSE- Questions regarding choosing not to answer some or all of the questions will be determined by the ***by the authorized and enabled*** certifying authority.

3. *Provide any and all criterion that will be considered by all evaluators' determinations as to "good moral character and fit for employment as a law enforcement officer."*

RESPONSE- Questions regarding evaluator's determinations will be determined by the ***by the authorized and enabled*** certifying authority.

4. *Will any officer be subject to discipline or further investigation based on any responses given, and if so, provide all criteria upon which such discipline or further investigation can be based.*

RESPONSE- Questions regarding whether *any officer be subject to discipline or further investigation based on any responses given,* will be determined by the ***by the authorized and enabled*** certifying authority.

5. *Does the officer have the option to answer the questions verbally, and if not, why not?*

RESPONSE- It would seem to be impactable to provide for verbal answers but all such issues and questions will more than likely be answered by the ***authorized and enabled*** certifying authority.

6. *What efforts will the Department and evaluator take to ensure confidentiality of the officers' answers, as well as the notes and records of the interviews? Will such materials be produced in response to a public records request? Will the records be maintained, and if so, for how long? Does the Department consider the records exempt from public records disclosure, and if so, why?*

RESPONSE- All such issues and questions will more than likely be answered by the ***authorized and enabled*** certifying authority as its process progresses..

7. *What is the Department's process for determining whether an officer is of good moral character and fit for duty? Please provide the standard that will be used, and explain all factors that will be considered, and in particular, what weight the officers' answers - or refusal to answer - will factor into such determination.*

RESPONSE- ***Determining whether an officer is of good moral character and, or fit for duty is an initial hiring and continuing employment issue that has been and will, more than likely, always be determined on an informed and reasoned basis depending on the specific facts and circumstances involved with each and every such determination.***

8. *The Questionnaire states that an officer may indicate that he/she has the option of not answering a question if they have good faith belief that they might waive a privilege,*

protection or right recognized by law. Please explain what constitutes a "good faith belief" and what qualifies as a protection or right recognized by law.

RESPONSE- Here again, this is a question that can only be answered by the authorized and enabled certifying authority *on an informed and reasoned basis depending on the specific facts and circumstances involved with each and every such determination.*

9. *Will the Department investigate or follow up to verify or corroborate the officers' responses, and if so, what process will be followed in doing so?*

RESPONSE- The department may or may not *follow up to verify or corroborate an officers' responses depending on the specific facts and circumstances involved with each and every such determination.*

10. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members are current in all tax payments? If the department has no such need, please indicate such need. Is providing this information to the Department a condition of employment?*

RESPONSE- The need to know whether members are current in all tax payments is a requirement developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.

11. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have ever received a permit or license to carry a firearm, and related details regarding the history of same, particularly in light of the department's existing knowledge on this issue. Is providing this information to the Department a condition of employment?*

RESPONSE- The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.

12. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been defendants in a civil suit, and the details of such civil suits as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*

RESPONSE- The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.

13. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been the*

subject of a restraining order, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?

RESPONSE- *The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.*

14. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been suspended for more than 5 days in connection with any employment, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*

RESPONSE- *The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.*

15. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether in the last 5-years, our members have sent or displayed a public communication on social as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*

RESPONSE- *The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.*

16. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members currently or have ever belonged to any organization as set forth in Question No, 7 of the Questionnaire. Is providing this information to the Department a condition of employment?*

RESPONSE- *The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.*

17. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members "thinking broadly" have and provide the information sought Question No. 8, and is providing such information to the Department a condition of employment? Please also define what information in particular would meet the criteria provided in the question.*

RESPONSE- *The need to know this information has been developed by the authorized and enabled certifying authority and as such any question relative to same should be directed to that authority.*

18. *Is an officer's attestation to the form under the penalties of perjury a condition of employment? If so, why? Is the officer subject to criminal prosecution based on his or*

her answers (both for admissions to conduct, or for perjury)? Please provide information as to any process that would be employed in such circumstances.

RESPONSE- It is my *opinion* that if the questionnaire requires attestation *under the penalties of perjury* that such is at minimum, a condition of certification. Beyond this, such questions should be directed to the authorized and enabled authority involved.

19. *Please list all events and circumstances that could result in or justify a negative recommendation by the Department regarding moral character or fitness for duty.*

RESPONSE- Any and all events and circumstances that could result in or justify a negative recommendation by the Department regarding moral character or fitness for duty would always be determined on an informed and reasoned basis dependent on the specific facts and circumstances of each such question or issue.

20. *What is the Department's complete definition of good moral character and fitness for duty, what is the source of said definition?*

RESPONSE- Acceptable moral character and fitness would in all circumstances be defined *on an informed and reasoned basis dependent on the specific facts and circumstances of each such question or issue.*

Please produce this information to the union as required by G.L. c. 150E within the timeframes contemplated by that statute. Upon receiving the information, the union demands bargaining as to any and all contemplated changes affecting mandatory subjects of bargaining. In the meantime, demand is made that the status quo be maintained.

RESPONSE-

As demanded herein, please know that any such proposals that the union may have may be raised at main bargaining table discussions.

Respectfully,

Steven A. Mazzie
Chief

Exhibit 7



Town of Billerica Police Department

6 Good Street
Billerica, Ma 01821
(978) 215-9653 Fax (978) 667-3532



Roy W. Frost
Chief

To: Gilbert Ynostroza, President 5A and Martin Conway, President 5B
From: Chief Roy W Frost
Date: April 27, 2022

Re: (1) Request for Clarification regarding POST Re-Certification Packet Officer Questionnaire; (2) Request to Bargain pursuant to G.L. c. 150E, and (3) Union's Initial Request for Information Pursuant to G.L. c. 150E

In response to your April 19th request/demand, in the paragraphs below I have done my best to answer each question you posed. Note, on Tuesday, April 26, 2022, I sent out to the entire body a 34 paragraph FAQ document produced by POST that answered many of the questions posed in your aforementioned memo. As of April 25, 2022, POST has opened its portal to receive Officer Recertification documents related to all Massachusetts Police Officers whose last names begin with A-H. Under their regulations, these recertifications must be submitted no later than June 15, 2022. As you are aware, Officers whose last name begin with A-H will have their certifications expire as of June 30, 2022. I will be glad to sit down with the unions to further discuss any part of the process being required by POST for officer certification.

1. What are our members obligations to the questionnaire? Is responding to it a condition of employment? Are the members ordered to complete the questionnaire, and if so, will discipline result for failing to answer?
 - o As outlined in the in the instructions provided by the Questionnaire for Law Enforcement Recertification, you are asked to provide answers to the eight questions provided on the form and then participate in any related discussions required by a superior officer. If you have a good faith belief that you cannot answer a question completely and accurately without waiving a privilege, protection, or right recognized by law, you may state that belief in lieu of answering. Any answer that you do provide must be complete and accurate. If you intentionally make any false statements, or intentionally omit any pertinent information other than as provided above, your application for recertification will be disqualified, reported to the POST commission and considered a complaint subject to investigation and possible sanction by the Commission. No form of information that is provided will automatically lead to a denial of certification, but certain responses may prompt further review by the POST Commission.
 - o As noted in the most recent FAQ sent out by POST on April 26, 2022, Officers who elect not to answer "yes" or "no" to any/all of the 8 questions on the questionnaire, may instead write below "No to the best of my knowledge" or "Yes to the best of my knowledge" as an alternative. This response will be acceptable to the Billerica Police for purposes of evaluating whether an officer is of "good moral character and fit for employment as a law enforcement officer".
 - o As you are aware, the under Chapter 6E of the Massachusetts General Laws, police officers are now required to be certified through the Peace Officers Standards and Training Commission (POST). All current officers as of July 1, 2021 were automatically certified by POST, however, officers with last names ending between A through H must be recertified as of June 30, 2022. Anyone working for the Billerica Police as a police officer whose name falls in that first pool, who does not obtain recertification from the POST commission cannot perform the functions of a police officer possibly resulting in job sanctions.
2. If the questionnaire is voluntary, what shall be the consequences for choosing not to answer some of all of the questions?

- As outlined in the questionnaire, the Agency Head is required to submit an "Attestation Signature Page" attesting to the Good Moral Character/Fitness for Employment of each sworn officer at the Billerica Police Department. This determination will be based on a totality of the information obtained, including a review of the officer's personnel file and disciplinary records, if applicable. With this in mind, I would urge each officer to fully participate in the recertification process, to include answering the questionnaire to the best of their ability. Failure to complete the questionnaire without a reasonable explanation could result in that officer's name not being included in the Attestation Signature Page sent to POST. In the event that should occur, a Non-Attestation Signature Page would be sent to POST outlining the reasons the officer was not included in the Attestation Page. This may result in a delay of the Officer's recertification and could also prompt an investigation on the part of POST further impacting that officers' certification status.
- 3. Provide any and all criterion that will be considered by all evaluators' determinations as to "good moral character and fit for employment as a law enforcement officer".
 - This will be based on a totality of the information obtained, including a review of the officer's personnel file and disciplinary records. The eight questions provided by the POST in the questionnaire to officers will also be part of the information considered.
- 4. Will any officer be subject to discipline or further investigation based on any responses given, and if so, provide all criteria upon which such discipline or further investigation can be based.
 - Responses will be reviewed by the Evaluator and/or Department Head. The department has a responsibility to investigate any matter that it believes impacts the qualifications required to be a Billerica Police Officer.
- 5. Does the officer have the option to answer the questions verbally, and if not, why not?
 - Based on a reading of the "instructions for the Officer Seeking Recertification", the POST Commission asks that "each Officer answer the questions below and then participate in any related discussions required by a superior officer. If you have a good faith belief that you cannot answer a question completely and accurately without waiving a privilege, protection, or right recognized by law, you may state that belief in lieu of answering. Any answer that you do provide must be complete and accurate. If you intentionally make any false statements or omit any pertinent information other than as provided above, your application for recertification will be disqualified, reported to the POST Commission, and considered a complaint subject to investigation and possible sanction by the Commission. No form of information that is provided will automatically lead to a denial of certification, but certain responses may prompt further review by the POST Commission." With the above in mind, I would urge officers to put their answers to the eight questions in writing instead of relying on the evaluator to document what the officer verbally states in their response. This will mitigate any future potential disagreement of what was stated verse what was documented.
- 6. What efforts will the department and evaluator take to ensure confidentiality of the officers' answers, as well as the notes and records of the interviews? Will such materials be produced in response to a public records request? Will the records be maintained, and if so, for how long? Does the department consider the records exempt from public records disclosure, and if so, why?
 - All records related to certification/recertification will be maintained in the officers' personnel file.
 - This department is required to honor all public records requests under MGL c. 66 §10 unless the request falls under an established exemption to the law. POST considers the questionnaire as "confidential background investigation data" and thus exempt under exemption C (Privacy Data). Based on that assessment, this department will maintain all records related to certification and re-certification in the officers' personnel files and consider them exempt for a public records request.
- 7. What is the Department's process for determining whether an officer is of good moral character and fit for duty? Please provide the standard that will be used, and explain all factors that will be considered, and in particular, what weight the officer's answers- or refusal to answer- will factor into such a determination.
 - Please refer to our Rules and Regulations which outlines what is expected of an officer with the Billerica Police. This includes areas of Professional Responsibilities, Conflicts of Interest, Orders, Required Conduct, Prohibited Conduct, Uniform and Appearance, handling of Department Property and Equipment as well as Accountability and Discipline.
 - As the questionnaire created and provided to Officers by POST is used by the Department when making a determination of moral character and fitness for duty, this document will have an impact on whether an officer is included on the Attestation Form or placed separately on a Non-Attestation Form.
- 8. The questionnaire states that an officer may indicate that he/she has the option of not answering a question if they have a good faith belief that they might waive a privilege, protection or right recognized by law. Please explain what constitutes a "good faith belief" and what qualifies as a protection or right recognized by law.
 - According to lawinsider.com, a good faith belief is defined as "a reasonable reliance on fact and can be based on observed conduct, behavior or appearance, information reported by a person believed to be reliable, or written, electronic or verbal statements from the employee or other persons". Based on that definition, an

officer citing a legally recognized privilege would be best advised to document their objection/response in writing. As stated above, a decision of whether an officer is included on the Attestation Form or individually, on a Non-Attestation Form will be made based on a totality of the information reviewed (refer to answer for question 3 above).

9. Will the department investigate or follow up to verify or corroborate the officer's responses, and if so, what process will be followed in doing so?
 - o Any answers provided by officers to the Attestation questions are expected to be "complete and accurate". If officers intentionally make any false statements, or intentionally omit any pertinent information (other than as claimed to be legally privileged), the application for certification will be disqualified, reported to the POST Commission and considered a complaint subject to investigation and possible sanction by the Commission. That stated, there will be no automatic follow up on responses made by officers unless there is some articulable reason to do so (i.e., complaint made).
10. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members are current in all tax payments? If the Department has no such need, please indicate such need. Is providing this information to the Department a condition of employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
11. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have ever received a permit or license to carry a firearm, and related details regarding the history of same, particularly in light of the Department's existing knowledge on this issue. Is providing this information to the Department a condition of employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
12. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been defendants in a civil suit, and the details of such civil suits as set forth in the Questionnaire. Is providing this information to the Department a condition of employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
13. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been the subject of a restraining order, and the details of such set forth in the Questionnaire. Is providing this information to the Department a condition of employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
14. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been suspended for more than 5 days in connection with any employment, and the details of such as set forth in the Questionnaire. Is providing this information to the Department a condition of employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
15. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether in the last 5 years, our members have sent or displayed a public communication on social media as set forth in the Questionnaire. Is providing this information to the Department a condition of employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
16. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members currently or have ever belonged to any organization as set forth in Question No 7 of the Questionnaire. Is providing this information to the Department a condition of Employment?
 - o This question was created and implemented by the POST Commission without input or advice from this Department.
 - o POST Certification is a condition of employment
17. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members "think broadly" have and provide the information sought in Question No. 8, and is providing such information to the Department a condition of employment? Please also define what information in particular would meet the criteria provided to the question.

- This question was created and implemented by the POST Commission without input or advice from this Department.
 - POST Certification is a condition of employment
 - Each answer provided will stand on its own merit but should be complete and accurate.
18. Is an officer's attestation to the form under the penalties of perjury a condition of employment? If so, why? Is the officer subject to criminal prosecution based on his or her answers (both for admissions to conduct, or for perjury)?
- POST Certification is a condition of employment.
 - Being untruthful is a violation of our established Rules and Regulation and subject to discipline up to and including, termination.
 - Decisions on criminal prosecution are made by the prosecutors' office
19. Please list all events and circumstances that could result in or justify a negative recommendation by the Department regarding moral character and fitness for duty.
- Please refer to our Department's Rules and Regulations
20. What is the Department's complete definition of good moral character and fitness for duty. What is the source of said definition?
- Decisions on moral character and fitness for duty are established at the time an officer is offered employment as a Billerica Police Officer. Once certified, Officers must follow all established Rules and Regulations to maintain good standing as a Billerica Police Officer.

Thank you for taking the time ask the above questions. I hope working together we can make this transition as efficient and equitable as possible for all the officers working in Billerica.

Respectfully,

Chief Roy W Frost

Exhibit 8



CARVER POLICE DEPARTMENT

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Marc R. Duphily
Chief of Police

Sheri A. Sarmento
Deputy Chief of Police

May 6, 2022

BY ELECTRONIC MAIL ONLY (wkelly@carverpolice.org)

William Kelly
President, Carver Police Union
NEPBA Local 89

Re: NEPBA Demand to Bargain and Information Request

Dear President Kelly:

The Department is in receipt of your letter dated April 12, 2022, in which NEPBA Local 89 ("Union") has requested clarification regarding the POST Recertification Packet Officer Questionnaire, also known as the Questionnaire for Law Enforcement Officer Recertification, (hereinafter "Questionnaire"), demanded to bargain over the impacts of implementing said Questionnaire, and requested information pursuant to G.L. c. 150E.

As you are aware, the newly-formed POST Commission prepared the Questionnaire, and its distribution and completion is a required aspect of the process for recertifying law enforcement officers in the Commonwealth under Chapter 6E of the General Laws, which process must be completed for individuals presently serving as police officers to continue to hold their positions. Please be advised, however, that the POST Commission anticipates discussing the Questionnaire, in its current form, at its upcoming May 3, 2022 meeting, and the Questionnaire is subject to further revisions in the POST Commission's sole discretion. Nevertheless, the Town remains willing to bargain with the Union over the impact of the Questionnaire on the terms and conditions of officers' employment to the extent described herein.

With respect to your information requests, please consider the following a response to your respective requests and demands. As you are aware, on December 31, 2020, the Massachusetts Legislature enacted Chapter 253 of the Acts of 2020, *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*, hereinafter "the Law." The Law includes a number of new requirements for law enforcement agencies, including a requirement that "law enforcement officers" receive certification or recertification from the POST Commission as a condition of their obtaining and maintaining a law enforcement position. See G.L. c. 6E, § 4(g). While existing law enforcement officers were automatically certified as of the effective date of the Law, those currently

occupying a law enforcement officer position, which includes municipal police officers, are required under the Law to receive recertification by the Commission at some point in the next three (3) years to retain their position. The Commission has been tasked with promulgating recertification standards and a process for meeting said standards, and the Questionnaire is part of that process. The Commission has provided that officers whose last names begin with letters A through H (inclusive) must be recertified prior to the expiration of their certification on July 1, 2022, per Section 102 of the Law.

The Questionnaire is integral to the recertification process established by the Post Commission. The recertification process requires that heads of police departments complete and submit an attestation that each individual due for recertification has met certain statutory requirements, one of which is that the officer be "of good moral character and fit for employment in law enforcement." G.L. c. 6E, §4(f)(1)(ix). The POST Commission has provided that, in order to complete such attestation, each officer must be provided with and complete a questionnaire furnished by the POST Commission, which will be used to inform and support the department head's attestation. The POST Commission has indeed stated that the department head's attestation "cannot be completed until the questionnaire ... has been received and processed." See March 30, 2022, letter from POST Commission to Heads of Law Enforcement Agencies, attached. Further, pursuant to G.L. c. 6E, § 4(f)(1)(viii), the officer seeking recertification must complete "an oral interview administered by the commission." The POST Commission's approach to satisfying this requirement is for department heads to provide the Questionnaire to officers, and to subsequently discuss the officer's responses with the officer, either personally or through a designee. The department head is then required to attest to the Commission that the Questionnaire was provided to a given officer, the department reviewed the responses, and the department head (or a designated evaluator or interviewer) discussed those responses with the officer. Departments are required to maintain completed Questionnaires on file, and may be required to provide completed Questionnaires to the Commission upon request. However, the POST Commission has emphasized it does not want the Questionnaires to be submitted to it unless and until requested. Accordingly, the Questionnaire document that the Union has received was prepared and furnished by the POST Commission and is a required step of the recertification process mandated by the POST Commission and set forth above.

Please be advised that the department will maintain the Questionnaires received from officers in a safe and confidential location, and only provide such documents to third-parties to the extent required by the Public Records Law. Moreover, the Town will retain these records for a period of time consistent with the Records Retention Schedule promulgated by the Supervisor of Public Records. The Department must complete that recertification process by June 15th, 2022, for officers with last names beginning A-H, or those officers will not be recertified by the POST Commission or able to continue in their position as police officers anywhere in the Commonwealth pursuant to G.L. c. 6E, §4(g). Therefore, the completion of the Questionnaire is a requirement of officers' continued service as a "law enforcement officer" as provided for under G.L. c. 6E (see POST Commission FAQ No. 23: "If an officer elects not to answer the questions, for reasons not allowed in the instructions, they are not in compliance with POST requirements and the agency head must bring that to the attention of POST. The POST Commission would determine what action would be taken against that officer's certification).

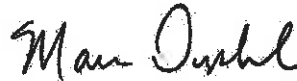
This letter includes all information known and available to the Town at this time regarding the implementation and use of the Questionnaire. Thus, the Town considers this response to have full responded to all requests for information contained in the Union's April 12, 2022 letter. To the extent any information requested has not been provided, the Town does not presently have further information,

but is willing to bargain with the Union with respect to such policies and procedures to the extent required and permitted by the General Laws, including, but not limited to, the Law and the POST Commission's regulations thereunder.

With respect to the Union's demand to bargain, the Town will meet to bargain over any impacts the Questionnaire will have on the terms and conditions of bargaining members' employment. However, please be advised that, due to the June 15th deadline for completing the attestation process, the Town intends to distribute the Questionnaire by **June 1, 2022**. This is the latest the department can distribute the Questionnaire with sufficient time for all affected officers to complete the Questionnaire and for the Department to review the responses internally and conduct the required oral interview in advance of the June 15th deadline for submitting the completed attestation. If the parties have not come to an agreement by June 1, 2022, the Town will implement the Questionnaire as provided by the POST Commission, but will continue to negotiate with the Union following said implementation.

Thank you for your attention to this matter. Please provide dates when the Union would like to discuss this matter, or the Union's proposals with respect to the Questionnaire, at your earliest convenience.

Very truly yours,



Marc Duphily
Chief of Police

Exhibit 9

1. *What are our members obligations relative to the Questionnaire? Is responding to it a condition of employment? Are the members ordered to complete the questionnaire, and if so, will discipline result for failing to answer?*

To be recertified as a Law Enforcement Officer by the Peace Officer Standards and Training (POST) Commission in accordance with Chapter 6E of the Massachusetts General Laws, an Officer must meet certain specified standards. The POST requires officers to complete the Officer Questionnaire and to engage in an interview with their Police Department as part of the recertification process.

According to the POST FAQ document available on their website, *"The questionnaire is POST's method of "administering" the oral interview. This questionnaire is one criteria that must be met to qualify the officer for certification and/or recertification as a police officer. If an officer elects not to answer the questions, for reasons not allowed in the instructions, they are not in compliance with POST requirements and the agency head must bring that to the attention of POST. The POST Commission would determine what action would be taken against that officer's certification."* The Commission also notes, *"If an officer elects to not check a "yes" or "no" box on the questionnaire but adds a statement in the narrative section of that question, this satisfies the requirement of answering the question according to POST. For example, it is acceptable for an officer to answer, "No, not to my knowledge" or "Yes, to the best of my recollection".*

In light of these requirements, it is a condition of employment and all union members are being ordered to complete the Officer Questionnaire as required by POST.

Internally, failure to complete the questionnaire will result in discipline consisting of a three-day suspension for Insubordination and for failing to meet their legal obligations in the recertification process. If an officer fails to complete the questionnaire and is ultimately not recertified or loses certification, they will legally be required to be terminated as they will no longer be qualified to work as an officer.

2. *If the Questionnaire is voluntary, what shall be the consequences for choosing not to answer some or all of the questions?*

The questionnaire is not voluntary. See above answer regarding non-compliance.

3. *Provide any and all criterion that will be considered by all evaluators' determinations as to "good moral character and fit for employment as a law enforcement officer."*

The POST Commission has directed chiefs to use a "totality of the circumstances" standard, including disciplinary records. The Chief will complete an attestation form for all current, full-time, sworn employees based on what is currently known about those employees. Any new information that is learned from the questionnaire and any resulting internal investigation that results in sustained findings, would also need to be considered.

4. *Will any officer be subject to discipline or further investigation based on any responses given, and if so, provide if all criteria upon which such discipline or further investigation can be based.*

Yes, it is possible that answers that reveal previously unknown information could result in an internal investigation and discipline imposed. Discipline remains subject to the just cause provisions under the applicable collective bargaining agreement. Whether information that raises a question of possible misconduct is learned through the POST questionnaire or from another source, the Department may need to investigate a matter based on information that was not previously known.

5. *Does the officer have the option to answer the questions verbally, and if not, why not?*

No. POST is requiring that officers complete and sign the form in writing and that it be held in each employee's personnel file. The required interview is separate.

6. *What efforts will the Department and evaluator take to ensure confidentiality of the Officers' answers, as well as the notes and records of the interviews? Will such materials be produced in response to a public records request? Will the records be maintained, and if so, for how long? Does the Department consider the records exempt from public records disclosure, and if so, why?*

Each employee will be interviewed privately. Once the questionnaire is completed, it will be kept in the officer's individual personnel file, although POST would have legal access to them. In the May 5, 2022 meeting, POST Executive Director Zuniga indicated that they see these as "personnel records" that would be exempt under exemption c. If requested, POST will deny access and cite exemption c. If we receive a public records requests at NPD for any or all officer questionnaires, we would also deny access and cite exemption c. It would ultimately be up to the State Public Records Office to determine if the records were exempt. In compliance with the records retention schedule, personnel records must be maintained for 20 years past the person's last day of employment.

7. *What is the Department's process for determining whether an officer is of good moral character and fit for duty? Please provide the standard that will be used, and explain all factors that will be considered, and in particular, what weight the officers' answers or refusal to answer - will factor into such determination.*

See the response to question three. The Chief will complete an attestation form for all current, full-time, sworn employees based on what is currently known about those employees. Any new information that is learned from the questionnaire and any resulting internal investigation that results in sustained findings, would be considered. Whether or not officers choose to complete the questionnaire has no bearing on the Chief's completion of the attestation form. Meaning, just because an officer refuses to complete the form, it does not automatically mean that the Chief will not attest to the officer's good moral character and fitness for duty.

8. *The Questionnaire states that an officer may indicate that he/she has the option of not answering a question if they have good faith belief that they might waive a privilege, protection or right recognized by law. Please explain what constitutes a "good faith belief" and what qualifies as a protection or right recognized bylaw.*

The POST Commission has not provided guidance on this question, and because this is a standard required by POST the Police Department is not at liberty to create a definition.

While the definition in other legal contexts varies, it is typically understood as having an honest or sincere belief with the absence of malice, intent to defraud or seek an unconscionable advantage. So, for example, if a person did not answer a question because they really thought that a lawful court order prohibited them from doing so and the language of the order supports that's a reasonable interpretation, that might be evidence of a good faith belief.

9. *Will the Department investigate or follow up to verify or corroborate the officers' responses, and if so, what process will be followed in doing so?*

The questionnaire is part of what POST considers to be an interview process and therefore according to POST's FAQ document, "responses must be orally discussed with the Officer." If an officer's answer is concerning to the Interviewer, the Interviewer will then ask the officer to discuss their answer. The Interviewer may take notes and any notes will be attached to the questionnaire and must be retained by the Agency. Any concerning information will be brought to the attention of the Agency Head or their Designee (i.e. the Chief or one of the Captains).

10. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members are current in all tax payments? If the department has no such need, please indicate such need. Is providing this information to the Department condition of employment?*

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

11. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have ever received a permit or license to carry a firearm, and related details regarding the history of same, particularly in light of the department's existing knowledge on this issue. Is providing condition of employment?*

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 12. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been defendants in a civil suit, and the details of such civil suits as set forth in the questionnaire. Is providing this information to the Department a condition of employment?**

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 13. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been the subject of a restraining order, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?**

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 14. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been suspended for more than 5 days in connection with any employment, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?**

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 15. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether in the last 5-years, our members have sent or displayed a public communication on social as set forth in the questionnaire. Is providing this information to the Department a condition of employment?**

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 16. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members currently or have ever belonged to any organization as set forth in Question No, 7 of the Questionnaire. Is providing this information to the Department a condition of employment?**

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 17. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members "thinking broadly" have and provide the information sought Question No. 8, and is providing such information to the Department a condition of employment? Please also define what information in particular would meet the criteria provided in the question.**

The POST Commission has created the questionnaire and is requiring completion of the questionnaire for re-certification, so answering the question is required as explained in Answer to Question #1.

- 18. Is an officer's attestation to the form under the penalties of perjury a condition of employment? If so, why? Is the officer subject to criminal prosecution based on his or her answers (both for admissions to conduct, or for perjury)? Please provide information as to any process that would be employed in such circumstances.**

See answer to question 1.

Whether or not an officer would be subject to criminal prosecution based on his or her answers (both for admissions to conduct, or for perjury) really depends on the facts and circumstances. We are unable to imagine a situation where an officer would be subject to criminal prosecution based solely on their answers, without there being very strong evidence to support criminal prosecution as a result of an investigation.

- 19. Please list all events and circumstances that could result in or justify a negative recommendation by the Department regarding moral character or fitness for duty.**

It is not possible to list every circumstance that might result in the Chief not attesting to an officer's good moral character and fitness for duty or to speculate on such facts. Two primary evaluation tools are an officer's past behavior that may have been revealed in an internal affairs investigation and the officer's answers to the Officer Questionnaire, that may reveal an issue that rises to this level. Currently, the Chief is not aware of any prior incidents that will result in the Chief not signing off on anyone's good moral character or fitness for duty.

- 20. What is the Department's complete definition of good moral character and fitness for duty, what is the source of said definition.**

The POST Commission has not provided guidance on this question, and because this is a standard required by POST the Police Department is not at liberty to create a definition.

However, in the instructions provided by POST regarding completing the officer questionnaire, POST indicates, *“the Officer’s answers and oral comments should be considered when evaluating whether the Officer satisfies the requirement to be of good moral character and fit for employment as a law enforcement officer, but any ultimate determination of character and fitness should be based on the totality of the information obtained. Also, no form of information that is provided by the Officer will automatically lead to a denial of recertification, but certain responses may prompt further review by the POST Commission. All the Officer’s answers, and all notes from any discussion with the Officer concerning those answers, must be retained by the Agency.”*

Also, although not a binding definition under POST, when we look at other legal context, the determination of good moral character is often guided by definitions that focus on honesty, integrity and lawfulness. For example, for attorneys who want to practice before the US Patent and Trademark Office, good moral character is described as the “possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice, as well as the condition of being regarded as possessing such qualities”. 37 CFR § 11.1 Fitness for duty can certainly involve good moral character, but in other legal contexts it also often involves a determination that someone is able to perform the essential function of their job.