

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued January 28, 2025

Audit of Settlement Agreements and Confidentiality Clauses Across Multiple State Agencies

For the period January 1, 2010 through December 31, 2022



OFFICE OF THE STATE AUDITOR
DIANA DIZOGLIO

January 28, 2025

Her Excellency Maura T. Healey, Governor
Commonwealth of Massachusetts
State House, Room 360
Boston, MA 02133

Dear Governor Healey:

Please see the results of the enclosed performance audit of settlement agreements and confidentiality clauses across multiple state agencies. See [Appendix C](#) for a list of the 75 state agencies included as part of this audit.

As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, January 1, 2010 through December 31, 2022. As you know, my audit team discussed the contents of this report with your office.

It is clear from our review of the issues examined in our report that the system in place regarding employee settlements in state government is dysfunctional – at best. There exists little more than a haphazard approach to executing settlements, including those containing confidentiality clauses, with an informal, verbal policy that was allegedly promulgated around 2018 regarding non-disclosure language. Even after this alleged, informal policy was supposedly implemented by the prior Governor, there was no consistent adherence to it, including within the Office of the Governor itself. The Administration has no apparent standard approach to records retention, no single point of data collection or analysis, and no demonstrable management of agencies' use of confidentiality agreements.

These agreements represent an inflection point, where executive management can become aware of practices inside agencies where potential abuse or other inappropriate activity may be occurring. Our audit identifies areas of financial, legal and ethical risks for the Commonwealth – when our fellow public servants are at their most vulnerable. The Administration's "hands off" approach to thoughtfully managing these issues, prevents it from learning and growing from them. Mismanaging these agreements puts taxpayers at risk and silently condones the continued ability to exploit taxpayer dollars to protect powerful officials. Furthermore, taxpayer dollars may be weaponized to force employees into silence due to coercion, bullying or fear tactics that could remain undetected regarding issues that remain unresolved.

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Let's be clear, settlement agreements that exist to settle and resolve issues or disputes, outside of court, can actually provide great benefit to taxpayers, state agencies and employees by saving on time and costly legal fees while creating a mutually agreed upon, beneficial resolution. A settlement agreement, in and of itself, does not constitute anything inappropriate. Even in the best of work environments, disputes will occur since people, not robots, are employed. Properly executed settlements can be a useful tool to resolve disputes and provide resolution in both the public and private sectors.

Our office recognizes the value that settlement agreements bring to dispute resolution. However, when there is chaotic mismanagement of taxpayer-funded settlement agreements, as was apparent under the prior administration, problems can arise, taxpayer dollars can be abused, perpetrators can be protected, employees can be forced into the shadows and waste and abuse can run rampant.

We hope this Administration recognizes the need for an intensive overhaul of the broken system that currently exists under its purview. It's long past due that these issues be addressed.

This report highlights some of the ways that this Administration can take immediate action through conscientious management of what has been "out of sight" and "out of mind" for decades. Your office has committed to taking actions on some of our audit's recommendations. I hope this includes the implementation of formalized policies – in conjunction with an Executive Order and the passage of legislation – that will help improve management of these areas in the months and years to come, to the benefit of the Commonwealth, its employees, and to the public we all serve. I have attached a draft Executive Order and legislation for your consideration that our office believes will help to address many of the challenges highlighted in this report.

Finally, I wanted to note my concerns regarding our office's ability to access necessary records and your office's response to these audit findings – which minimized the findings by failing to appreciate the real impact that myriad missing or denied records had on our ability to obtain a clear picture of how, why, where and when these agreements have actually been used.

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Our inability to obtain necessary records, due to so many documents either being withheld or missing – never mind the disorganization and lack of documentation across state agencies – warrants greater concern and urgency from this Administration.

I am available to discuss this audit if you have any questions.

Best regards,



Diana DiZoglio
Auditor of the Commonwealth

cc: Yvonne Hao, Secretary, Executive Office of Economic Development
Patrick Tutwiler, Secretary, Executive Office of Education
Monica Tibbits-Nutt, Secretary, Massachusetts Department of Transportation
Edward Augustus, Secretary, Executive Office of Housing and Livable Communities
Rebecca Tepper, Secretary, Executive Office of Energy and Environmental Affairs
Jason Snyder, Secretary, Executive Office of Technology Services and Security
Lauren Jones, Secretary, Executive Office of Labor and Workforce Development
Terrence Reidy, Secretary, Executive Office of Public Safety and Security
Matthew Gorkowicz, Secretary, Executive Office of Administration and Finance
Kate Walsh, Secretary, Executive Office of Health and Human Services

By Her Excellency

[PRINTED NAME]

[ACTING] GOVERNOR

EXECUTIVE ORDER NO. 637

**FURTHERING TRANSPARENCY AND ACCOUNTABILITY AND PREVENTING
ABUSE OF TAXPAYER DOLLARS**

WHEREAS, transparency and accountability are cornerstones of a democratic system of government;

WHEREAS, transparency and accountability, including through appropriate public disclosure, promote public confidence in government and can inform residents, taxpayers and others of the operations of their government and the actions taken in their names;

WHEREAS, the Commonwealth of Massachusetts employs more than 45,000 people who ably serve the Commonwealth;

WHEREAS, in any large organization, a subset of employees may enter into a good-faith disagreement with their employer;

WHEREAS, those disagreements, and their proper resolution, may be of particular public interest when their employer is the Commonwealth of Massachusetts, and by extension, its People;

WHEREAS, the use of settlement or non-disclosure agreements by the Commonwealth of Massachusetts and its instrumentalities can obscure from public view, and therefore appropriate public accountability, bad acts by State agencies, their managers, employees, contractors, or others;

WHEREAS, as discovered in the #MeToo movement, the abuse of non-disclosure agreements has been well-documented to perpetrate abuse, silence victims, and protect powerful perpetrators of abuse such as Roger Ailes, Larry Nassar, and Harvey Weinstein;

WHEREAS, the abuse of non-disclosure agreements was found to aid the decades-long coverup of widespread and systemic child sex abuse by numerous priests of the Roman Catholic Archdiocese of Boston;

WHEREAS, the abuse of taxpayer-funded non-disclosure agreements in the Commonwealth has been found to obscure from public view unlawful acts in the workplace, such as harassment, discrimination, and retaliation;

WHEREAS, the Commonwealth recognizes its responsibility to protect victims, prevent future abuse, and hold perpetrators of abuse accountable;

WHEREAS, the use of taxpayer funds to silence victims and protect perpetrators of abuse is unacceptable, unethical, and immoral;

WHEREAS, there exists an opportunity to effectuate meaningful, positive change within the executive department to protect victims, prevent future abuse, and hold perpetrators of abuse accountable; and

WHEREAS, there exists an opportunity to increase transparency, promote accountability, and prevent the abuse of our taxpayer dollars.

NOW, THEREFORE, I, _____, [Acting] Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Articles of Amendment, Art. LV, do hereby order as follows:

Section 1. It is the policy of the Commonwealth that no settlement agreement executed between a complainant and any executive department agency or office shall include any non-disclosure, non-disparagement, or confidentiality provisions, or any other provisions that attempt to restrict disclosure of unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct, with a complainant, including, but not limited to the terms of the employee settlement, payments, and associated facts, including the reason for said settlement, except as provided for in this executive order.

Any non-disclosure, non-disparagement, or confidentiality provision, or any other provision that attempts to restrict disclosure regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct related to settlement agreements entered into before the effective date of the Executive Order, with a complainant, including, but not limited to the terms of the employee settlement, payments, and associated facts, including the reason for said settlement, except as provided for in this executive order, are void with respect to the executive department's ability to enforce such provisions against a complainant..

For the purposes of this executive order, the executive department includes the office of the Governor, any executive office of the Commonwealth, as defined by section 2 of chapter 6A of the General Laws, and any agency, bureau, department, office, or division of the Commonwealth within or reporting to such an executive office of the Commonwealth.

For the purposes of this executive order, the definition of complainant shall be any person: 1) who performs or has performed services for a Commonwealth executive department agency, bureau, department, office, or division of the Commonwealth for wage, remuneration, or other compensation, including full-time, part-time, seasonal, intermittent, temporary, post-retiree and contract employees, and interns; and 2) who is resolving or has resolved a claim (as defined by 815 CMR 5.02), against the executive department regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct with a settlement agreement.

For the purposes of this executive order, the definition of settlement agreement shall mean a written agreement resolving any claim (as defined by 815 CMR 5.02), written or unwritten, by any claimant for damages to compensate an injury or wrong allegedly suffered, directly or a result of the Commonwealth failing to prevent such damages, including but not limited to personal injury, violation of civil rights, breach of contract, failure to comply with contract bidding laws, assault, harassment, discrimination, retaliation, whistle blowing, incorrect or improper personnel determinations regarding pay, promotion or discipline, failure to comply with statutory or constitutional provisions applicable to employment, and eminent domain taking damages, misconduct, including any attorney's fees and interest associated with these claims.

Section 2. No settlement agreement may prevent a complainant from discussing or disclosing information about unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct. Use of confidentiality language may only be permitted in limited circumstances to prevent the disclosure of a complainant's identity, facts that might lead to the discovery of the complainant's identity, or factual circumstances relating to the employment that reasonably implicate legitimate privacy interests held by the complainant who is a party to the agreement, if and only if the complainant elects in writing to restrict such disclosure. Such election may be made at the time of the execution of the settlement agreement or at any time thereafter, with written notification provided to the Human Resources Division of the Commonwealth, or other executive department agency, bureau, department, office, or division having a different name but performing its function, if such election is made after the execution of the agreement. The Human Resources Division or its successor entity shall notify appropriate personnel in the executive department of this election in a timely manner to prevent the disclosure of said information.

The provisions of Section 2 shall apply to those settlement agreements entered into before the effective date of this Executive Order.

Section 3. To ensure accountability regarding the appropriate application of Section 2, use of confidentiality language regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct must be approved in writing, by (1) the Secretary or other official in charge of the executive department agency, bureau, department, office, or division of the Commonwealth, (2) the official in charge of the Human Resources Division of the Commonwealth, or other executive department agency, bureau, department, office, or division having a different name but performing its function, and (3) the Office of the Governor.

Attached to said approvals shall be a written explanation of why these officials believed the proposed provisions are in the best interest of the Commonwealth. Said approvals and written explanations shall be public records and subject to any applicable privacy exemptions to prevent the disclosure of a complainant's identity, facts that might lead to the discovery of the complainant's identity, or factual circumstances relating to the employment that reasonably implicate legitimate privacy interests held by the complainant.

Section 4. Every settlement agreement, including all potential non-disclosure, non-disparagement, or confidentiality provisions, or any other provisions that attempt to restrict

disclosure of unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct, shall be processed in accordance with 815 CMR 5.00.

Section 5. Every settlement agreement shall be posted to CTHRU, the Commonwealth's Financial Records Transparency Platform, that is administered by the Office of the Comptroller.

Section 6. All employee settlements are public records and thus, subject to the public records law, including all applicable exemptions related to privacy. Under no circumstance shall an executive department official directly or indirectly ask, incentivize or coerce any complainant to request the redaction or restriction of any details of any settlement agreement regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct.

Section 7. On the first business day of February of each calendar year, the executive department shall report to the Office of the Comptroller all settlement agreements entered into during the prior calendar year, which the Office of the Comptroller may compile into a single record and make available to the public as a public document on its website.

Section 8. This Executive Order shall not be construed to require the Commonwealth to release information that could negatively affect public safety or the safety of any particular individual, or to release trade secrets or proprietary information, though maximum public disclosure shall still occur within these limitations.

Section 9. All settlement agreements issued by the executive department shall grant each complainant executing a settlement agreement no less than five (5) business days to review and/or consult an attorney regarding the proposed settlement agreement, prior to execution of any such agreement, and shall notify each such complainant of their right to do so, in writing. No negative action shall be taken against any complainant who seeks to review a proposed settlement and/or seeks the advice of an attorney, and no incentives shall be offered or provided to any complainant to coerce them to not review or consult with an attorney.

Section 10. Other state governmental entities, including state agencies outside the executive department, independent agencies, and constitutional offices, and municipalities are encouraged to adopt the terms of this Executive Order, where applicable, and effectuate meaningful, positive change to protect victims, prevent future abuse, and hold perpetrators of abuse accountable while increasing transparency, promoting accountability, and preventing the abuse of our taxpayer dollars.

Section 11. This Executive Order shall take effect on _____, 2024, and shall continue in effect until amended, superseded, or revoked by subsequent Executive Order.

Given in Boston this ____ day of
_____ in the year of our Lord two
thousand and twenty-four, and of the
Independence of the United States of
America two hundred and forty-
seven.

Printed Name
[Acting] Governor
Commonwealth of Massachusetts

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

HOUSE No. 10

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act relative to nondisclosure agreements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 151B of the General Laws is hereby amended by inserting after
2 section 10 the following new sections:-

3 Section 11. Nondisclosure agreements relative to unlawful acts in the workplace, such as
4 harassment, discrimination or other forms of misconduct

5 Section 11. (a) Notwithstanding any general or special law to the contrary, a settlement
6 agreement or a provision within a settlement agreement that prevents the disclosure of
7 information related to a claim filed in a civil action or a complaint filed in an administrative
8 action, regarding any of the following, is prohibited(1) An unlawful act in violation of the
9 provisions of this chapter or any other applicable law related to employee’s employment.

10 (2) A sex offense, as defined in section 178C of chapter 6, between the employer and an
11 employee or between employees occurring in the workplace or at work-related events off the
12 employment premises coordinated by or through the employer, or between the employer and an
13 employee off the employment premises.

14 (3) An act of sexual harassment, as defined in subsection 18 of section 1 of this chapter,
15 between the employer and an employee or between employees occurring in the workplace or at
16 work-related events off the employment premises coordinated by or through the employer, or
17 between the employer and an employee off the employment premises.

18 (4) An act of discrimination, as described in section 4 of this chapter, between the
19 employer and an employee or between employees occurring in the workplace or at work-related
20 events off the employment premises coordinated by or through the employer, or between the
21 employer and an employee off the employment premises.

22 (5) An act of retaliation against a person for reporting any incident described in
23 paragraphs (1) through (4), inclusive, or against a person for cooperating in the investigation of
24 the report of any incident described in paragraphs (1) through (4), inclusive.

25 (b) Notwithstanding any general or special law to the contrary, in a civil matter described
26 in subsection (a), a court shall not enter, by stipulation or otherwise, an order that restricts the
27 disclosure of information in a manner that conflicts with subsection (a).

28 (c) Notwithstanding subsections (a) and (b), a provision that shields the identity of the
29 claimant/victim and all facts that could lead to the discovery of the claimant's/victim's identity,
30 including pleadings filed in court, may be included within a settlement agreement at the written,
31 informed request of the claimant/victim. This subsection shall not be construed to limit the right
32 of the claimant/victim to disclose this information.

33 (d) Except as authorized by subsection (c), a provision within a settlement agreement that
34 prevents the disclosure of factual information related to a claim described in subsection (a) that is

35 entered into on or after the effective date of this Act is void as a matter of law and against public
36 policy.

37 (e) With respect to agreements entered into before the effective date of this Act,
38 disclosure by a claimant/victim of any information subject to a nondisclosure agreement that
39 would be void as a matter of law and against public policy pursuant to this Act may not be used
40 to invalidate the claimant's/victim's right to consideration under the agreement or to require the
41 return of consideration that has already been provided to the claimant/victim.

42 (f) In determining the factual foundation of a cause of action for civil damages under
43 subsection (a), a court may consider the pleadings and other papers in the record, or any other
44 findings of the court.

45 (g) A claimant/victim shall be entitled to a trial by jury on any issue of fact in an action
46 for damages. A prevailing claimant/victim shall be awarded reasonable attorney's fees and costs.
47 A person who enforces or attempts to enforce a provision that would be void as a matter of law
48 and against public policy pursuant to this Act shall be liable for the claimant's/victim's
49 reasonable attorney's fees and costs.

50 (h) Notwithstanding any general or special law to the contrary, no public funds shall be
51 expended for the purposes of settling a claim described in subsection (a) against a public
52 employee.

53 (i) An attorney's failure to comply with the requirements of this section by demanding
54 that a provision be included in a settlement agreement that prevents the disclosure of factual
55 information related to an action described in subsection (a) that is not otherwise authorized by
56 subsection (c) as a condition of settlement, or advising a client to sign an agreement that includes

57 such a provision, may be grounds for professional discipline and the Massachusetts Board of Bar
58 Overseers shall investigate and take appropriate action in any such case brought to its attention.

59 (j) The rights and remedies provided in this section are in addition to any other rights and
60 remedies provided by law.

61 Section 12. Transparency regarding the Use of Settlement Agreement

62 Section 12(a) Notwithstanding any general or special law to the contrary, all settlement
63 agreements related to a claim filed in a civil action or a complaint filed in an administrative
64 action, shall be

65 (1) Processed in accordance with 815 CMR 5.00.

66 (2) Posted to CTHRU, the Commonwealth's Financial Records Transparency Platform,
67 that is administered by the Office of the Comptroller.

68 (3) Reported to the Office of the Comptroller, which shall compile into a single record
69 each calendar year and make available to the public. SECTION 2. Chapter 6 of the General Laws
70 is hereby amended by inserting after section 219 the following new section:-

71 Section 220. (a) As used in this section, the term "governmental entity" shall mean the
72 executive branch, the legislature, the judiciary, and any agency, office, department, board,
73 commission, bureau, division, instrumentality or other entity of the commonwealth.

74 (b) No governmental entity shall include or permit the inclusion of a nondisclosure, non-
75 disparagement or other similar clause as a condition of employment or in a settlement agreement
76 between the governmental entity and an employee or a student; provided, however, that such a
77 settlement may include, at the request of the employee or student, a provision that prevents the

78 governmental entity from disclosing the individual's identity and all facts that could lead to the
79 discovery of the individual's identity.

80 SECTION 3. This Act shall take effect immediately upon enactment.

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LIST OF ABBREVIATIONS

A&F	Executive Office for Administration and Finance
CMR	Code of Massachusetts Regulations
CTR	Office of the Comptroller of the Commonwealth
DRA	Data Reliability Assessment
EEA	Executive Office of Energy and Environmental Affairs
EEOC	US Equal Employment Opportunity Commission
EOE	Executive Office of Education
EOED	Executive Office of Economic Development
EOHHS	Executive Office of Health and Human Services
EOHLC	Executive Office of Housing and Livable Communities
EOLWD	Executive Office of Labor and Workforce Development
EOPSS	Executive Office of Public Safety and Security
EOTSS	Executive Office of Technology Services and Security
FIPA	Fair Information Practices Act
GAGAS	generally accepted government auditing standards
GOV	Office of the Governor
MassDOT	Massachusetts Department of Transportation
MMARS	Massachusetts Management Accounting and Reporting System
OSA	Office of the State Auditor

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of state employee settlement agreements. This audit was conducted on the Office of the Governor (GOV) and its subordinate agencies, as well as the Office of the Comptroller of the Commonwealth (CTR), for the period January 1, 2010 through December 31, 2022.

This is the first audit report released by the Office of the State Auditor as part of a comprehensive performance audit of state employee settlement agreements. This audit report reviewed state employee settlement agreements with employees of the following state agencies:

Office of the Governor	Massachusetts Office of Business Development	Department of Mental Health
Office of the Comptroller of the Commonwealth	Office of Consumer Affairs and Business Regulations	Department of Public Health
Executive Office for Administration and Finance (A&F)	Executive Office of Energy and Environmental Affairs (EEA)	Department of Transitional Assistance
Civil Service Commission	Department of Agricultural Resources	Department of Youth Services
Department of Revenue	Department of Conservation and Recreation	Executive Office of Elder Affairs
Division of Administrative Law Appeals	Department of Energy Resources	Massachusetts Commission for the Blind
Division of Capital Asset Management and Maintenance	Department of Environmental Protection	Massachusetts Commission for the Deaf and Hard of Hearing
Group Insurance Commission	Department of Fish and Game	Massachusetts Rehabilitation Commission
Human Resources Division	Department of Public Utilities	Office for Refugees and Immigrants
Massachusetts Office on Disability	Massachusetts Environmental Police	Office of Medicaid (MassHealth)
Operational Services Division	Executive Office of Technology Services and Security (EOTSS)	Executive Office of Veterans Services
State Library of Massachusetts - George Fingold Library	Massachusetts Department of Transportation (MassDOT)	Veteran Home of Massachusetts—Chelsea
Supplier Diversity Office	Registry of Motor Vehicles	Veteran Home of Massachusetts—Holyoke
Executive Office of Education (EOE)	Executive Office of Labor and Workforce Development (EOLWD)	Executive Office of Public Safety and Security (EOPSS)

Department of Early Education and Care	Department of Career Services	Department of Correction, MCI
Department of Elementary and Secondary Education	Department of Economic Research	Department of Criminal Justice Information Services
Department of Higher Education	Department of Industrial Accidents	Department of Fire Services
Executive Office of Housing and Livable Communities	Department of Labor Relations	Department of State Police
Executive Office of Economic Development	Department of Labor Standards	Massachusetts Emergency Management Agency
Department of Telecommunications and Cable	Department of Family and Medical Leave	Military Division (Massachusetts National Guard)
Division of Banks	Department of Unemployment Assistance	Municipal Police Training Committee
Division of Insurance	Division of Apprentice Standards	Office of the Chief Medical Examiner
Division Of Occupational Licensure	Executive Office of Health and Human Services¹ (EOHHS)	Parole Board
Division of Standards	Department of Children and Families	Sex Offender Registry Board
Massachusetts Marketing Partnership	Department of Developmental Services	State 911 Department

Note: Executive offices of state government, GOV, and CTR are listed in bold.

In this performance audit, we determined the following:

- whether state agencies reported to CTR monetary state employee settlement claims in accordance with Section 5.09 of Title 815 of the Code of Massachusetts Regulations (CMR) and CTR’s Settlements and Judgments Policy and
- whether state agencies developed and implemented policies and procedures regarding the use of confidentiality language, including nondisclosure clauses, within the context of state employee settlement agreements.

Below is a summary of our findings, the effects of those findings, and our recommendations, with links to each page listed.

Finding 1 Page 30	Executive offices and agencies do not have documented internal policies or procedures on the authorization, development, documentation, and retention of state employee settlement agreements and supporting records.
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1. The Executive Office of Veterans Services was previously known as the Department of Veteran Services during the audit period. This department reported to EOHHS. State employee settlement agreements from the Department of Veteran Services were requested of EOHHS for the audit.

Effect	If GOV does not have policies and procedures for all state agencies to handle state employee settlement agreements, it cannot ensure that employee settlements are handled in a fair, ethical, legal, and consistent manner. This results in an inconsistent process that is not transparent to the citizens of the Commonwealth regarding how their public employees are treated or how their tax dollars are being spent. It can also lead to potential errors in financial reporting by not allowing CTR the opportunity to review how the department intends to process state employee settlement payments.
Recommendations Page 32	<ol style="list-style-type: none">1. GOV should establish and implement policies and procedures over the authorization, development, documentation, and retention of state employee settlement agreements, and requirements for supporting documentation. These policies and procedures should be uniformly communicated across all state agencies. These policies and procedures should encompass all CTR requirements and should be made clear and documented within the newly created policies and procedures.2. GOV should provide centralized management and oversight over the use of state employee settlement agreements to ensure that policies and procedures are adhered to and to provide reporting to the public regarding the use of these agreements.3. GOV should establish a public reporting process to ensure sufficient transparency and accountability for the use of state employee settlement agreements. These agreements may impact employees and former employees when they are most vulnerable, which argues for additional public transparency and oversight to ensure that their use is consistent with policies and public expectations.
Finding 2 Page 35	Executive offices and agencies have no documented policies and procedures over the use of confidentiality language in state employee settlement agreements.
Effect	<p>By not having a documented policy on the use of confidentiality language in state employee settlement agreements, there is a risk that confidentiality language may be used to cover up harassment, discrimination, or other unlawful behaviors, potentially allowing perpetrators to continue to remain in their position and engage in further unlawful behavior. This would be an inappropriate use of taxpayer dollars. Impacted employees may also not know that nondisclosure terms may be unenforceable under Public Records Law. If GOV does not have a transparent and accountable process to guide the use of nondisclosure, non-disparagement, or similarly restrictive clauses in state employee settlement agreements, it cannot ensure that state employee settlements are handled in an ethical, legal, or consistent manner.</p> <p>Further, a lack of a documented policy on the use of confidentiality language creates the risk that confidentiality language could be used to protect or obscure from public view repeated instances of poor management or inappropriate or unlawful behavior at agencies of government. This perpetuates the risk that public employees may continue to face abusive or harassing treatment from perpetrators, and that the taxpayers be required to pay for the costs of settlements or litigation in connection with this continued behavior.</p>

<p>Recommendations Page <u>41</u></p>	<ol style="list-style-type: none"> 1. GOV should establish and implement policies and procedures regarding the use of confidentiality language in state employee settlement agreements and the required supporting documentation justifying its inclusion. These policies and procedures should be communicated to all executive offices and agencies. 2. GOV’s policy on the use of confidentiality language in an employee settlement agreement should weigh the employee’s right to privacy versus the public’s right to know how state funds are spent. In accordance with the 2013 Superior Court case with Globe Newspapers (Civil Docket# SUCV2011-01184), information determined not to be public record should be redacted when a state employee settlement agreement is requested for public inspection. 3. GOV’s policy on the use of confidentiality language in a settlement agreement should not protect an employee with detrimental behavior (e.g., harassment or abuse) in the workplace. 4. The Governor should consider implementing an executive order to limit the use of confidentiality language in employee settlement agreements. This order should implement a balancing test to ensure that the privacy rights of the individual(s) involved in a settlement agreement are measured against the public’s right to know how state funds are spent and if there is mismanagement or mistreatment of employees occurring in state agencies.
<p>Finding 3 Page <u>49</u></p>	<p>Executive offices and agencies did not report 40 state employee settlement agreements to CTR when required.</p>
<p>Effect</p>	<p>Failure to report settlement agreements is a violation of regulation and policy and may result in the improper reporting of the state employee settlement agreement in the state’s accounting system and by the state employee to the Department of Revenue and the Internal Revenue Service. According to CTR’s Settlements and Judgments Policy, agencies are responsible for making any corrections necessary to bring any settlement documentation or payments into compliance if payment was made contrary to the instruction of CTR.</p>
<p>Recommendations Page <u>51</u></p>	<ol style="list-style-type: none"> 1. GOV should establish and implement policies and procedures over the reporting of state employee settlement agreements to CTR. These policies and procedures should be consistently communicated across all executive offices and agencies and should comply with all CTR regulations. 2. All executive office employees should receive training on these policies and procedures. 3. GOV should establish sufficient monitoring controls to ensure compliance and the appropriate management of this issue.
<p>Finding 4 Page <u>53</u></p>	<p>Agencies did not provide all requested employee settlement agreements.</p>

<p>Effect</p>	<p>Agencies' failure to provide settlement agreements to our office, which has the legal authority to receive and analyze them under state law, creates the reasonable concern that information is being unlawfully withheld. Indeed, across the two tests identified above, 47 executed settlement agreements were not provided to us. This could negatively affect public trust in government and obscures from view how public dollars are being spent. Since these records were not provided to us, we were unable to test (1) whether these agencies complied with CTR's reporting requirements and (2) that settlement lists provided to us were accurately described. Without sufficient documentary support, there is a greater than acceptable risk that some or many employee settlement agreements that should have been reported to CTR were not. CTR would therefore have been unable to ensure proper accounting of these settlement agreements.</p>
<p>Recommendation Page <u>55</u></p>	<p>GOV should ensure that state agencies comply with public records law and should develop policies and procedures to ensure that state employee settlement agreements are retained in accordance with the Massachusetts Statewide Record Retention Schedule. GOV should ensure that these records are provided to our office upon request. This policy should consider the creation of a centralized list of such state employee settlement agreements and the location of the storage of these records to facilitate production of these records upon request.</p>
<p>Finding 5 Page <u>62</u></p>	<p>Agencies did not provide us 78% of the underlying employee complaints for employee settlements that involved confidentiality language.</p>
<p>Effect</p>	<p>If state agencies are not retaining complaint records, there is a risk that inappropriate behavior will not be properly identified and appropriate action taken to prevent it from occurring again.</p>
<p>Recommendations Page <u>63</u></p>	<ol style="list-style-type: none"> 1. GOV should develop policies and procedures to ensure that complaints are first documented and then retained in accordance with the Massachusetts Statewide Records Retention Schedule and are provided to external auditors upon their request. This policy should consider the creation of a centralized list of such complaints and the location of the storage of these records to facilitate production of these records upon request. GOV should clarify its policy on record retention to ensure that complaints are retained. 2. Agencies should consult with the Massachusetts Supervisor of Public Records to ensure that they accurately classify these records and should then ensure that they retain them according to the requirements of the Massachusetts Statewide Records Retention Schedule. 3. If complaints arise out of substantiated egregious behavior, such as illegal or harmful acts, these records should be retained permanently to ensure that this behavior can be tracked across state government.

OVERVIEW OF AUDITED ENTITY

Office of the Governor

The Office of the Governor (GOV) was established under Section I of Chapter II of the Constitution of the Commonwealth. It consists of the Offices of the Governor and the Lieutenant Governor, both of whom are elected every four years. The Governor and Lieutenant Governor oversee a cabinet consisting of the secretaries of the following offices:

Executive Office for Administration and Finance (A&F)	Executive Office of Labor and Workforce Development (EOLWD)
Executive Office of Education (EOE)	Executive Office of Public Safety and Security (EOPSS)
Executive Office of Energy and Environmental Affairs (EEA)	Executive Office of Technology Services and Security (EOTSS)
Executive Office of Health and Human Services (EOHHS)	Massachusetts Department of Transportation (MassDOT)
Executive Office of Housing and Livable Communities (EOHLC)	Executive Office of Veterans Services
Executive Office of Economic Development (EOED)	

Each secretary is appointed by the Governor and is responsible for overseeing the activities of the executive offices and agencies within the secretariat. GOV sets policy for implementation by all cabinet secretariats, agencies, offices, commissions, boards, and other entities within the state executive department to achieve GOV's mission.

According to GOV's internal control plan,

The Office of the Governor is committed to making Massachusetts a truly great place for all individuals to live, work, start a business, raise a family, and reach their full potential. It will work toward a growing economy with family-sustaining jobs; ensure that schools across the Commonwealth provide opportunity for every child regardless of zip code; improve the delivery of state services; and make Beacon Hill a true partner with our local governments to create safer and thriving communities across Massachusetts.

Office of the Comptroller of the Commonwealth

According to the Office of the Comptroller of the Commonwealth's (CTR's) website,

[CTR's] mission is to oversee the Commonwealth's financial systems, promoting integrity, mitigating risk, and providing accurate reporting and promoting transparency to illustrate the

financial health of Massachusetts. . . . We promote accountability, integrity, and clarity in Commonwealth business, fiscal, and administrative enterprises.

CTR is an independent agency established by Section 1 of Chapter 7A of the Massachusetts General Laws. The Comptroller is the administrative and executive head of CTR and is appointed by the Governor for a term that runs concurrently with the Governor's term.

Section 2 of Chapter 7A establishes an advisory board to the Comptroller as follows:²

There shall be an advisory board to the comptroller which shall consist of the attorney general, the treasurer, the secretary of administration and finance who shall be the chairman, the auditor, the court administrator of the trial court, and two persons who have experience in accounting, management, or public finance who shall be appointed by the governor. . . .

Said advisory board shall provide advice and counsel to the comptroller in the performance of his duties. The advisory board shall be responsible for reviewing any rules or regulations promulgated by the comptroller prior to their implementation. The advisory board shall also review prior to publication the annual financial report of the commonwealth published by the comptroller.

CTR oversees more than \$123 billion in state revenues and expenditures. Its offices are located at 1 Ashburton Place in Boston.

State Employee Settlement Agreements

Initial research revealed that state agencies did not have a consistent, comprehensive, established definition of what constitutes a state employee settlement agreement. In our opinion, this creates a risk of unfair, disparate treatment, as well as a lack of transparency for settlement activity across state government. For the sake of consistency in the audit, we defined a state employee settlement as a settlement resulting from a formal claim³ (union and non-union grievances, complaint, or lawsuit) against a state agency brought by a current or former employee.

State employee settlement agreements can result from claims including, but not limited to, discipline and termination, discrimination, position classifications, employment conditions, promotion, vacation, and

-
2. Generally accepted government auditing standards require that organizations be free from organizational impairments to independence with respect to the entities they audit. Pursuant to Section 1 of Chapter 7A of the General Laws, the State Auditor serves on the seven-member advisory board to the Comptroller, in this instance through a designee. This disclosure is made for informational purposes only, and this circumstance did not interfere with our ability to perform our audit work and report its results impartially.
 3. CTR's Settlements and Judgments Policy defines a claim as "any demand by any person for damages to compensate a wrong allegedly suffered, including but not limited to violation of civil rights, breach of contract, failure to comply with contract bidding laws, incorrect or improper personnel determinations regarding pay, promotion or discipline, failure to comply with statutory or constitutional provisions applicable to employment."

sick leave. Claims also include complaints settled through the Massachusetts Civil Service Commission, Massachusetts Commission Against Discrimination, Massachusetts Department of Labor Relations, Massachusetts Human Resources Division, and grievance procedures as part of collective bargaining agreements.

The Office of the Attorney General is only involved in another state agency's settlement process if that process goes to court. For the purposes of this audit, we reviewed state employee settlement agreements that resulted in monetary and non-monetary awards.

During the audit, we requested from all agencies listed in [Appendix C](#) all policies and procedures in effect during the audit period regarding the use of state employee settlement agreements. **No agency (0%) had its own internal policy on how a state employee settlement agreement is defined, when one would be considered or used, or how it would be developed.** Agencies provided us union agreements that documented their grievance process with certain labor unions, if a unionized employee were to file a grievance.

Instead of providing us agency policies on the consideration, development, and use of state employee settlement agreements, state agencies cited guidance from CTR that provided detail on how CTR defines a state employee settlement agreement. Agencies informed us that they follow CTR's policy for processing and reporting state employee settlement agreements. CTR uses this definition to identify state employee settlement agreements that are able to be paid by the Settlements and Judgments fund administered by CTR. This guidance does not serve as agency policy regarding the use or development of state employee settlement agreements. This policy relates to the payment of settlements and provides only limited instruction on what a state agency should do when claims, subpoenas, or other complaints are received.

Settlements and Judgments Fund

The Settlements and Judgments fund is a reserve appropriation within the Commonwealth's annual budget. It was created in 1985 and is administered by CTR to fund certain court judgments, settlements, and legal fees. A state agency entering into an employee settlement may use the Settlements and Judgments fund administered by CTR.

CTR promulgated Section 5 of Title 815 of the Code of Massachusetts Regulations (CMR), which documents how state employee settlement agreements are to be paid for by state agencies. According to 815 CMR 5.01, this regulation was established for the following purpose:

(1) The purpose of [this regulation] is to clarify the procedures by which agencies may preserve the availability of funds and may obtain access to funds for the payment of judgments and settlements. Such clarification will:

(a) Aid agencies in making the payment of judgments and settlements a part of their current year operation or capital project budgeting; and

(b) [Ensure] faster payment of judgments and settlements, which will lessen the waiting time for successful claimants and litigants against the Commonwealth and its agencies and minimize the amount of any applicable interest.

(2) [This regulation] shall identify funds legally available for payment, and shall minimize the need to use deficiency payments for judgments and settlements of claims against the Commonwealth. 815 CMR 5.00 shall also prevent any use by agencies of the Commonwealth of funds not legally available for payments of such judgments and settlements.

As part of administering the Settlements and Judgments fund, CTR must submit a quarterly Settlement Judgment Transparency Report⁴ to the Legislature to report on the financial activity of the fund. These reports do not include department-funded settlement payments as those payments fall outside the scope of the statutory reporting requirement. (See [Other Matters](#).)

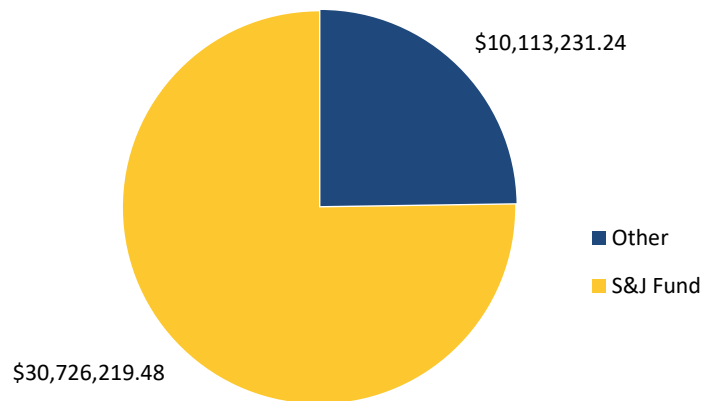
Payment of State Employee Settlement Agreements

Under 815 CMR 5.06, subject state agencies are allowed to pay state employee settlements by using either (1) the agency's current year operating budgets (salary line items) without regard to the year in which the claim(s) arose or (2) by accessing the Settlements and Judgments fund administered by CTR. As CTR processes claims on behalf of departments, **all monetary settlements⁵ must be reviewed by CTR prior to payment** regardless of whether they are paid from the Settlements and Judgments fund. During our audit, we identified more than \$40.8 million paid by the Commonwealth in employee settlement agreements. See chart below for funding sources disclosed by agencies.

4. In accordance with Section 2 of Chapter 28 of the General Laws, CTR is required to submit quarterly reports each fiscal year on payments from the Settlements and Judgments fund. These reports provide information on payees, amounts, and the associated Commonwealth of Massachusetts department or agency for settlements and judgments paid from the fund.

5. According to CTR's Settlements and Judgments Policy, "A 'monetary' settlement or judgment includes any action which results in a payment being made to, or on behalf of a claimant, or which may impact 'creditable' service for retirement calculation purposes for a state employee, or which may result in a future commitment of funds, services or state resources."

Source of Funding for State Employee Settlement Agreements January 1, 2010 through December 31, 2022



Note: Other includes department funding sources chosen by the agency that funded the settlement.

Under 815 CMR 5.09, agencies are required to notify CTR within 15 days when a state employee settlement agreement involves a monetary award to be paid to the current or former employee, regardless of whether that settlement is ultimately paid from the Settlements and Judgments fund. In addition to the Settlement Agreement and General Release, agency employees must submit a completed “815 CMR 5.00 Non-Tort Settlement/Judgment Authorization Form” or “S&J Form” to CTR that details information on the claimant, employment status (current or former), department, settlement type, amount of payment, amount of attorney fees, amount of any interest due,⁶ and payment type (through CTR or the department). CTR checks that the “S&J Form” contains approvals from the agency’s chief fiscal officer and agency counsel. In certain circumstances, approval is required from the Office of the Attorney General and A&F for state employee settlement agreements greater than \$250,000.⁷ If the required information has been supplied, CTR continues to review the form to determine whether there is a single claimant or multiple claimants and whether the claimant(s) name(s) will be withheld from public disclosure.

Claims with sufficient information provided by a department are entered as records into CTR’s Settlements and Judgments Access database. CTR conducts a secondary review of the state employee settlement agreement and payment information. CTR confirms the availability of sufficient funding to pay

6. According to CTR’s Settlements and Judgments Policy, “Interest will either be awarded as a specified amount, or will be calculated at the time of payment in accordance with the rates specified in the settlement or judgment.”

7. This threshold is noted in the Judgments, Settlements and Legal Fees budgetary line item (1599-3384).

the claim through the Massachusetts Management Accounting and Reporting System (MMARS) and consults with the department if there are any issues. In addition, CTR ensures that the payments are made using the appropriate MMARS codes for correct financial reporting. It also ensures that proper tax withholdings and tax reporting are made by the department. Once the review is complete, CTR sends an approval email to the department.

Whether an agency makes a settlement payment using its department appropriations or the Comptroller makes the payment using the Settlements and Judgments fund, there is one main MMARS expenditure object code designated for employment-related settlements and judgments (A11). Within the Settlements and Judgments Access data provided to us, we found 22 additional MMARS codes used for logging state employee settlement agreement payments ([Appendix B](#)). The MMARS settlements and judgments code contains employment-related claims, including any claim for damages arising out of an individual's employment by the Commonwealth, such as awards of back pay for improper termination, lump sum awards, discrimination claim awards, emotional distress awards, and attorney fees and costs. This MMARS code does not include retroactive salary adjustments, unpaid regular time, periodic collective bargaining agreement increases, or any other payment adjustments that are not the result of a claim or lawsuit filed against the department that results in a court judgment, administrative order, or state employee settlement agreement.

Confidentiality Language in State Employee Settlement Agreements

During the audit period, the executive branch agencies under audit had no documented policies in place over the use of nondisclosure agreements or confidentiality clauses related to state employee settlement agreements. However, in response to our inquiries, some agencies informed us they did not use nondisclosure agreements or confidentiality clauses in their state employee settlement agreements; however, we were prevented from verifying these claims because we were not provided any documentation to substantiate them.

Some state employee settlement agreements have been found to be inherently public records. In *[Boston] Globe Newspapers Co Inc. vs. Executive Office of Energy and Environmental Affairs et al.*, a declaratory judgment, dated June 14, 2013, found that records of separations, severance, transition, or settlement agreements entered into by state agencies and public employees, or records of payments made from the Settlements and Judgments fund by the Comptroller, are public records subject to mandatory disclosure. Employee addresses, phone numbers, and other personal information can be redacted in certain cases.

The court weighed whether public employees' privacy rights take precedence over the public's right to know about government expenditures. The court stated a public employee's identity and the information contained within the agreement are wholly unrelated to an individual's privacy interest and, therefore, are not subject to privacy exemption. Therefore, the disclosure of a state employee settlement agreement with the employee's identity, current or former work entity, the financial terms of the agreement, and various legal provisions do not implicate a right to privacy.

According to *A Guide to Massachusetts Public Records Law* by the Public Records Division of the Secretary of the Commonwealth's office:

The public interest in the financial information of a public employee outweighs the privacy interest where the financial compensation in question is drawn on an account held by a government entity and comprised of taxpayer funds. Additionally, the disclosure of the settlement amount would assist the public in monitoring government operations. Therefore, exemptions to the Public Records Law will not operate to allow for the withholding of settlement agreements as a whole. However, portions of the agreements, and related responsive records, may be redacted pursuant to . . . the Public Records Law.

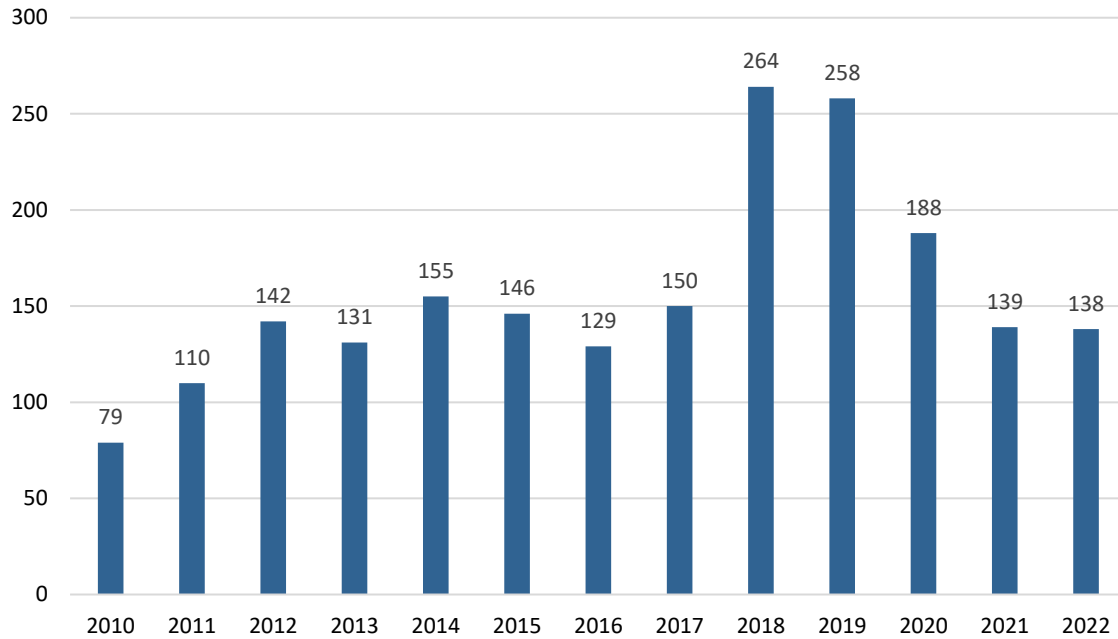
While certain information could be redacted from settlement documents, the state employee settlement agreement itself is a public document subject to disclosure and public inspection.

State Employee Settlement Agreements by the Numbers

Based on state employee settlement agreement lists provided to us by the executive offices and agencies listed in [Appendix C](#), during the period of January 1, 2010 through December 31, 2022, the audited agencies entered into 2,029 state employee settlement agreements with a total cost in excess of \$40,839,452. On average, these agencies entered into 156 state employee settlement agreements per year with an average cost of \$20,128 per settlement.⁸ The number of state employee settlement agreements peaked in 2018 to over 250 settlement agreements. Settlement activity was high by historical standards in 2019 as well. EOPSS had two class action settlements in 2014 and 2015 that were consolidated into two respective settlements. The 2014 class action included 2,750 total employees, and the 2015 class action included 2,732 total employees. See the chart below.

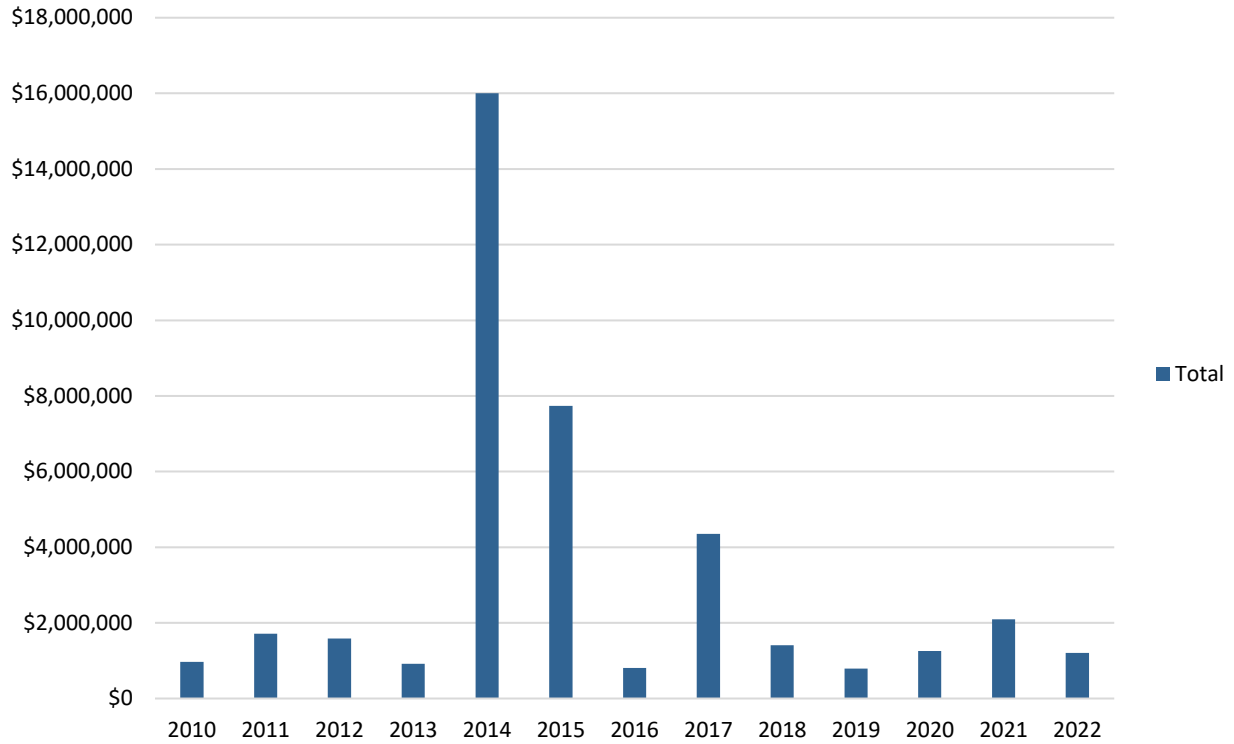
8. According to the Mass.Gov website, the full-time equivalent count for the quarter ending December 31, 2022 for the executive branch totaled 42,264 full-time equivalent employees.

Settlement Activity by Year



The dollar value of each state employee settlement agreement is determined by negotiations between the state agency and the employee or their representative. Agencies' employee settlement costs peaked in 2014 at nearly \$16,007,000 because of a large class action suit settled by EOPSS that exceeded \$14,053,000. See the chart below.

Settlement Activity Cost by Year



Year	Settlement Cost
2010	\$ 970,461
2011	1,713,890
2012	1,586,816
2013	915,276
2014	16,006,909
2015	7,735,073
2016	811,231
2017	4,349,500
2018	1,408,157
2019	790,806
2020	1,255,220
2021	2,092,625
2022	1,203,485
Grand Total	<u>\$40,839,452*</u>

* Discrepancy in total is due to rounding.

Between January 1, 2010 and December 31, 2022, executive offices and agencies self-reported settlement activity ranging from 1 settlement to 624 settlements.⁹ Over the audit period, the three offices with the highest settlement counts were EOHHS (624), EOPSS (579), and MassDOT (527). The offices with the highest settlement costs over the audit period were EOPSS (\$25,499,440), EEA (\$5,176,923), and EOHHS (\$4,301,466). See the table below.

Number of Self-Reported Settlement Agreements and Total Cost of Settlements by Agency during the Audit Period

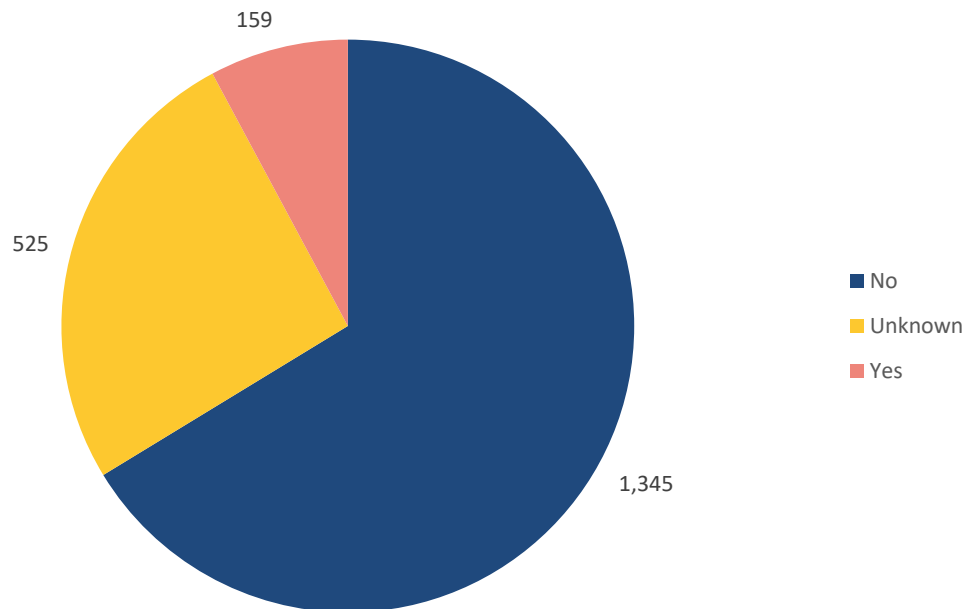
	Self-Reported Settlements Disclosed During the Audit Period	Amount (\$)
EOPSS	579	\$ 25,499,440
EEA	108	\$5,176,923
EOHHS	624	\$4,301,466
MassDOT	527	\$3,714,634
EOE	58	\$667,973
EOLWD	37	\$576,405
A&F	58	\$303,410
EOTSS	14	\$291,933
GOV	1	\$62,500
EOED	7	\$172,229
EOHLC	15	\$72,539
CTR	1	\$0
Total	<u>2,029</u>	<u>\$ 40,839,452</u>

Within the list of 2,029 state employee settlement agreements provided to us, which we were not able to verify are all the settlement agreements that were executed during our audit period, state agencies claimed that only 146 of these state employee settlement agreements contained some form of confidentiality language. We identified 13 more settlements that included confidentiality language during our review of settlement agreements, bringing the total to 159. However, due to departments' reported failure to retain appropriate documentation, we were unable to verify these claims and it is possible that

9. We were unable to confirm that these were all of the settlement agreements entered into during the audit period because we were unable to perform all of our audit testing. It is possible that some or many settlement agreements, including those containing confidentiality language, are still undisclosed given this dynamic. See "Constraint" in the Audit Objective, Scope, and Methodology section of this report.

some, or many, additional confidentiality clauses exist that were not reported to us. Departments claimed that they were unable to determine whether this language was present in 525 other state employee settlement agreements because they indicated that they do not have access to the executed state employee settlement agreement or left the field blank. See the chart below.

State Employee Settlement Agreements Containing Confidentiality Language During the Audit Period, as Self-Reported by State Agencies



Our analysis of the 159 state employee settlement agreements with confidentiality language revealed that EOHHS reported that it used confidentiality language in 73 state employee settlement agreements, the most during the audit period. We found an inconsistency in the usage of confidentiality language, varying by agency. For instance, 34 (or 92%) of EOLWD's 37 state employee settlement agreements for the audit period reportedly included some form of confidentiality language. MassDOT claimed that only 5 (1%) of its 527 self-reported state employee settlement agreements contained confidentiality language. Our office was unable to verify all of these claims. See the tables below.

Use of Confidential Language in Executive Office Agencies (Self-Reported)

Executive Office	Number of Settlements with Confidentiality Language*	Total Number of Settlements	Agency Percentage Use
A&F	19	58	33%
EOE	1	58	2%
EOED	2	7	29%
EEA	11	108	10%
EOHLC	2	15	13%
EOLWD	34	37	92%
EOTSS	9	14	64%
GOV	1	1	100%
EOHHS	75	624	12%
MassDOT	5	527	1%
Grand Total	<u>159</u>	<u>1,449</u>	<u>11%^{**}</u>

* Settlement agreements, and the use of confidentiality language in those agreements, are self-reported by agencies. Each agency is reported as part of its executive office.

** Please note that this is the percentage of employee settlement agreements from the audit period with confidentiality language.

Cost of Settlements That Included Confidentiality Language (Self-Reported)

Executive Office	Number of Settlements with Confidential Language	Cost of Settlements with Confidentiality Language
A&F	19	\$153,710
EOE	1	\$-
EOED	2	\$152,230
EEA	11	\$693,266
EOHLC	2	\$31,121
EOLWD	34	\$71,115
EOTSS	9	\$226,600
GOV	1	\$62,500
EOHHS	75	\$838,344
MassDOT	5	\$74,966
Grand Total	159	\$2,303,851*

* Discrepancy in total is due to rounding.

Appendices A, D, and E present further data on the funding source and claim type by department, as well as a list of employee settlement agreements with confidentiality language reported.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities related to state employee settlement agreements of the Office of the Governor (GOV) and its subordinate agencies and the Office of the Comptroller of the Commonwealth (CTR). Pursuant to our governing statute, Section 12 of Chapter 11 of the General Laws, our audit covers multiple entities' use of state employee settlement agreements. Specifically, Section 12 of Chapter 11 states, "Each entity may be audited separately as a part of a larger organizational entity or as a part of an audit covering multiple entities." As such, our review of the use of employee settlement agreements was completed at GOV, CTR, and 73 other executive branch agencies for the period January 1, 2010 through December 31, 2022.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS) except Paragraph 8.90, which pertains to obtaining sufficient, appropriate evidence to meet audit objectives. During the audit, we encountered instances where sufficient, appropriate evidence was not provided for the full audit period.

Consistent with GAGAS, we have noted this inability to obtain sufficient, appropriate evidence as part of the "Scope Limitation" section below. We believe that, except for areas detailed in the "Scope Limitation," the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did state agencies report monetary state employee settlement agreement claims to CTR in accordance with Section 5.09 of Title 815 of the Code of Massachusetts Regulation (CMR) and CTR's Settlements and Judgments Policy?	No; see Findings <u>1</u>, <u>3</u>, and <u>4</u>
2. To what extent, if at all, have agencies developed and implemented policies and procedures regarding the use of confidentiality requests, including nondisclosure language, within the context of state employee settlement agreements?	Not at all; see Findings <u>2</u> and <u>5</u>

To accomplish our audit objectives, we gained an understanding of the internal control environment in GOV and its executive offices and agencies and in CTR related to the objectives by reviewing the Governor's and Comptroller's internal control plans, by reviewing the Comptroller's and the executive offices' and agencies' applicable policies and procedures, by conducting interviews of management in GOV and its executive offices and agencies and CTR and performing walkthroughs of the processes related to our objectives. (See Finding 1.)

We performed the procedures listed below in order to obtain sufficient, appropriate audit evidence to address the audit objectives.

Scope Limitations

Paragraph 9.12 of the US Government Accountability Office's Government Auditing Standards states, "Auditors should . . . report any significant constraints imposed on the audit approach by information limitations or scope impairments."

We experienced the scope limitations listed below while performing the audit.

Production of Records

Our original objective was to review documents, including settlements and related records, covering a period of 13 years. However, agencies expressed concerns about providing documents dating back as far as 2010. It was explained to us that documents for recent settlements would be more readily available as these documents fall within the six-year retention period most agencies reported to us that they followed.

When originally questioned about this records retention period, agencies were generally unable to identify which specific records retention category employee settlement documentation fell under, offering different requirements based on the type of document.

We reviewed the Massachusetts Statewide Records Schedule in the relevant areas of legal, fiscal, and personnel records and documents. After consulting with the Secretary of State Public Records Division and the Archivist of the Commonwealth of Massachusetts, we conclude that most of the settlement documentation, including settlement payment support documentation and employee complaints associated with settlements, could reasonably be assumed to have records retention periods of six years

from the date of final resolution or final activity.¹⁰ Certain other categories require longer periods of retention, however, such as employee grievance/complaint records resulting in “Landmark Cases,” which require permanent retention. Similarly, under Subsection E05-02(b), case summaries and final decisions must be retained for 25 years. It is notable that agencies seeking to destroy such records after the expiration of retention periods must first seek approval of the Records Conservation Board, consisting of the State Librarian, the Attorney General, the Comptroller of the Commonwealth, the “Commissioner of Administration and Finance,”¹¹ the Supervisor of Records, the Secretary of Technology Services and Security, and the State Archivist, or persons designated by them.

Given that a portion of our audit period was within the six-year retention period and some agencies were unable to provide us with the requested information, even within this shortened period, we have referred this matter to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth for their review and potential enforcement. Additionally, we have concerns that agencies may not be properly classifying records under the statewide records retention schedule and have also referred these matters to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth for their review and potential enforcement. We also note that case summary records and final decisions are required to be retained for 25 years and that this information could have served as a source of information for our audit. These records were not provided to us as evidence.

Therefore, we were forced to limit the scope of our testing to six years. This included the final four years of the audit period. We determined we could still answer our audit objective by evaluating a testing population of monetary settlements within the final four years of the audit period (January 1, 2019 through December 31, 2022).

Constraint

During the course of the audit, certain records requested were not provided in a timely manner. (See Findings 2 and 4).

10. Documents submitted to CTR to support the payment of settlements are classified as “Routine Accounting Records” under section D01-07. CTR has routinely had requests to destroy records after three years by the Records Conservation Board. See Statewide Records Retention Schedule D01-01(c): Primary copies of payment support documentation and transaction Postings; E05-01: Employee Complaint/Investigation/Disciplinary Records; and E05-02 (c): All other records.

11. We note that this is an archaic title for this position, which is now entitled Secretary of Administration and Finance.

We initiated our audit by requesting a list of all state employee settlement agreements entered into by the state agencies included in this review. Most agencies did not have a system of record for settlements made with their employees, and none of them had a system that encompassed the full duration of the audit period. Agencies made an effort to review their records and compile the list by doing the following: reviewing legal files, reviewing human resources files, and reviewing union grievance files. Agencies also consulted CTR's Settlements and Judgments fund records for their agencies to determine which activity was related to state employee settlement agreements and should be included on the requested list. The agencies compiled the lists after reviewing the state employee settlement agreements identified in this search. Some agencies conducted this due diligence in a sufficient manner while others required many months to produce a list, and instructed our office to simply refer to the settlements and judgments Access database.¹² Some agencies indicated that they "lost" relevant records, while others claimed that they could not access the records we requested of prior administrations because they claimed those records were the property of that prior administration,¹³ and that they would not inspect them without the expressed permission of the prior administration. The table below details the length of time it took to receive a complete list of settlement agreements to begin our audit work.

12. It was not considered sufficient to obtain settlements processed through the CTR Settlements and Judgments database as we could not be certain that all settlement agreements were processed through CTR. Settlement agreements are able to be paid for through an agency's own funds, and it is possible that CTR would not be aware of them.

13. After making this representation to us, GOV informed us that it had inspected prior records and made representations to us about the data as described therein.

Agency	Days it took to receive complete list	Settlement Records Listed
GOV	65	1
CTR	6	1
Executive Office for Administration & Finance (A&F)	52	58
Executive Office of Education (EOE)	72	58
Executive Office of Housing and Livable Communities (EOHLC)	110	15
Executive Office of Economic Development (EOED)	79	7
Executive Office of Energy and Environmental Affairs (EEA)	93	108
Executive Office of Technology Services and Security (EOTSS)	24	14
Massachusetts Department of Transportation (MassDOT)	35	527
Executive Office of Labor and Workforce Development (EOLWD)	122	37
Executive Office of Health and Human Services (EOHHS)	122	1,456
Executive Office of Public Safety and Security (EOPSS)	143	6,744

As part of our data reliability analysis of state employee settlement agreement lists, we requested to review employee personnel files for a sample of staff members actively employed during the audit period. The purpose of this review was to determine whether files contained settlement documentation that was not identified by the agencies during their aforementioned searches. We have been denied access to the files needed to conduct this verification aspect of our data reliability analysis.¹⁴ At the time this report was issued, we were actively working with the Office of the Attorney General to gain access to the files.

14. In denying us access to these records, GOV indicated that it was concerned our request to view employee personnel files violated the Fair Information Practices Act (FIPA). We note that this is a new argument, never previously having been asserted to our office, including the multiple times in which we have requested and received access to employee personnel files in conducting our audits (Department of Industrial Accidents [Audit No. 2019-0222-3S], issued March 23, 2021, and Hampden County District Attorney's Office [Audit No. 2022-1259-3J], issued November 28, 2023). GOV offered that, in accordance with its interpretation of FIPA, it would notify impacted employees of our request to inspect their personnel files, allowing them to file an injunction in court to prevent us from accessing their individual files. This is a functional denial of records, as (1) our enabling statute provides

Reporting of Monetary Settlements to CTR

a. Review of Documentation for Monetary Settlements

To determine whether the 75 agencies reviewed as part of this multi-agency audit reported monetary state employee settlement agreements to CTR, we took the following actions:

- We had a test population of 263 monetary settlements records dated from January 1, 2019 through December 31, 2022. For each executive office, we stratified the population of monetary state employee settlement agreements by dollar amount. Assessed at high risk, we tested all records with settlement amounts greater than or equal to \$20,000.
- We also selected random, nonstatistical samples of records for settlement amounts less than \$20,000. Our test sample included a total of 108 state employee settlement agreements from the population of 263. (See table below.)
- We requested the following documentation for all the records we tested:
 - the executed state employee settlement agreement, complete with signatures from authorized parties
 - the “815 CMR 5.00 Non-Tort Settlement/Judgment Payment Authorization Form” submitted to CTR, complete with proper approvals
 - the email approval of the settlement claim from CTR.

Documentation provided was assessed at three levels:

- **FULL DOCUMENTATION**—the agency provided evidence of all three requested documents.
- **LIMITED DOCUMENTATION**—the agency provided one or two of the requested documents.
- **NO DOCUMENTATION**—the agency did not provide any of the requested documents.

us access to these records; (2) we have been given repeated, unfettered access to these files; (3) this new obstacle would require employees to undertake unnecessary expense and inconvenience to pursue legal action; and (4) it would provide employees the opportunity to withhold records from this office, which we have the legal authority to access.

Test Populations by Agency
January 1, 2019 through December 31, 2022

Agency	Population	Sample Size of Settlements Reviewed Under \$20,000	Settlements Reviewed Over \$20,000	Total Test Sample
EOHHS	99	20	8	<u>28</u>
MassDOT	53	10	11	<u>21</u>
EOPSS	55	10	10	<u>20</u>
EEA	32	10	6	<u>16</u>
EOHLC	6	5	0	<u>5</u>
EOLWD	5	5	0	<u>5</u>
EOTSS	4	4	0	<u>4</u>
A&F	3	2	1	<u>3</u>
EOE	3	1	2	<u>3</u>
EOED	2	1	1	<u>2</u>
GOV	1	0	1	<u>1</u>
Total Count	<u>263</u>	<u>68</u>	<u>40</u>	<u>108</u>

b. Review of Potentially Unreported State Employee Settlement Agreements

During our assessment of the reliability of the state employee settlement agreement lists (further described below in the “State Employee Settlement Agreement List” section), we identified 93 potentially unreported state employee settlement agreements.

We asked CTR to review the provided lists and settlement agreements. Based on the nature of the settlements and awards, CTR confirmed 56 of the 93 state employee settlement agreements were monetary settlements that should have been reported. We asked CTR to search its settlements and judgments Access database and records to determine whether it had any evidence that the 56 state employee settlement agreements were submitted to CTR for review. CTR confirmed that 16 of the 56 were effectively reported.

See Finding 3 for issues we identified with state agencies reporting monetary state employee settlement agreements to CTR.

Use of Confidentiality Language in State Employee Settlement Agreements

To determine to what extent the 75 agencies in this multi-agency audit have developed and implemented policies and procedures regarding the use of confidentiality language within the context of state employee settlement agreements, we took the following actions:

- We interviewed management and legal counsel to the executive offices and agencies to learn about the steps taken when entering into a state employee settlement agreement. During these interviews, we inquired about internal procedural documents for reviewing claims, determining terms of the settlement, and processing settlement agreements. It was explained to us that this support was considered privileged documentation and would not be provided to the audit team while the legal counsel performed an analysis and provided a recommendation on whether to settle a pending claim.
- We inquired whether the state agencies had policies in place regarding the use of confidentiality language within state employee settlement agreements.
- For the entire population of 159 state employee settlement agreements self-reported by executive agencies as containing confidentiality language, which we were unable to verify, we requested copies of the original claim, complaint, or grievance to gain an understanding of the situation that led to the settlement. The few requested documents that were provided to us (35) were generally for the settlement of union grievances.
- We reviewed the available 145 state employee settlement agreements, looking for evidence of information that could be considered exempt under public records law. As we learned, agreements are drafted on a case-by-case basis. We requested that agencies explain their rationale or reasoning for the inclusion of confidentiality language.

See Findings [2](#) and [5](#) for issues we identified with the process on how state agencies used confidentiality language in state employee settlement agreements.

We used nonstatistical sampling methods for testing. Therefore, we did not project the results of our testing to any of the populations.

Data Reliability Assessment

CTR Settlements and Judgments Access Database

CTR provided us an Excel list of state employee settlement agreements and payments reported during the audit period from its internal settlements and judgments Access database. To determine the reliability of the data, we performed validity and integrity testing to ensure that the settlement documentation receipt dates (the date documentation was received by CTR's legal team) were within the audit period. We also checked that there were no duplicate state employee settlement records.

In addition, we conducted interviews pertaining to CTR’s approval process, which included employee access to the database.

State Employee Settlement Agreement Lists

To determine the reliability of the lists of state employee settlement agreements provided by each executive office, GOV, and CTR, we conducted interviews with officials from each executive office who were knowledgeable about the process of entering in settlement agreements and the creation of the lists. We performed validity and integrity testing of the data to ensure that all lists from the executive offices and agencies contained settlement records that were executed during the audit period and that there were no duplicate settlement records.

In addition, to ensure the accuracy of the lists, we selected random samples from the agencies with larger counts of state employee settlement agreements. For agencies with smaller counts, we selected either judgmental samples or the entire population for review. These samples¹⁵ combined for 254 state employee settlement agreements from the total population of 9,026 employees entering into settlement agreements provided for the audit period. We vouched information included in each list (settlement dates, employee names, descriptions of the settlements, and the amounts) to copies of the signed state employee settlement agreements. The following table details the sample sizes reviewed for each office.

Agency	Count of Settlements Records Provided for the Audit Period	Sample Size
EOPSS	6,744	50
EOHHS	1,456	50
MassDOT	527	50
EEA	108	20
A&F	58	20
EOE	58	20
EOLWD	37	10
EOHLC	15	15

15. As referenced throughout this audit, there were 2,029 settlement agreements during the audit period. Agencies provided lists consisting of 9,026 employees entering into settlement agreements. There were multiple class action suits that occurred during our audit period, some of which were provided to us as a single record and some of which were provided to us listing each employee involved. For the purposes of the audit, we considered each class action as one settlement agreement.

Agency	Count of Settlements Records Provided for the Audit Period	Sample Size
EOTSS	14	10
EOED	7	7
CTR	1	1
GOV	1	1
Total	<u>9,026</u>	<u>254</u>

For those state employee settlement agreements in the sample that were monetary, we also vouched the agency name, settlement date, employee name, and the amount to CTR's settlements and judgments Access data. Additionally, we filtered the settlements and judgments Access data by agency, confirming that the monetary settlements were included in the state employee settlement agreement lists provided to us by the executive offices and agencies, GOV, and CTR.

Out of our sample of 254, we identified 93 potentially unreported state employee settlement agreements based on the following characteristics:

- Settlement list information could not be traced to source documents because they were not provided by agencies.
- Settlement records could not be traced to our list of records from CTR's settlements and judgments Access database.
- Settlement amounts in the list and source documents provided differed from the amounts reported in CTR's settlements and judgments Access database.

To determine the completeness of the settlement lists, we requested to review employee personnel files for a sample of staff members actively employed during the audit period. The purpose of this review was to determine whether files contained settlement documentation that was not identified by the agencies during their aforementioned searches. We have been denied access to these files needed to conduct this aspect of our data reliability analysis. We are actively working with the Office of the Attorney General to gain access to these files.

As a result, we cannot determine whether the lists provided by any of the executive agencies included in this audit are complete. We used this data as it was the only source available for our audit purpose. For more information, see Finding [4](#).

Based on the results of the data reliability procedures described above, we determined that the data was sufficiently reliable for the purposes of our audit.

DETAILED AUDIT FINDINGS WITH AUDITEES' RESPONSES

1. Executive offices and agencies do not have documented internal policies or procedures on the authorization, development, documentation, and retention of state employee settlement agreements and supporting records.

The Office of the Governor (GOV) did not issue any policies, or document its procedures, on the use of state employee settlement agreements by executive offices and agencies. There were no documented policies or procedures on these basic aspects of the state employee settlement process, including the following:

1. receipt and handling of complaints filed by nonunion employees;
2. definition of authorization of state employee settlement agreements by agency employees or management;
3. development of draft state employee settlement agreements (who would draft agreements, the use of outside assistance, which employees would be interviewed, retention of discussion notes, etc.);
4. documentation of an employee's claim resulting in a state employee settlement agreement; and
5. records retention regarding the storage of these records, how they should be retained, where they should be retained, and for what period of time.

When we asked for their documented policies or procedures, agency officials told us that they followed the Office of the Comptroller of the Commonwealth's (CTR's) regulations and policies over the processing and reporting of state employee settlement agreements to CTR. These regulations define a state employee settlement agreement and which state employee settlement agreements are required to be reported to CTR for payment and/or proper financial reporting. However, these policies were not incorporated into any policy of GOV or the executive offices and agencies and do not address a variety of important issues, such as records retention or the use of confidentiality language.

Agency officials told us that employee union agreements detailed procedures on how employee grievances should be handled. We note that these procedures are typically detailed in any state employee union agreement in Massachusetts, as they are an important aspect of the labor-management relationship. However, no policies were in place over the handling of nonunion employee complaints.

Additionally, GOV officials told us that some type of policy exists regarding the factors impacting the decision to settle a claim and documentation of the considerations taken. The Governor's Office refused to make this document available for our review, which it indicated was a formal policy of state government, citing attorney-client privilege. We are therefore asked to believe that a formal policy exists, but that the policy is secret and cannot be disclosed. While we respect the sanctity of the attorney-client privilege doctrine, we disagree that policies outlining the procedures and process for use of settlement agreements unrelated to any specific claim, settlement, or negotiation has any protection under attorney-client privilege.

If GOV does not have policies and procedures for all state agencies to handle state employee settlement agreements, it cannot ensure that employee settlements are handled in a fair, ethical, legal, and consistent manner. This results in an inconsistent process that is not transparent to the citizens of the Commonwealth regarding how their public employees are treated or how their tax dollars are being spent. It can also lead to potential errors in financial reporting by not allowing CTR the opportunity to review how the department intends to process state employee settlement payments. (See Finding 3 for instances of state employee settlement agreements not properly reported to CTR).

Authoritative Guidance

The US Government Accountability Office's Standards for Internal Control in the Federal Government, known as the Green Book, sets internal control standards for federal entities. The Green Book defines internal controls in the following way:

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources. . . . Management should design control activities to achieve objectives and respond to risks. . . . Management should implement control activities through policies.

While GOV is not required to follow this policy, we believe it to be a best practice.

In June of 2020, Montana's Legislative Audit Division issued a performance audit titled "State Employee Settlements: Trends, Transparency, and Administration." In this audit, a recommendation is given that the Montana Governor's Office work with its administration department "to develop and implement policy

establishing support documentation requirements and minimum standard settlement language that must be used for all state employee settlements.”

The report also cites the practices of other states. The state of Iowa required a memorandum documenting why a settlement should be offered and the circumstances surrounding it. The state of New Mexico has its personnel office review the settlement terms and decisions made to ensure that providing a settlement is an appropriate decision.

While GOV is not required to follow these policies, we believe them to be best practices.

Reasons for Issue

GOV was unable to provide policies and procedures relative to state employee settlement agreements. There is no evidence that any policies and procedures were created by GOV and communicated across executive offices and agencies between January 1, 2010 and December 31, 2022.

GOV was unable to demonstrate that CTR policy documents for the processing and reporting of state employee settlement agreements were incorporated into the policies of executive offices and agencies.

Recommendations

1. GOV should establish and implement policies and procedures over the authorization, development, documentation, and retention of state employee settlement agreements, and requirements for supporting documentation. These policies and procedures should be uniformly communicated across all state agencies. These policies and procedures should encompass all CTR requirements and should be made clear and documented within the newly created policies and procedures.
2. GOV should provide centralized management and oversight over the use of state employee settlement agreements to ensure that policies and procedures are adhered to and to provide reporting to the public regarding the use of these agreements.
3. GOV should establish a public reporting process to ensure sufficient transparency and accountability for the use of state employee settlement agreements. These agreements may impact employees and former employees when they are most vulnerable, which argues for additional public transparency and oversight to ensure that their use is consistent with policies and public expectations. (See Other Matters for more information.)

Auditee Response

The executive department agrees that documenting policy and procedures can help ensure consistent practice across a broad and wide-ranging government. The audit report's conclusions notwithstanding, several internal and external policies and procedures governed the authorization,

development, documentation, and retention of state employee settlement agreements during the audit period:

- *The Office of the Comptroller's Policy on Settlements and Judgments, and the associated regulations at 815 CMR 5.00 et seq., applied to the processing of settlements during the audit period, and were mandatory for executive department offices and agencies to follow. See 815 CMR 5.02. The policy and regulations prescribed, among other things, record-keeping requirements and required written justifications for settlements (815 CMR 5.09(1)); required approvals for settlements at certain monetary levels (S&J Policy at p. 34); limitations on settlement agreement terms and available monetary compensation (S&J Policy at pp. 12-25); and limitations on the enforceability of confidentiality provisions (S&J Policy at p.8).*
- *The Secretary of State's Statewide Records Retention Schedule required the retention of settlements and relevant supporting documentation during the audit period and applied to executive department offices and agencies. While the requirements differed somewhat depending on the nature of the claim being settled, the Schedule largely required that settlements and relevant supporting documentation be retained for a period of six years. See Schedule at D01-01(c): Primary copies of payment support documentation and transaction Postings; E05-01: Employee Compliant/Investigation/Disciplinary Records; and E05-02(c): All other records.*
- *For all cases handled by the Attorney General's Office, or by Special Assistant Attorneys General, offices and agencies followed the required settlement procedures of the Attorney General's Office. This included seeking and securing approval from the Attorney General's Office for all settlement amounts and terms.*
- *For grievances by union members, offices and agencies followed the terms of collective bargaining agreements, which in some case expressly provide that grievance settlements must be non-precedential. During the audit period, the Governor's Chief Legal Counsel issued several memoranda to the general counsels of the offices and agencies, prescribing additional required considerations, approvals, and limitations on settlement agreements and terms. While these memoranda were attorney-client privileged communications, their terms were mandatory. The memoranda were intended to ensure additional consistency and accountability in the negotiation and approval of settlements across the executive department.*

The report appears to suggest that, in addition to these policies and procedures, it would be helpful to have a written policy, issued to each office and agency, and governing the authorization, documentation, and retention of settlement agreements and supporting records. The executive department welcomes this suggestion and commits to the following steps:

- *The Office of the Governor will issue a public Executive Department Settlement Policy applicable to all executive department offices and agencies. The policy will address procedures for settling complaints filed by nonunion employees; the types of supporting documentation to be considered and maintained when settling such complaints; document retention and settlement tracking obligations; limitations on settlement terms; and the required approvals for settlements.*
- *All executive department offices will adopt their own settlement and judgment policies applicable to themselves and their agencies that adhere to the policies issued by the*

Office of the Governor and the Office of the Comptroller and set additional appropriate requirements, if any.

- *The Office of the Governor will partner with the Office of the Comptroller on both the Comptroller's ongoing review of its settlements and judgments policy and related regulations, and on developing new training material for use throughout the executive department.*

Auditor's Reply

In its response, GOV cited policies that existed during the audit period, notably CTR's Policy on Settlements and Judgments, and the associated regulations at 815 CMR 5.00. We note that this policy and regulation is issued by CTR, not the Office of the Governor, which the agencies audited here report to. CTR's policy establishes policies that agencies must follow—though not all did—in order to pay for the cost of settlement agreements. These policies and regulations say nothing about the consideration, development or use of settlement agreements, which are critical elements. As such, we do not view these policies or regulations to be sufficient or even applicable policies or regulations on the use of settlements, but rather simply related to the payment, and in some instances, reporting of settlements entered into, with no guidance regarding their consideration, development or ultimate use. It appears a number of agencies did not understand CTR's policies or regulations, particularly the obligations to report settlement agreements to CTR, regardless of the funding source.

To the extent one wishes to consider CTR's policy and regulation as being applicable policy and regulation, it was unclear to us as to whether this policy had been properly communicated to agencies. Either way, there appeared to be insufficient oversight of agency compliance with them. While CTR's policy provided agencies guidelines, they often lacked specificity on what was required. For example, the CTR policy cited that "The Agency Counsel is responsible for maintaining the original or certified copies of all documents related to a claim or identifying the repository for these records in accordance with [r]ecord retention schedules published by the Supervisor of Public Records—Records Management Unit." The CTR policy does not define what records need to be retained in accordance with specific sections of the record retention schedule. The Executive Department Settlement Policy that GOV suggests creating should provide this detail so it is clear to each department what records need to be retained and for what period of time. We were not provided a documented policy during the audit that provided this level of detail.

Additionally, during our audit, we spoke with executive offices and agencies about who must approve settlement agreements. Agency officials informed us of their office's approval thresholds of settlement

agreements. While the CTR policy and regulation may require approval of a settlement agreement of certain agency officials based on the amount of the settlement prior to CTR processing it, it is possible for an executive office to require additional approval levels. The GOV itself highlighted that executive offices and agencies have varying requirements when it stated in its reply that “[a]ll executive departments will adopt their own settlements and judgments policies.” Our audit noted that these differences in the approval of a settlement agreement were not documented in a policy during the audit period.

Also, not all settlement agreements entered into by executive offices and agencies are processed through CTR. The Executive Department Settlement Policy that GOV suggests creating could help to ensure that all executive offices and agencies have clear guidance on the authorization, documentation, and retention of settlement agreements and supporting records in instances where the settlement agreement is not processed through CTR or does not meet CTR's definition of a settlement agreement. Our office will be following up in the coming months to review these measures to ensure the results match the spirit communicated to us.

We note that it will be important that GOV ensure proper monitoring of any policy implemented to address these concerns and ensure agencies comply on an ongoing basis.

2. Executive offices and agencies have no documented policies and procedures over the use of confidentiality language in state employee settlement agreements.

There is no documented policy on the use of confidentiality language for GOV and other executive offices and agencies. Many officials of executive offices and agencies informed us that GOV officials instructed them to stop using nondisclosure agreements in their state employee settlement agreements. However, this directive (if written in email as one agency speculated) could not be located and provided to us to review during the audit. Some officials estimate that this communication took place around 2018. Below is a table detailing self-reported settlement agreements with confidentiality language (which we were not able to verify), prior to and after December 31, 2018.

Self-Reported Settlement Agreements with Confidentiality Language before and after December 31, 2018

State employee settlement agreements dated January 1, 2010 through December 31, 2018	107
State employee settlement agreements dated January 1, 2019 through December 31, 2022	52
Total	<u>159</u>

We note that 52 settlement agreements were self-reported to us as including confidentiality language after 2018, the year several agencies reported to us that a policy was put into place forbidding their use. We have been unable to verify the number of settlement agreements or the date of this policy, if it was implemented.

During the audit, we were made aware of or were able to identify 159 state employee settlement agreements that included some form of confidentiality language, limiting the discussion or disclosure of the purpose for or terms of the settlement agreement. When asked for rationale or an explanation behind the confidentiality language, agencies did not provide us any support justifying the inclusion of this language in individual settlements. See below for examples of common types of confidentiality language used in state employee settlement agreements that we found during our audit:

- Confidentiality: “Agrees to keep terms and discussions of settlement and release confidential.”
- Nondisclosure: “The Complainant agrees to keep confidential, and not disclose or communicate, the contents and/or nature of this Agreement to any other parties.”
- Non-disparagement: “Claimant shall refrain from making disparaging remarks about the Department and its leadership team.”
- Not for publication: “This Settlement Agreement is not for publication and it is without precedent or prejudice to any other current or future matter between the parties. This Settlement Agreement cannot be introduced in any other forum except to enforce its terms.”

The table below lists the types of confidentiality language reported in state employee settlement agreements.

Type of Language Used	Number of Settlements (Unverified, Self-reported)
Not for publication	85
Confidential	29
Confidential, not for publication	14
Unknown*	13
None**	8
Non-disparagement, not for publication	7
Non-disparagement	3
Grand Total	<u>159</u>

* These were settlement records self-reported by agencies as containing confidentiality requests but that could not be verified because of a lack of provided state employee settlement agreements.

** These were settlement records self-reported as containing confidentiality language. Upon review of the agreements, the language used was related to “non-precedential” language.

While some agencies explained their general use of confidentiality language, they did not produce any evidence that we could review and instead gave the following rationale without supporting documentation:

- language is included on a case-by-case basis;
- language was included prior to the 2013 Globe Case;
- language is included as part of union practices/bargaining agreement;
- language is mutually agreed upon or included as a mutual benefit;
- language is included based on guidance from GOV and the Executive Office for Administration and Finance; and
- document was not provided due to attorney-client privilege.

The policies that GOV and its agencies claimed existed regarding the use of confidentiality language were not documented or made available to our office for inspection, citing in one instance attorney-client privilege. We are, therefore, asked to believe that formal policies exist, but that those policies are secret and cannot be disclosed. As a result, we cannot determine whether these instances of confidentiality language complied with GOV or agency policies. Some departments cited to us that the prior practice barring the use of confidentiality language in state employee settlement agreements was still in force from approximately 2018.

Additionally, in discussions with the Office of the Attorney General,¹⁶ we were told that the office also has an undocumented practice to not use nondisclosure agreements or similar clauses in state employee settlement agreements when the Office of the Attorney General represents a state agency. Officials in the office were also uncertain on when this practice was started and could not demonstrate that this policy existed.

As an example, we reviewed one MassDOT state employee settlement agreement that involved a claim of sexual harassment. The complainant received payment and the other party was required to attend training. However, the agreement contained language that required the complainant to keep the content and nature of the settlement confidential. Without access to the documentation of the discussions that led to the agreement, we are unable to determine whether the confidentiality language was included at the request of the employee or added at MassDOT's request. It is also unclear whether the agency included the language because it was in the best interest of the Commonwealth or simply to ensure the incident was never discussed by the complainant.

By not having a documented policy on the use of confidentiality language in state employee settlement agreements, there is a risk that confidentially language may be used to cover up harassment, discrimination, or other unlawful behaviors, potentially allowing perpetrators to continue to remain in their position and engage in further unlawful behavior. This would be an inappropriate use of taxpayer dollars. Impacted employees may also not know that nondisclosure terms may be unenforceable under Public Records Law. If GOV does not have a transparent and accountable process to guide the use of nondisclosure, non-disparagement, or similarly restrictive clauses in state employee settlement agreements, it cannot ensure that state employee settlements are handled in an ethical, legal, or consistent manner.

Further, a lack of a documented policy on the use of confidentiality language creates the risk that confidentiality language could be used to protect or obscure from public view repeated instances of poor management or inappropriate or unlawful behavior at agencies of government. This perpetuates the risk that public employees may continue to face abusive or harassing treatment from perpetrators, and that

16. State employee settlement agreements between the Office of the Attorney General and its employees were not reviewed as part of this audit.

the taxpayers be required to pay for the costs of settlements or litigation in connection with this continued behavior.

Authoritative Guidance

The US Government Accountability Office's *Standards for Internal Control in the Federal Government*, known as the Green Book, sets internal control standards for federal entities. The Green Book defines internal controls in the following way:

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources. . . . Management should design control activities to achieve objectives and respond to risks. . . . Management should implement control activities through policies.

While GOV is not required to follow this policy, we believe it to be a best practice.

The 2013 Superior Court decision in *[Boston] Globe Newspaper Co. v. Exec. Office of Admin. and Finance*, Suffolk Sup. No. 11-01184-A (June 14; 2013) affirmed the presumption that separation, severance, transition or settlement agreements are public records and held that public records law does not allow the withholding of such agreements as a whole.

CTR's Settlements and Judgments Policy states,

Confidentiality Provisions May be Unenforceable. *Departments are put on notice that confidentiality language mandating that a settlement or settlement terms be kept confidential may not be enforceable unless the claim or certain provisions in the claim are exempted from disclosure under statutory, personnel file or privacy exemptions under the Public Records Law. The Public Records Law, G.L. c. 4, §. 7, 26 (a) and (c) exempt records from disclosure that are statutorily prohibited from disclosure, are part of a personnel file or are of a highly personal nature.*

According to the Secretary of the Commonwealth's *A Guide to Massachusetts Public Records Law*,

The public interest in the financial information of a public employee outweighs the privacy interest where the financial compensation in question is drawn on an account held by a government entity and comprised of taxpayer funds. Additionally, the disclosure of the settlement amount would assist the public in monitoring government operations. Therefore, exemptions to the Public Records Law will not operate to allow for the withholding of settlement agreements as a whole. However, portions of the agreements, and related responsive records, may be redacted pursuant to the Public Records Law.

In June 2020, the state of Montana issued a performance audit titled "State Employee Settlements: Trends, Transparency, and Administration." In this audit, a recommendation is made that a balancing test be implemented to determine whether confidentiality clauses should be used if an individual's privacy interest outweighs the public's right to know details of the agreement.

While GOV is not required to follow these policies, we believe them to be best practices.

The use of confidentiality language in state employee settlement agreements has also been the subject of recent legislation in federal and state governments. Regarding the use of nondisclosure language, the federal government approved the Speak Out Act on December 7, 2022. This act describes the limitation on judicial enforceability of nondisclosure and non-disparagement contract clauses relating to sexual assault disputes and sexual harassment disputes in settlement agreements. The Silenced No More Act legislative model has been used in both California (enacted on January 1, 2022) and Washington (enacted on June 9, 2022). This law bans confidentiality provisions in state employee settlement agreements relating to the disclosure of underlying information concerning to any type of harassment, discrimination, or retaliation at work including age, ethnicity, disability, sexual orientation, religion, national origin, pregnancy, or race. Although not required, these pieces of legislation can be considered a best practice.

Additionally, Massachusetts Senate rule 11G, first put in place in 2019, states the following regarding the use of confidentiality clauses in settlement agreements:

The Senate shall not include or permit a nondisclosure, non-disparagement or other similar clause in an agreement or contract between the Senate and a member, officer or employee. The Senate shall not seek to enforce a nondisclosure, non-disparagement or other similar clause in an existing agreement or contract between the Senate and a member, officer or employee. This rule shall not be suspended.

While GOV is not required to follow these policies, we believe them to be best practices.

Reasons for Issue

GOV did not provide a reason why policies regarding the use of confidentiality language in state employee settlement agreements were not created by GOV and communicated across executive offices and agencies. Although multiple agencies referenced guidance provided by the prior gubernatorial administration, none were able to produce evidence of its existence over the course of the audit.

Regarding the use of non-disparagement clauses, it was explained to us that they can be mutually beneficial to the parties. We could not confirm that these clauses were mutually beneficial, however, without documented evidence of the discussion or request for its inclusion in the settlement documents.

Recommendations

1. GOV should establish and implement policies and procedures regarding the use of confidentiality language in state employee settlement agreements and the required supporting documentation justifying its inclusion. These policies and procedures should be communicated to all executive offices and agencies.
2. GOV's policy on the use of confidentiality language in an employee settlement agreement should weigh the employee's right to privacy versus the public's right to know how state funds are spent. In accordance with the 2013 Superior Court case with Globe Newspapers (Civil Docket# SUCV2011-01184), information determined not to be public record should be redacted when a state employee settlement agreement is requested for public inspection.
3. GOV's policy on the use of confidentiality language in a settlement agreement should not protect an employee with detrimental behavior (e.g., harassment or abuse) in the workplace.
4. The Governor should consider implementing an executive order to limit the use of confidentiality language in employee settlement agreements. This order should implement a balancing test to ensure that the privacy rights of the individual(s) involved in a settlement agreement are measured against the public's right to know how state funds are spent and if there is mismanagement or mistreatment of employees occurring in state agencies.

Auditee Response

The executive department cannot concur with Audit Finding 2 to the extent that it appears to overlook the Comptroller's Settlement and Judgments Policy which explains that "confidentiality language mandating that a settlement or settlement terms be kept confidential may not be enforceable"; that "[c]onfidentiality provisions will not create protections that do not already exist under the Public Records Law or other statutory bar to disclosure"; and that "the name of a recipient payee of a settlement or judgment payment made from the settlement and judgment account is considered a public record."

Since 2018, the policy of the executive department has generally precluded the use of nondisclosure agreements. As recognized in the report, the Attorney General's Office and the Office of the Governor have advised since 2018 that executive branch offices and agencies should not include nondisclosure agreements as a part of employee settlement agreements.

Since taking office in 2023, Governor Healey and Lieutenant Governor Driscoll have been outspoken in their direction to executive branch offices and agencies: nondisclosure agreements are not to be used. Government benefits from transparency, and anyone who has suffered mistreatment should have the right to tell their story and advocate for change.

As the audit report documents, the use of non-disclosure agreements in employee settlements was rare during the audit period, particularly in recent years. Based on our review of [Appendix A] to the audit report, we believe that fewer than 60 settlements during the audit period included language indicating that a settlement or settlement terms should be kept confidential, including just twelve settlements with documented confidentiality language between 2018 and 2022. These twelve settlements comprise about 1% of settlements between 2018 and 2022. And of these twelve settlements, seven appear to arise from one agency repeating an identical clause in its agreements without regard to the circumstances of each case. The audit's findings indicate that such clauses continue to appear in sporadic cases largely due to the use of dated "boilerplate" agreement templates in some agencies. To the extent non-disclosure language remains in any form agreements, we agree it should be eliminated.

Finally, we note that the report appears to conflate non-disclosure agreements, which are forbidden by policy, with several other contract provisions, which serve legitimate purposes in appropriate circumstances. Within its definition of "confidentiality language," the report includes "not for publication" clauses (appearing in about 100 of the 159 agreements identified as including confidentiality language) and "non-disparagement" clauses (appearing in about 10 of the 159 agreements identified as including confidentiality language). Contrary to [the Office of the State Auditor's (OSA's)] interpretation, neither type of clause seeks to limit a settling employee from discussing the purpose or terms of a settlement agreement.

A "not for publication" clause is a standard clause in labor grievance settlements reciting that the agreement will not be treated as precedent, whether by the settling employee, their employer, or their union. "Non-disparagement clauses" similarly do not limit employees from discussing the purpose or terms of their settlement agreements. These clauses typically involve limits on defamatory or derogatory statements, but do not limit discussion of a settlement or the reasons for a settlement. In our experience, such clauses are most commonly requested by employees themselves who seek a sense of finality and assurances against reputational harm. . . .

These points of dispute should not overshadow our fundamental agreement with OSA that non-disclosure agreements erode public trust and are largely unenforceable as a matter of law in Massachusetts.

. . . The report notes a "risk [of] confidentiality language [being] used to protect or obscure from public view repeated instances of poor management or inappropriate or unlawful behavior at agencies of government" or "public employees . . . continu[ing] to face abusive or harassing treatment from perpetrators." While it is appropriate for the report to note this risk, we observe that the report identifies no examples of such things occurring during the audit period. . . .

To further our shared goal, the Executive Department Settlement Policy will include clear guidelines prohibiting the use of non-disclosure language except in highly limited circumstances where unusual privacy interests may be at stake, such as a demonstrated safety need to protect a complainant's identity from public disclosure.

Auditor's Reply

In its response, GOV cited a statement within the CTR Settlements and Judgments Policy explaining to departments that “confidentiality language mandating that a settlement or settlement terms be kept confidential may not be enforceable”; that “[c]onfidentiality provisions will not create protections that do not already exist under the Public Records Law or other statutory bar to disclosure”; and that “the name of a recipient payee of a settlement or judgment payment made from the settlement and judgment account is considered a public record.” We again note here that CTR’s policy and regulations are not enforceable policy by the employer—they do not bind an agency in an executive office to any particular course of action related to settlement agreements. In the instances cited, these statements appear to provide information and advise state agencies. They do not prohibit state agencies from using clauses that restrict either party’s ability to speak out about the settlement agreement.

These statements do communicate to agencies that confidentiality clauses “may not be enforceable”. This language simply means that a settlement agreement that contains a confidentiality clause or agreement may not be able to be enforced by either party. There is no policy, however, prohibiting or permitting them or regulating their use. Additionally, we are concerned that an employee who enters into a settlement agreement with a confidentiality clause is unlikely to be familiar with CTR Settlements and Judgments Policy and may not understand that this clause may be unenforceable. Including such a clause in a settlement agreement, while unenforceable, may result in an employee’s right to disclose or discuss the terms and circumstances of their settlement agreement being unlawfully restricted.

As we were told and as GOV stated in its reply, there was supposed communication around 2018 to allegedly, generally preclude the use of non-disclosure agreements. As noted in our audit there was no documented evidence to confirm this claim. We were therefore unable to review any documentation of what this supposed communication said, what confidentiality clauses were supposedly prohibited from use, and what exceptions could supposedly be made in their use.

Despite these allegedly promulgated policies to prevent the use of settlement agreements including non-disclosure language or other similar clauses, it is important the Governor’s Office recognize and accept that settlement agreements which included confidentiality language continued to be executed well after 2018. We remain concerned that GOV appears to still not recognize the significance of this issue as it claims these policies exist while simultaneously failing to produce any supporting documentation to

support its claims—also recognizing that these agreements were nonetheless executed between 2018 and 2022, despite supposed verbal policies being conveyed and implemented.

Our audit teams place a higher bar on policies that we cannot even review and which purport to “generally” perform certain tasks. In other high-profile instances, without strong controls, “generally following” a policy, law or standard has been used to justify non-compliance and occasional outright abuse. In our recent audit of the Massachusetts Convention Center Authority, we found significant challenges with supposed, general compliance with Chapter 30B of the Massachusetts General Laws (public purchasing law).

“General” compliance seemed to have been used as an excuse for non-compliance. GOV’s response states that “Governor Healey and Lieutenant Governor Driscoll have been outspoken in their direction to executive branch offices and agencies” that “nondisclosure agreements are not to be used.” However, we were not provided with any documentation to support this statement.

We note that this claim is regarding a time period which our team did not include in the audit report. However, since GOV chose to raise this in its response, we will comment that what we do know, as GOV is aware, is that the Auditor did draft an executive order for the Governor’s and Lieutenant Governor’s review regarding the use of non-disclosure agreements across executive branch offices and met with them to discuss the matter. Neither the Auditor, nor this office, received any conclusory communication in return—verbal or otherwise—that demonstrated that the Lieutenant Governor or Governor had even reviewed any of the matters raised by the Auditor in her draft executive order. Should GOV wish to provide documented examples of the Governor and Lieutenant Governor being “outspoken in their direction to executive branch offices and agencies” that “nondisclosure agreements are not to be used”, we would welcome the opportunity to examine such examples so as to include them in our Post Audit Review.

Our team does appreciate and recognize that in GOV’s written response to our audit finding, it states, “Government benefits from transparency, and anyone who has suffered mistreatment should have the right to tell their story and advocate for change.”

We agree. We caution, however, that all agencies are not required to follow the Administration’s statement of opinion on these matters, true and heartfelt as it may be. We commend the administration on making this statement in response to our audit findings yet emphasize that the previous Administration was also said to have made similar statements regarding the use of these agreements, and yet these

agreements continued to be executed. And a gubernatorial successor could have a different opinion regarding these matters. Therefore, while these words are very important and meaningful, this administration has the power and, therefore the responsibility, to implement regulations and to propose laws, that are appropriately monitored and overseen, to help ensure the increased accountability and transparency that is sorely needed around the use of confidentiality provisions that leverage taxpayer dollars across executive offices and agencies. We urge GOV to act with a sense of urgency.

GOV states in its response that it agrees to include in its proposed Executive Department Settlement Policy “clear guidelines prohibiting the use of non-disclosure language except in highly limited circumstances where unusual privacy interests may be at stake, such as a demonstrated safety need to protect a complainant’s identity from public disclosure.” This demonstrates that GOV agrees that the lack of a documented policy over the use of non-disclosure language exists and should be clarified in a written policy. We wish to note that these “highly limited circumstances where unusual privacy interests may be at stake” should be clearly articulated, subject to a rigorous documented request and review process, and subject to a fully documented oversight process to ensure that carve outs and exemptions are not abused to conceal illegal, unlawful or unethical actions. We strongly recommend GOV revisit recommendation 4 and commit to taking stronger steps to help ensure accountability.

GOV’s response claims that our report “conflates” non-disclosure agreements with those containing other contract provisions such as “not for publication” and “non-disparagement” clauses. It certainly does not. The information and tables in this finding clearly break down and differentiate the different types of confidentiality language reviewed by our audit team. We hope GOV will reexamine what is clearly apparent in this finding that gives insight into the breakdown of its agencies’ self-reported settlement claims regarding the use of different types of confidentiality provisions.

Conversely, GOV appears to be conflating “non-disclosure agreements” with those containing other contract provisions such as “not for publication” and “non-disparagement” clauses—potentially for the purposes of minimizing the overarching issue, that our office found no effective system in place for tracking, monitoring and preventing the abuse of confidentiality provisions in taxpayer-funded settlement agreements that could result in protecting bad actors and silencing victims. We don’t know, what we don’t know—and we don’t know nearly as much as we should regarding the use, and potential abuse, of these confidentiality provisions and our taxpayer dollars due to the significant scope limitations repeatedly referenced in this report. We urge the Governor’s Office to fully recognize our valid and appropriate

concerns without attempting to minimize the findings highlighted in this report—as that does not serve the taxpayer or our shared desire to protect victims rather than perpetrators of abuse in our own state government.

We reviewed employee settlement agreements for not only confidential/non-disclosure language but also for other language restricting an employee's ability to discuss the terms, conditions, circumstances, etc. surrounding their employee settlement agreement or the issues related to their employment. As one example, "non-disparagement" clauses can prevent a former employee from discussing their prior employment, their employer or the circumstances around their departure because those circumstances would be viewed as disparaging of an agency. While we accept that "not for publication" may be standard language in labor grievance settlements with a particular meaning, this limited meaning may not be clear to an employee unfamiliar with labor law, especially when other terminology, such as "this agreement shall not establish a precedent" is not used. It is reasonable to foresee the risk that an employee may construe that phrase literally and conclude that they are unable to talk openly or otherwise publish the terms, conditions, circumstances, etc. surrounding their employee settlement agreement.

Non-disparagement clauses, particularly those imposed on employees entering into settlement agreements, are clearly restrictive and do limit an employee's ability to freely discuss the terms, conditions, circumstances, etc. surrounding their employee settlement agreement. The abuse of "non-disparagement clauses" to limit an employee's ability to discuss their experiences pertaining to unlawful or unethical behaviors and conduct, is not only inconsistent with best practices and public policy but may be unenforceable. Employees entering into these types of settlement agreements may not be aware of these facts since these alleged policies have not been communicated clearly or in writing, as we were informed, even to the state agencies that would be entering into these agreements.

There is an unclear picture on the true number of settlement agreements and non-disclosure agreements entered into by agencies across Massachusetts because many agencies could not produce records we requested and because we were denied the opportunity to review documents needed to conduct our Data Reliability Assessment. We believe GOV's conclusions regarding the number of non-disclosure agreements entered into are self-serving, as GOV has refused to allow us to access documents needed to complete our review. Because we had to rely on self-reported and unverified data, the total number of agreements could indeed be much larger than what agencies willingly reported, contrary to GOV's statements regarding the alleged rarity of their use as stated in GOV's response below:

GOV asserts in its response that “the use of non-disclosure agreements in employee settlements was rare during the audit period, particularly in recent years . . . 2018 and 2022.”

Quite the contrary, our report calls out the unfortunate reality that we were disappointingly unable to draw these types of broader-based conclusions, in one way or another, because GOV and executive offices and agencies only provided us access to documents that they could allegedly find while preventing our office from verifying its claims. Our audit report simply reflects the number of self-reported non-disclosure agreements we were provided access to, rather than a complete population, verified for accuracy. So while GOV may indeed actually believe that fewer than, “60 settlements during the audit period included language indicating that a settlement or settlement terms should be kept confidential” these claims were not able to be verified because of the scope limitations cited in this report. We do not believe that GOV or its executive agencies know the full scope of the use of confidentiality provisions used in settlement agreements. We find this to be problematic.

Our office has strong concerns that, based on its response, GOV appears to still not fully recognize the glaring issue that we were not able to verify claims regarding the use of settlement agreements containing non-disclosure language or other similar clauses due to significant scope limitations. As a result, none of us can really know how large this issue is or whether or not the Office of the Governor or executive agencies may be hiding certain, unflattering or unlawful non-disclosure or other types of confidentiality agreements.

Especially concerning is that, in its footnoted response, GOV claims:

The report notes a "risk [of] confidentiality language [being] used to protect or obscure from public view repeated instances of poor management or inappropriate or unlawful behavior at agencies of government" or "public employees . . . continu[ing] to face abusive or harassing treatment from perpetrators." While it is appropriate for the report to note this risk, we observe that the report identifies no examples of such things occurring during the audit period.

We note that our audit identifies multiple instances, highlighted in [Appendix A](#), regarding the use of confidentiality provisions in cases of alleged harassment or discrimination. GOV should revisit its opinion stated in its footnoted comment above and ensure that its new policies, reflect a deep understanding of the rationale used for its executed confidentiality agreements. Executive office and agencies themselves gave us the list of settlement agreements that we examined and therefore should know, clearly, what agreements they gave to our team for inclusion in this report.

It is concerning that this footnoted statement, appears not to fully contemplate that, where there are potential, repeated instances of “poor management or inappropriate or unlawful behavior”, there are concerns that these documents/records **may** have indeed been inappropriately destroyed or inappropriately withheld from our audit team. The obscurity only further demonstrates the real and urgent need for significantly increased accountability, oversight and management, by GOV, of these agreements across state government.

We cannot know if there are many, many more confidentiality agreements floating around state agencies, and our Governor's office, that this report was not able to identify. Because of scope limitations, we cannot say for certain how many more settlement agreements that include confidentiality language actually exist. This should concern the Office of the Governor.

We appreciate the acknowledgment that, while the use of confidentiality provisions may be related to an agency's use of a boilerplate template, this is yet another reason to provide much stronger oversight and ensure that such templates are regularly reviewed and updated to ensure they no longer include such restrictive language. This also emphasizes the critical importance of clearly written policies, procedures, executive orders and laws, including ongoing monitoring, by GOV and appropriate other agencies to ensure instances of noncompliance are identified and addressed to increase transparency and accountability and to protect employees and taxpayer dollars.

With respect to non-disparagement and not for publication clauses, there was no documented policy provided to us by any agency on the use of these types of confidentiality clauses in employee settlement agreements. Additionally, there was no database used by state agencies denoting which settlement agreements contained confidentiality clauses. Therefore, when executive offices and agencies were compiling listings of employee settlement agreements for us to use in our audit, we were only able to draw conclusions regarding self-reported settlement agreements containing these clauses. Based on its response, GOV may take some measures to address our recommendations. However, also based on its response, we remain concerned and encourage GOV to ensure its proposed solutions are sufficient so executive offices and agencies do not suffer from same lack of oversight and enforcement noted throughout our audit.

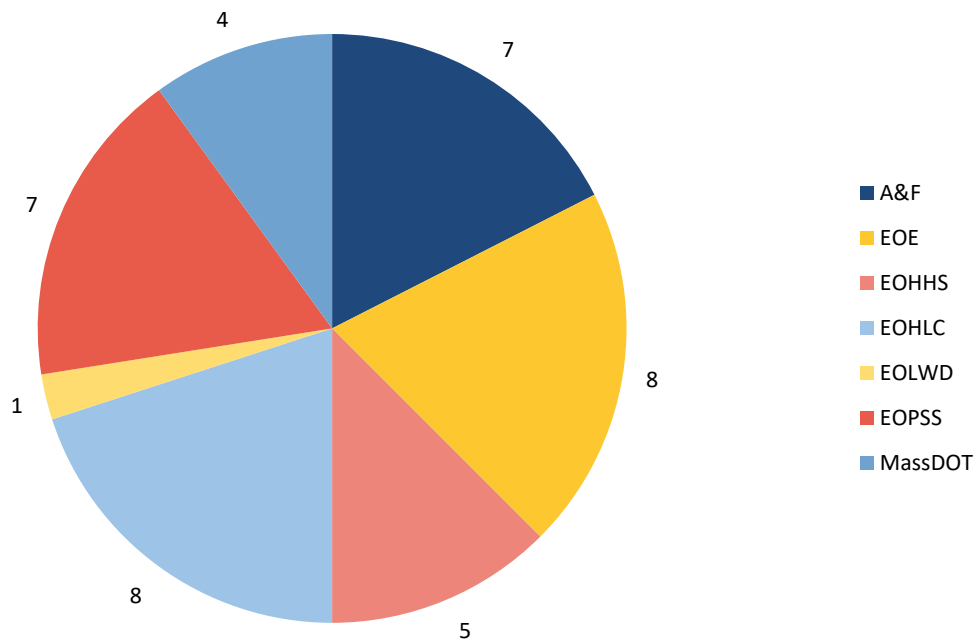
Any policies, regulations, executive orders or laws implemented to address these issues should include a balancing test to ensure the privacy rights of the individual(s) involved in a settlement agreement are

measured against the public's right to know how state funds are spent, if there is mismanagement or mistreatment of employees occurring, and if there is unlawful or unethical behavior within executive offices and agencies.

3. Executive offices and agencies did not report 40 state employee settlement agreements to the Office of the Comptroller of the Commonwealth when required.

During the review of the 93 employee settlements sent to CTR, it was confirmed 56 were required to be reported for review. CTR found 40 of those 56 (71.4%) monetary state employee settlement agreements across 7 executive offices and agencies, totaling \$104,209, were not reported as required. Additionally, due to a lack of documentation, there were 19 state employee settlement agreements that we could not determine whether they were required to be reported to CTR. According to CTR's Settlements and Judgments Policy, CTR reviews monetary settlement agreements, regardless of whether the settlement agreement is funded through the Settlements and Judgments fund or self-funded by the state agency. This review by CTR is performed to ensure proper accounting and tax reporting for payment of the employee settlement agreements.

The following is a breakdown of state agencies that failed to report to CTR:



Failure to report settlement agreements is a violation of regulation and policy and may result in the improper reporting of the state employee settlement agreement in the state's accounting system and by the state employee to the Department of Revenue and the Internal Revenue Service. According to CTR's Settlements and Judgments Policy, agencies are responsible for making any corrections necessary to bring any settlement documentation or payments into compliance if payment was made contrary to the instruction of CTR.

Authoritative Guidance

CTR's Settlements and Judgments Policy states,

*All "monetary" settlements/judgments **must** be reviewed by CTR prior to payment to ensure that the payments are made using the appropriate codes and that proper tax withholdings and tax reporting are made, **irrespective of whether or not the Department plans to pay the claim with Department funds or through the Settlement and Judgment Reserve (1599-3384) or other authorized account.***

A "monetary" settlement or judgment includes any action which results in a payment being made to, or on behalf of a Claimant, or which may impact "creditable" service for retirement calculation purposes for a state employee, or which may result in a future commitment of funds, services or state resources.

- *A settlement or judgment on an employee grievance which makes an adjustment to vacation or sick time or other leave (which does not have any associated payments, reimbursements or changes in creditable service) will be considered a "non-monetary" settlement or judgment which does not have to be reviewed by CTR prior to the payroll adjustment. (Note that payroll "adjustments" may not be made in lieu of back pay or other salary payments, and may not be made for leave that has not actually been earned, accrued or for time actually worked.)*
- *A settlement or judgment on an employee grievance which reinstates, promotes, or makes an employee "whole" for a number of days is a "monetary" settlement or judgment" and must be reviewed by CTR for the proper processing instructions. These amounts may not be processed as regular payroll payments using regular pay or any other payroll earnings codes to avoid the CTR approval process, to make payments from current payroll funds which are not authorized by CTR or to avoid the settlement process.*

In June 2020, the state of Montana issued a performance audit titled "State Employee Settlements: Trends, Transparency, and Administration." In this audit, a recommendation is given stating the following:

- A. Defining what constitutes a state employee settlement and what should be considered when determining the cost of a state employee settlement, and*
- B. Requiring reporting of state employee settlements in the State Accounting, Budgeting, and Human Resource System, including defining what information should be reported.*

While GOV is not required to follow these policies, we believe them to be best practices.

Reasons for Issue

The state employee settlement agreements that were not reported to CTR were all paid through the agencies' own funds. However, some agency officials told us that it was their understanding that CTR's policies did not require the agency to report an employee settlement agreement to CTR if it was paid out of their own agency funds. State agencies do not have any of their own documented policies over the reporting of state employee settlement agreements. Agencies also report that they were not aware of CTR's regulation requiring reporting of all settlement agreements to CTR, even if they are paid using agency funds. (See Finding 1.)

Recommendations

1. GOV should establish and implement policies and procedures over the reporting of state employee settlement agreements to CTR. These policies and procedures should be consistently communicated across all executive offices and agencies and should comply with all CTR regulations.
2. All executive office employees should receive training on these policies and procedures.

3. GOV should establish sufficient monitoring controls to ensure compliance and the appropriate management of this issue.

Auditee Response

OSA identified 40 "monetary" state employee settlement agreements, totaling \$104,209, and all paid through agency funds, that were not reported to the Office of the Comptroller in accordance with the Comptroller's Settlements and Judgments Policy. While we are uncertain of how OSA defined "monetary" agreements for purposes of this analysis. . . .

. . . The Office of the Comptroller's Settlements and Judgments Policy limits its applicability to a subset of monetary settlements and excludes those settlements that result in "retroactive salary adjustments, unpaid regular time, collective bargaining agreement increases or other routine payroll corrections of errors, or adjustments." (S&J Policy at p.1). . . .

We agree that offices and agencies must follow the Comptroller's reporting requirements, even when the settlement at issue requires no disbursement from the settlements and judgments fund. As indicated above, the Office of the Governor will collaborate with the Office on the Comptroller on new training materials to ensure understanding of and compliance with the Comptroller's requirements, including reporting requirements. In addition, as part of their adoption of their own updated settlement and judgment policies, executive department agencies will be expected to implement appropriate monitoring controls to address this issue.

Auditor's Reply

For GOV's edification, the 40 monetary state employee settlement agreements identified in this finding did meet the definition of a "monetary" settlement according to CTR's Settlements and Judgments policy. As referenced in our finding, 71.43% of the settlement agreements tested during our audit were not reported to CTR even though CTR officials confirmed that they were required to be reported by executive offices and agencies. We note that even when executive offices and agencies pay for a settlement agreement with their own funding, they **must** still report the agreement to CTR which ensures its proper coding in the state accounting and reporting system. The lack of clarity across executive branch agencies further underscores the urgent need to clarify, document and communicate policies and ensure appropriate monitoring of employee settlement agreements, as there appears to even be confusion as to what a "monetary" settlement is, even though we simply utilized the same definition taken from the CTR's Settlements and Judgments policy which we were told was the existing statewide policy that GOV says it followed.

Based on its response, GOV plans to take some measures to address our concerns in this area. We will be following up during our Post Audit Review to track progress.

4. Agencies did not provide all requested employee settlement agreements.

We reviewed a sample comprising 108 monetary state employee settlement agreements to determine whether agencies maintained supporting documentary evidence. In doing this test, we found that agencies did not provide 18 employee settlement agreements totaling \$620,304. These were a mix of settlement payments reportedly paid through a state agency’s own funds or the Settlements and Judgments fund. The table below details, by agency, the settlement agreements not provided to us.

Settlement Agreements Not Provided by Agency—Substantive Testing Sample

Agency	Total Settlement Agreements Not Provided
MassDOT	2
EEA	10
EOPSS	1
EOHHS	5
Grand Total	<u>18</u>

Additionally, when performing our data reliability assessment using a separate judgmental sample, we requested a copy of state employee settlement agreements for our sample (254 requested in total). We conducted this test to ensure the accuracy of the state employee settlement agreement lists provided to us by the agencies (employee names, execution dates, use of confidentiality language). Agencies were unable to provide 29 employee settlement agreements in this sample, this time totaling \$270,976. The table below details, by agency, the settlement agreements not provided to us.

Settlement Agreements Not Provided by Agency—Data Reliability Assessment Testing Sample

Agency	Total Settlement Agreements Not Provided
EOHLC	2
EOED	3
EEA	5
EOHHS	19
Grand Total	<u>29</u>

Agencies' failure to provide settlement agreements to our office, which has the legal authority to receive and analyze them under state law, creates the reasonable concern that information is being unlawfully withheld. Indeed, across the two tests identified above, 47 executed settlement agreements were not provided to us. This could negatively affect public trust in government and obscures from view how public dollars are being spent. Since these records were not provided to us, we were unable to test (1) whether these agencies complied with CTR's reporting requirements and (2) that settlement lists provided to us were accurately described. Without sufficient documentary support, there is a greater than acceptable risk that some or many employee settlement agreements that should have been reported to CTR were not. CTR would therefore have been unable to ensure proper accounting of these settlement agreements.

Authoritative Guidance

The Massachusetts Statewide Records Retention Schedule requires state agencies to retain records relating to an employee settlement agreement in accordance with the following guidelines:

E05-01: Employee Complaint/Investigation/Disciplinary Records

Retain 6 years after last activity.

Documents informal or formal investigations into alleged employee misconduct. Includes complaints, notes, statements, and determinations and record of actions taken.

E05-02: Employee Grievance/Complaint Records . . .¹⁷

Documents work related complaints from non-union employees and grievances from union employees relating to their job environment. Includes complaints, grievances, hearing notices, arbitration findings, meeting notes, dispositions, and related correspondence.

E05-02 (a): Landmark cases

Permanent

E05-02 (b): Case summaries and final decisions

25 years

E05-02 (c): All other records

Retain 6 years final resolution.

17. According to the Archivist of the Commonwealth of Massachusetts archives office, there was a typographical error in Section E05-02 of the Statewide Record Retention Schedule where the word "Permanent" was listed directly following the E05-02 header. The reference to permanent retention is to Landmark cases.

E05-03: Personnel Action Records

See sub-schedules for specific retention periods.

Documents individual or class actions relating to reclassifications, promotions, demotions, transfers, layoffs, reductions-in-force, severance agreements, and terminations. Includes justification documentation, working notes, requests, employee notifications and responses, appeals, and related correspondence.

E05-03 (a): Landmark or policy setting cases

Permanent

E05-03 (b): Case summaries and final decisions

Permanent

E05-03 (c): All other records

Retain 6 years final resolution.

Reasons for Issue

No policies and procedures were documented that defined how long state agencies should retain employee settlement agreements in accordance with the Massachusetts Statewide Record Retention Schedule. Some agencies told us that settlement agreements should be retained for six years under E05-03 of this schedule. However, neither this time period nor the method for storing settlement agreements were documented in a policy. Therefore, when records were requested to support the employee settlement agreements reported to us, some state agencies had difficulties locating and producing these records, as some reported that they may have been destroyed because their records retention period had allegedly expired. Additionally, some settlement agreements were not provided to us by agencies in a timely manner in accordance with the law (Section 12 of Chapter 11 of the General Laws).

GOV could not provide reasoning as to why state agencies within the executive branch did not have a centralized list of employee settlement agreements and supporting documentation for employee settlements that fell within a record retention period.

Recommendation

GOV should ensure that state agencies comply with public records law and should develop policies and procedures to ensure that state employee settlement agreements are retained in accordance with the Massachusetts Statewide Record Retention Schedule. GOV should ensure that these records are provided

to our office upon request. This policy should consider the creation of a centralized list of such state employee settlement agreements and the location of the storage of these records to facilitate production of these records upon request.

Auditee Response

In responding to this audit, the executive department worked collaboratively and cooperatively with OSA to locate and produce information and documents from a thirteen-year audit period, nine years of which fell outside of the presumptive records retention period. Hundreds of employees across at least seventy-five offices and agencies collectively dedicated hundreds of hours, including through searches of archived paper files and electronic databases, to compile and produce information on the over 2,000 settlement agreements discussed in the report.

We respectfully disagree with the report's assertion that "57 executed settlement agreements" requested by OSA "were not provided." Agencies were unable to locate a small number of settlement agreements requested by OSA, many fewer than 57, particularly agreements that pre-date 2019.

. . . Audit Finding 4 appears to: (a) treat settlement agreements that were produced after OSA's initially requested deadlines as having been not produced at all (including, for example, agreements from EOPSS and EOHLC); and (b) include settlements that predate OSA's testing period of 2019 to 2022. . . .

Over the thirteen-year audit period, many executive department offices and agencies underwent broad organizational changes or consolidated their human resources functions, updated their computer systems, and sent older case-related materials to offsite paper storage. In each case in which settlement agreements could not be located, the offices and agencies explained or offered to explain to OSA how its searches were conducted and why certain requested agreements could not be found. Consequently, we disagree with the report's unfounded implication that settlement agreements may have been "unlawfully withheld" from OSA. We are confident that all individuals involved in conducting and responding to this audit—OSA and executive department employees alike—acted diligently and in good faith.

In this regard, the executive department and OSA have also attempted in good faith to resolve a legal disagreement over the applicability of G. L. c. 66A to certain requests made as part of the audit. In July 2024, OSA asked to review of a random sampling of several hundred personnel records of current and former executive department employees to "test" for the presence of settlement-related materials. Following consultation with the Attorney General's Office, we advised OSA that the request to review unredacted personnel information in a large number of personnel records—inclusive of personal identifying information, bank account numbers, social security numbers, medical information, and disciplinary information, for both employees and their family members—likely triggered the protections of G. L. c. 66A. See G. L. c. 66A, s. 2(k) (requiring agencies to "maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed");

Torres v. Att'y Gen., 391 Mass. 1, 12 (1984) (G. L. c. 66A applies to requests made by the Attorney General's Office for confidential, personal information, even in the context of ongoing litigation); Allen v. Holyoke Hosp., 398 Mass. 372, 381 (1986) ("[W]here a party . . . seeks materials arguably protected by [G. L. c. 66A], that party must demonstrate that, based on the particular circumstances of the case, the collective public interest in disclosure warrants an invasion of the data subject's privacy.")

To try to resolve the G. L. c. 66A issue, the executive department offices and agencies offered to review the personnel records at issue and produce to OSA any responsive information that might be located. OSA rejected this suggestion, contending that G. L. c. 66A was categorically inapplicable to its request. The Attorney General's Office thereafter suggested that the impacted agencies should send notices to data subjects under G. L. c. 66A, s. 2(k) and, absent any court orders to the contrary, provide OSA with access to the requested personnel records. To facilitate OSA's access to the documents, these notices were sent in early December 2024. To date, none of the employees have sought a court order to block review of the records.

As we have previously advised the OSA, the agencies are now prepared to schedule time for OSA's review of all records for which there is no court order to the contrary. As such, the report's suggestion that OSA has been "denied access" to the requested personnel records is incorrect. We have also acknowledged that OSA's review would be without prejudice to any of OSA's legal positions on the applicability or inapplicability of G. L. c. 66A.

Auditor's Reply

We appreciate the efforts that all 75 agencies included in this audit, and their employees, made to produce settlement listings, produce requested records, and participate in interviews with us to explain their processes in entering into, processing, and documenting employee settlement agreements. We are sure the Governor's Office similarly appreciates the countless hours, weeks and months spent by our audit team, making requests, analyzing records and drafting this report alongside this Administration to make government work better.

There were 57 settlement agreements requested during the course of the audit that agencies did not provide upon our request. We revisited the responses from the agencies that came in late and after our requested timelines and revised the figure, which still shows 47 settlements agreements were not provided to us in order for us to conduct our tests.

Some agencies had noted on their settlement listings that they were aware of a settlement agreement's existence through their search of relevant records, but they were unable to locate the actual settlement agreement itself. Some of our audit requests were made at random and did not take into consideration an agency's notation that the settlement agreement could not be located while we were performing our

audit testing. Additionally, records were expected to be provided to us in a timely manner. We waited months on end, in many cases for some requested records, that were provided to us only after our testing was already performed. We are sure GOV understands, even though it is not required to comply with the public records law, that the public records law generally requires state entities to produce a response within 10 business days. The Office of State Auditor, under M.G.L. Chapter 11 Section 12 asks for records to be provided to our office within a reasonable time frame. GOV and executive offices and agencies failed to fulfill our audit requests for information in a timely fashion. For several months, our office worked—in good faith—to accommodate the executive offices and agencies as they compiled the settlement lists. While agencies did provide periodic updates, we experienced months-long waiting periods. The timeframe of receipt of settlement lists ranged from one to six months (see table on report page 23) with an average wait time of three months from the date of the initial request.

Additionally, five agencies requested extensions in order to produce documents for our substantive test work. The explanation for these extension requests varied from scheduled vacation to time needed to retrieve paper documents from storage. While we did eventually, and thankfully, make some progress with agencies, whose workers appeared invested in working together with our office, we would unfortunately reach legal impasse with the Office of Governor, itself, which had cited FIPA (Chapter 66A) to direct agencies to withhold documents from our office. As we have already made clear, it was not feasible to grant yet additional extensions, or allow for an additional delay, in December, at the end of our already significantly delayed audit review.

Agency Requests for Extensions

Agency	Explanation for Extension Request
A&F	Additional documents in paper storage.
EOE	Staff out on vacation.
EEA	Staff out on vacation.
EOLWD	Staff out intermittently.
EOPSS	Increased workload.

We certainly acknowledge that agencies have moved offices through the years and undergone reorganization, restructuring and other activities over the last 13 years that may have impacted their ability to provide to us requested records. In this immediate instance, there were indeed challenges claimed by executive offices and agencies, and our audit report reflects the challenges that they cited.

The Office of Governor, originally told our office it could not access documents we needed because the prior administration still controlled them. (See [Appendix F.](#))

Months later, GOV and executive agencies and offices conceded it could produce the documents, only to then refuse to allow us to perform our data reliability assessment to ensure that a full and accurate record was indeed provided to us. These repeated delay tactics added significant stress to the work of our office as we sought to navigate how to complete our audit work timely, considering this audit covered 75 agencies that—as you are aware—all fall under a requirement to be audited every three years.

The overall difficulty in finding prior records underscores to us the need for GOV to ensure significantly improved centralized management and oversight of these issues. We believe centralized management and record keeping, in a one-stop shop—so to speak, could improve access, transparency and accountability while reducing risk for the Commonwealth, its taxpayers and its employees.

Furthermore, the request to review random samples of personnel files of individuals who were employed with those entities during the audit period was part of our office's Data Reliability Assessment (DRA). This step is required by GAGAS, the standard by which we are required by statute to conduct our audits, to ensure the completeness and accuracy of the data received from auditees. We have never had a problem with accessing these types of records to complete our work which helps to ensure that the law is not being broken and that abuse and fraud in government are weeded out. In fact, a few recent examples of when we reviewed personnel files as part of our audit work, was our audits of the Massachusetts Convention Center Authority, Southfield Redevelopment Authority, Hampden County District Attorney's Office, Department of Industrial Accidents, and Worcester County Sheriff's Department.

It is concerning that GOV is asserting new privileges for itself regarding the review of records that we have always had access to and very much need to be able to access in order to fulfill our duties to the taxpayers. Regarding sensitive information, GOV should know that we could not have conducted our recent audit of the Department of Children and Families that highlighted a need for significant improvements to be made regarding children's medical treatment and mental health services. Without access to documents containing very sensitive information, we would not have been able to examine 51A reports, regarding child abuse and neglect cases, for our audit of The Department of Early Education and Care.

It is truly concerning that GOV took it upon itself, against our office's repeated and well-documented directives not to do so, to reach out to former and current public employees to invite them to "object to"

and “quash” access to documents we needed to complete our audit of executive offices and the agencies, not those individuals. Employees in the Office of Governor, acted in a manner inconsistent with Government Auditing Standards, by reaching out to individuals without our audit team's request or consent. We can imagine how the Office of Governor would respond if our team acted as though we were speaking on its behalf, against its repeated, documented directives not to do so.

The statement given by the Office of the Governor in its response to justify its actions by stating that no one has “to date” objected in its response and that our office was somehow therefore not technically “denied access” is, in our opinion, purposefully misleading. This misleading statement seems to be intended to provide the Governor's Office with political cover after creating confusion and legal obstacles by refusing to allow our office access to records that we have the full right to access, under M.G.L. Chapter 11 Section 12, to conduct our data reliability assessment in time for the completion of the audit report. GOV's response leaves out the very important, and incredibly relevant fact, that **we had closed out the testing period and were already drafting the final report—which, as GOV knows, was given to GOV for review only days later during December.** It was made crystal clear, that there was nothing to object to by that point.

The reality is, contrary to the claims made in GOV's response, it decided to unilaterally send out these notifications granting the ability to “object” and “quash” our request, purposefully to try and “moot” the court action that we informed you we were taking.

The Office of Governor deliberately and purposefully acted with the intent to undermine our clear intent, and right, to bring this issue to court for resolution—which is needed, since your decision to require us to receive permission blocks our access to sensitive records which impacts not just this audit but the overall state oversight our office provides to taxpayers.

Our team made clear to both GOV and AGO that, since the disagreement and delay had gone on for far too long with no resolution, we had made the AGO aware that we were seeking court action to resolve the dispute so as to access the documents we needed to be able to continue to complete our audits in accordance with MGL Chapter 11 Section 12.

GOV was aware that we were completing our audit and would be citing the scope limitations imposed upon us by the GOV while pursuing court action to resolve the dispute.

The OSA finds the actions of the Governor's Office, in this regard, to be very problematic. Guided by G.L. c. 11, s. 12 and GAGAS, the OSA has discretion and independence as to how it conducts audits. And, as discussed above, the letters sent by GOV or its executive offices and agencies were not required by law. Sending these notifications, revealed details of our audit, jeopardizing and interfering with the integrity of our audit while creating unnecessary confusion, uncertainty and disruption in the lives of those active and former public servants impacted by the notifications. These actions, by GOV, would allow for records that may contain unflattering information or demonstrate a history of abuse, to be hidden from the Office of State Auditor—preventing us from reporting on potential unlawful or unethical actions within executive offices and agencies. The Administration should know full well that it is completely unacceptable to allow its office, an agency or an individual the opportunity to “quash” or “object” to our review which is conducted on behalf of taxpayers.

Our audits, without access to the records that we need to be able to complete our data reliability assessments, would be relinquished to being nothing more than hypotheses of what is happening across state government regarding the potential abuse and mismanagement of tax dollars and government programs. It is not unfair to question if this is the intent of the Administration, considering its actions over the course of this audit.

It is also notable no auditee has ever raised this objection or employed this novel interpretation of G.L. c. 66A (FIPA) with respect to our ability to access records in connection with an audit. The OSA's authority to access data in the scope of its audits is broad. Our enabling statute, G.L. c. 11 § 12, explicitly and unambiguously authorizes the OSA to request, review, and if necessary, compel production of documents related to any matter within the scope of its audits. This authority extends to sensitive, confidential, or such information that would otherwise be protected from disclosure by law. See *Suzanne Bump, State Auditor v. Shahrzad Haghayegh-Askarian and Hancock Dental Co.*, Mass. Super. Ct., No. 11-4539A (Suffolk County May 10, 2012). The personnel records requested in the scope of this audit fall under the OSA's broad authority, granted by statute and affirmed by case law.

The Office of the Governor's reliance on FIPA fails to note the plain language of the law, specifically, G.L. c. 66A § 2(c), which contains a provision granting OSA access if “such access is authorized by statute.” As discussed above and explained, repeatedly but to no avail, to the Office of the Governor by our audit team, our General Counsel, and the Auditor herself, G.L. c. 11, s.12 provides for the statutory access

contemplated by FIPA. Moreover, such statutory access as possessed by the OSA requires neither notification to nor approval from data subjects.

Based on this legal authority, we rejected the Office of the Governor's assertion that FIPA was applicable and that notifications granting the ability to object to and quash our request were suddenly, and uniquely, required for this particular audit. Additionally, we engaged the Office of the Attorney General (AGO) seeking resolution on this matter not only for this audit but also to ensure our ability to conduct audits in the future. We view this misapplication of FIPA to be an existential threat to our ability to conduct audits across all of state government. We must have access to required data to conduct our audits.

Finally, it is absolutely reasonable, and we would further assert—responsible, to have concerns that some settlement agreements “may have been ‘unlawfully withheld.’” GOV and executive agencies may very well have purposefully hidden these agreements from our audit team. Again, we simply do not know what settlement agreements may have been entered into, but withheld from our office—or whether it was for the reasons claimed. We cannot confirm the claims made by the executive branch offices and agencies regarding the rationale for myriad missing documents. We are not able to simply take the claims of GOV and executive agencies and offices, at face value and based on the honor system, then propagate these claims to the public as though they are reality. Our job is to audit and identify areas lacking sufficient controls and oversight. We may trust, but we do need to verify. Based on its response, GOV is not taking sufficient steps to address our concerns on these matters. Our office encourages GOV to act with urgency to address our audit findings.

5. Agencies did not provide us 78% of the underlying employee complaints for employee settlements that involved confidentiality language.

When reviewing employee settlement agreement records that were reported to have confidentiality language, we did not receive 124 of the 159, or 78% of, requested copies of the original claim, complaint, or grievance. Therefore, we were unable to assess whether the employee settlement agreement was supported by a complaint in order to understand the reason for including confidentiality language. Additionally, we are unable to assess whether there was a situation where a state employee engaged in unlawful behavior, such as discrimination or harassment, that was not appropriately addressed by the state agency. If state agencies are not retaining complaint records, there is a risk that inappropriate behavior will not be properly identified and appropriate action taken to prevent it from occurring again.

Authoritative Guidance

The Massachusetts Statewide Record Retention Schedule requires state agencies to retain records relating to an employee settlement agreement in accordance with the following guidelines:

E05-02: Employee Grievance/Complaint Records . . .¹⁸

Documents work related complaints from non-union employees and grievances from union employees relating to their job environment. Includes complaints, grievances, hearing notices, arbitration findings, meeting notes, dispositions, and related correspondence.

E05-02 (a): Landmark cases

Permanent

E05-02 (b): Case summaries and final decisions

25 years

E05-02 (c): All other records

Retain 6 years final resolution.

In June 2020, the state of Montana issued a performance audit titled “State Employee Settlements: Trends, Transparency, and Administration.” In this audit, a recommendation is given that Montana’s Governor’s Office work with its administration department “to develop and implement policy establishing support documentation requirements . . . for all state employee settlements.”

While GOV is not required to follow this policy, we believe it to be a best practice.

Reasons for Issue

Some complaints that led to settlement agreements were not provided to us by agencies in a timely manner in accordance with the law (Section 12 of Chapter 11 of the General Laws).

Also, one agency official told us that some settlements did not stem from a complaint.

Recommendations

1. GOV should develop policies and procedures to ensure that complaints are first documented and then retained in accordance with the Massachusetts Statewide Records Retention Schedule and are

18. According to the Archivist of the Commonwealth of Massachusetts archives office, there was a typographical error in Section E05-02 of the Statewide Record Retention Schedule where the word “Permanent” was listed directly following the E05-02 header. The reference to permanent retention is to Landmark cases.

provided to external auditors upon their request. This policy should consider the creation of a centralized list of such complaints and the location of the storage of these records to facilitate production of these records upon request. GOV should clarify its policy on record retention to ensure that complaints are retained.

2. Agencies should consult with the Massachusetts Supervisor of Public Records to ensure that they accurately classify these records and should then ensure that they retain them according to the requirements of the Massachusetts Statewide Records Retention Schedule.
3. If complaints arise out of substantiated egregious behavior, such as illegal or harmful acts, these records should be retained permanently to ensure that this behavior can be tracked across state government.

Auditee Response

Audit Finding 5 appears to inadvertently overstate the percentage of employee complaints that should have been retained under the applicable record retention policy but could not be located upon request. The report notes that in 124 of 159 instances, OSA did not receive requested copies of the original claim, complaint, or grievance associated with a settlement OSA classified as having "confidentiality language." The report notes, however, that most such records can "be assumed to have records retention periods of 6 years from the date of final resolution or final activity." The report does not indicate how many of the 124 agreements fell outside of the records retention period, but that number is likely to be substantial given that approximately two-thirds of the 159 settlements identified on the report's [Appendix A] were entered outside of the referenced records retention period.

Regardless of the numbers, we agree that the report has identified historical record-keeping issues requiring attention. To that end, and as noted in the response to Finding 1, the Executive Department Settlement Policy will address document retention and settlement tracking obligations and, we expect, will assist offices and agencies with improving their settlement-related record keeping as a forward-looking matter.

Auditor's Reply

Our office was not provided with documentation or evidence that demonstrated whether appropriate steps were taken by executive offices and agencies regarding the destruction of public records. Compliance with public records law requires agencies to follow specific processes and procedures, including receiving approval from the Records Conservation Board before destroying records. Our team cannot be expected to simply believe what is being told to us regarding missing records without sufficient documentation. Should GOV and executive offices and agencies wish to send our office the documentation that provides evidence of appropriately destroyed records, we would welcome such engagement in time for our Post Audit Review.

If there are claims that “no complaint was ever made in association with the settlement agreement”, for example, and the entity making that claim has no procedures, protocols or documentation to back up their claim—then it is just a claim and we cannot know for certain that an employee did not indeed make a complaint. What we know for certain is that we did not receive 124 of the 159, or 78% of, requested copies of the original claim, complaint, or grievance. Also, during the audit, it was never at any point clearly communicated to us that any of the requested records were ever destroyed due to the requested records falling outside a reported record retention period of 6 years. It was only communicated that it might be one possibility, suggesting that GOV and executive agencies may not have a clear picture of what settlement agreements and complaints exist, from which time period, and for what purpose. Based on its response, GOV intends to address our concerns on this matter. We will follow up to track progress during our post audit review.

OTHER MATTERS

1. The system to report state employee settlement agreements to the Office of the Comptroller of the Commonwealth does not provide transparency into all monetary state employee settlement agreements made with taxpayer funds.

The Office of the Comptroller of the Commonwealth's (CTR's) regulations define what a state employee settlement agreement is for the purposes of processing and reporting these agreements in the Settlements and Judgments fund. However, this definition is narrow and as defined does not include all state employee settlement agreements that may exist. During the audit, we identified instances where employees were allowed to resign in lieu of termination. In these situations, the employees were allowed to resign and remain on the payroll for a pre-determined amount of time in accordance with the agreement. Agency officials and CTR officials both told us that these types of state employee settlement agreements are not required to be reported to CTR according to CTR policies. We believe these agreements are state employee settlement agreements that involve the payment of money to employees/former employees. The individuals involved receive compensation (in this instance, payroll-based compensation) but are not rendering services or using accrued leave time (vacation time, for example) in exchange for this money.

Also, while state agencies are required to report all monetary state employee settlement agreements (that meet this definition according to CTR policies), CTR is not required to publicly report on all monetary state employee settlement agreements. CTR does not publicly report state employee settlement agreements that are reported to them if those agreements are paid by a state agency's legally available funding source. Quarterly, CTR reports on financial activity of the Settlements and Judgments fund that it administers. This publicly available report shows only monetary state employee settlement agreements paid using the Settlements and Judgments fund.

According to CTR's website,

[CTR] is required to submit quarterly reports each fiscal year on payments from the Settlements and Judgments Reserve account. These reports provide information on payees, amounts, and the associated Commonwealth of Massachusetts department or agency for settlements and judgments paid from appropriation account 1599-3384.

CTR will not, however, report on monetary settlement agreements paid for using the state agency's legally available funding. CTR will only review these settlement agreements to ensure they are properly accounted for.

As an example of an alternative approach, agencies in the State of Montana are required under Executive Order 6-2019 to report compensation provided through settlement agreements; specifically,

It is the policy of the executive branch that compensation provided to current or former state employees through settlement or compromise agreements with the state is subject to reporting and transparency requirements.

Unless exempted because of privacy concerns of the individual involved in state employee settlement agreement, Montana state agencies must publish online for a minimum of three years (starting within 30 days of the date of the employee settlement) the date and amount of the state employee settlement, in addition to the state agency where the claim originated.

In the interest of transparency to the public on the use of taxpayer funds for state employee settlement agreements, we recommend that the Office of the Governor (GOV) develop a process to report all monetary state employee settlement agreements to the public, regardless of the funding source, and that this information be published prominently and that it remains available for public inspection for an extended period of time.

Auditee Response

The current format for settlement and judgments reporting by the Office of the Comptroller is dictated by the Settlements and Judgments line item (1599-3384). The Office of the Governor and the Office of the Comptroller are committed to working together to explore ways to improve the timeliness, quality, and transparency of reporting.

Auditor's Reply

We note that line item 1599-3384 required CTR to report quarterly on the expenditures from the Settlements and Judgments fund but does not prohibit reporting on other settlements and judgments. We view this language to provide a mandatory "floor" on reporting but not a limitation on what additional information can be reported.

2. The Office of the Governor inappropriately disclosed sensitive information to unrelated parties.

During the course of this audit, we sought to conduct a Data Reliability Assessment (DRA) of settlement agreements provided to us by the auditees. As part of this DRA, we attempted to verify that the settlement agreements provided to us represented all settlement agreements that existed. We utilized audit software to take a random sample of all state employees employed during the audit period and requested access to the personnel records for the employees identified in this random sample. The purpose of this aspect of the DRA was to determine if settlement agreements or other indicators of settlement agreements existed in these records and if we were provided a complete listing of settlement agreements.

As noted in our audit, auditees refused to permit our office to conduct this aspect of the DRA at the direction of the Office of the Governor. Specifically, the Office of the Governor claimed that Chapter 66A of the Massachusetts General Laws, the Fair Information Practices Act (FIPA), required notification to employees and the opportunity to object to allowing access to these records - records that we have express authority to access under Section 12 of Chapter 11 of the Massachusetts General Laws and which we required access to in order to complete the DRA under Generally Accepted Government Auditing Standards (GAGAS).

We rejected this, as FIPA does not apply when there is statutory authorization. Our enabling statute is such statutory authorization, and we have an extensive track record of maintaining strict confidentiality for these and many other records. Indeed, it would make oversight meaningless, and practically impossible, if our office needed to obtain permission every time we needed to view sensitive information to conduct audits; combat waste, fraud, and abuse; review processes and procedures; or ensure the law was being followed. We note that we have not previously been required to obtain such permission in prior instances regarding such records, including to review settlement agreements, cybersecurity and ethics training records, and for other purposes.

We repeatedly, and in writing, rejected the Office of the Governor's claim and engaged with the Office of the Attorney General to adjudicate this matter in Superior Court. Nonetheless, the Governor's Office unilaterally decided to send letters to employees and retirees in our sample offering an opportunity to "quash" and "object" to our office's review.

Attached in [Appendix F](#) is a letter sent to the Office of the Governor on this matter on 12-16-2024.

Our office does not discuss details of ongoing audits for the purpose of maintaining integrity in the audit process. By inappropriately disclosing sensitive information to non-auditees, the Administration compromised the integrity of our audit, which is required to be conducted in accordance with GAGAS. Additionally, the Administration's actions resulted in unnecessary interference with our ongoing audit, which is authorized by statute. This could be perceived as an unintentional consequence of a disagreement regarding the law or as an intentional attempt to coerce or pressure our office to back off from reviewing certain records. The Office of the Governor has wrongfully assumed that it would be able to moot this very serious issue by utilizing tactics which, regardless of intent, are coercive. The Office of State Auditor reiterates that we are still pursuing court action to resolve our access to the documents that GOV and executive offices and agencies has denied to our audit team so that we may continue to conduct audits in accordance with our governing statute.

We encourage the Administration to consider the impact of these decisions on transparency, accountability, the public's trust and our office's ability to simply do its job and conduct independent audits that help make government work better.

3. The Massachusetts State Police Department uses broad-ranging nondisclosure agreements as part of its employment process.

During the course of our audit, a recruit at the Massachusetts State Police (MSP or the Department) academy tragically died during recruit training. We heard concerns that the MSP utilized nondisclosure agreements that prevent recruits and others from disclosing information regarding their employment, and that these agreements went beyond requiring the reasonable nondisclosure of plainly confidential matters, such as law enforcement techniques, personnel matters, and information regarding investigations.

Under the public records law, we requested from MSP documents that are required to be signed by new MSP employees and State Police Academy recruits. MSP provided us multiple documents related to employee onboarding, including recruit training policies and a document entitled Confidentiality Agreement. These documents require broad-based nondisclosure as a condition of employment.

As an example, the Confidentiality Agreement document states the following, under Section I, Nondisclosure:

*Employee shall not . . . disclose to others or use in any way any confidential information, **non-public information, sensitive or potentially embarrassing or discrediting information** or confidential information relating to **business, activities, operations or investigations of the Department, its users, consultants or partners, including . . . information pertaining to Department personnel.** [Emphasis added.]*

We note that these non-disclosure requirements appear exceptionally broad and prevent employees from disclosing matters related to MSP business or activities if they are non-public, sensitive, potentially embarrassing (and therefore not necessarily embarrassing, but rather things that may potentially become embarrassing) or discrediting, including regarding consultants, users, partners and personnel. This non-disclosure language, which employees are required to sign “as a condition of employment with the Department”, is far-reaching and could potentially prevent employees, including recruits from discussing or disclosing potential corruption, unethical behavior, harassment or other unlawful or problematic conduct, as these would each be discrediting or potentially embarrassing to the Executive Office of Public Safety and Security, the Administration as a whole, MSP, its personnel, users, consultants, or partners.

The Office of Governor and the Secretary of the Executive Office of Public Safety and Security alongside appropriate personnel including the Colonel of the State Police, should review this Confidentiality Agreement and other documents regarding confidentiality and nondisclosure and make the necessary changes to permit MSP recruits and MSP employees to report or otherwise appropriately disclose necessary information, such as allegations of abuse, harassment, corruption, unethical behavior, and other misconduct that is inappropriate or unlawful, which is not protected information (law enforcement or otherwise).

APPENDIX A

Employee Settlement Agreements in which Confidentiality Language Was Used (Self-Reported)

This table reflects a compilation of selected attributes analyzed across 159 Settlement Agreements. The OSA Description of Settlement is annotated as “N/A” only in instances where a Reporting Agency identified a Settlement Agreement as existing, but OSA did not receive a copy of the Settlement Agreement. In the Confidentiality or Other Restrictive Language and Clause columns, an entry of “Unknown” reflects instances where the OSA was unable to review the Settlement Agreement:

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
A&F	Division of Capital Asset Management and Maintenance	2012	\$0	Settlement to resolve employment separation and all grievances & claims arising out of his employment; no damages paid	N/A	Unknown	Unknown
A&F	Division of Capital Asset Management and Maintenance	2014	\$50,000	Settlement to resolve discrimination claims; payment of lump sum damages (\$28,000) and attorneys’ fees (\$22,000)	MCAD— Discrimination on the Basis of Disability, Age & Gender, and Retaliation accompanied by Separation of Employment	“The parties agree that the provisions, terms and conditions of this Agreement are to be held in confidence to the extent permissible but	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						law and will not disclose such matters to any person or entity unless otherwise compelled under law, except that Complainant may disclose such matter to...immediate family, counsel, financial or tax advisors, or taxing authorities.”	
A&F	Division of Capital Asset Management and Maintenance	2016	\$15,000	Settlement of employment action claims and labor grievance; payment of lump sum damages	Union— Employment action claims related to unfair labor practice charges and grievances	“This Settlement Agreement is not for publication.”	Not for publication
A&F	Division of Capital Asset Management and Maintenance	2016	\$15,000	Settlement of employment action claims and labor grievance; payment of lump sum damages	Union— Employment action claims related to unfair labor practice charges and grievances	“This Settlement Agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
A&F	Department of Revenue	2022	N/A	Grievance	Union—Dispute related to comp time	“This Agreement is not publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential, Not for publication
A&F	Department of Revenue	2022	N/A	Arbitration	Union—Release of Arbitration Claims Related to Personal Transfer Procedures	“This Settlement Agreement . . . is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
A&F	Department of Revenue	2016	\$710.50	Grievance	Union— Improper Denial of Promotion Pursuant to Collective Bargaining Agreement & Partial Retroactive Payment	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential, Not for publication
A&F	Department of Revenue	2022	N/A	Grievance	Union— Employee Performance Rating & Evaluation	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						requirement to do so.”	
A&F	Department of Revenue	2019	\$19,999.00	MCAD	Union— Resignation in lieu of termination and release of MCAD claims; Employee Performance Rating(s), Discipline, and Denial of Request for Reasonable Accommodation	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
A&F	Department of Revenue	2022	N/A	Grievance	Union— Resignation in lieu of termination related to failure to meet expectations and violating company policy	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential, Not for publication
A&F	Department of Revenue	2016	\$18,000.00	Arbitration	Union— Resignation in lieu of termination	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						requirement to do so.”	
A&F	Department of Revenue	2020	N/A	Grievance	Union— Rescission of suspension	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential, Not for publication
A&F	Department of Revenue	2020	N/A	MCAD— Disability	MCAD— Discrimination on the Basis of Disability	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	
A&F	Department of Revenue	2017	N/A	Grievance	Union—Disciplinary Actions & Reimbursement for Pay Resulting from Reduced/Removed Periods of Suspension related to Disciplinary Action	“This Settlement Agreement is not for publication.”	Not for publication
A&F	Department of Revenue	2022	N/A	Grievance	Union—Payroll & Leave Category Correction	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						conditions contained herein absent a legal or compulsory requirement to do so.”	
A&F	Human Resources Division	2018	\$10,000.00	Contract claim	General Release of Claims Related to Separation from Employment	“[Complainant] agrees that she shall not disparage or defame HRD or its officers . . . HRD and its officers agree not to disparage or defame [Complainant].” “The Agreement is not for publication.”	Non-disparagement, Not for publication
A&F	Human Resources Division	2017	\$15,000.00	Contract claim	Reduction in Force use to lack of funding	“[Complainant] agrees that she shall not disparage or defame HRD or its officers . . . HRD and its officers agree not to disparage or defame [Complainant].” “The Agreement	Non-disparagement, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						is not for publication.”	
A&F	Human Resources Division	2018	N/A	Grievance	Union— Correction of Payroll Classification Resulting from Use of Accrued Leave During Period of Suspension	“This Settlement Agreement is not for publication.”	Not for publication
A&F	Operational Services Division	2015	\$10,000.00	No claim	Union— Separation from Employment	“This Settlement Agreement is not for publication.”	Not for publication
EEA	Department of Conservation and Recreation	2018	\$304.23	Employment	Union	“This Settlement Agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EEA	Department of Conservation and Recreation	2018	\$709.87	Employment	Union—Employment Action	“This Settlement Agreement is not for publication.”	Not for publication
EEA	Department of Conservation and Recreation	2014	\$500.00	Employment	MCAD	“The Parties agree that any and all settlement discussion and the terms and conditions of this Agreement shall be kept confidential.”	Confidential
EEA	Department of Conservation and Recreation	2019	\$3,000.00	Employment	Union—Violation of CBA	“The Agreement is not for publication.”	Not for publication
EEA	Department of Conservation and Recreation	2012	\$15,000.00	Employment Action	Union—Employment Action	“This settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EEA	Department of Conservation and Recreation	2014	20,000.00	Employment	MCAD	“Non-Admission/Non-Publication”	Not for publication
EEA	Executive Office of Energy and Environmental Affairs	2017	7,724.10	Employment	Reinstatement of Employment, Corrective Leave Categorization, and Reimbursement of Medical Expenses/ Attorney’s Fees	“It is agreed this document and any and all matters concerning this Agreement will be regarded as confidential.”	Confidential
EEA	Department of Environmental Protection	2019	\$695.86	Employment	Union— Reimbursement for Pay Resulting from Reduced Period of Suspension	“This Settlement Agreement is not for publication and is not a public record to the extent provided by applicable law.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EEA	Department of Environmental Protection	2011	169,986.25	Employment Action	Litigation based Privacy, Negligence, Inducement to Breach Physician Patient Confidentiality, Civil Conspiracy, Intentional Interference	Unknown	Unknown
EEA	Department of Environmental Protection	2012	418,332.99	Employment Action	Litigation in Superior Court— Violation of CBA & FMLA, Invasion of Privacy, Discrimination on the Basis of Handicap, and Retaliation	“[Complainant] agrees not to disparage.”	Non-disparagement
EEA	Department of Environmental Protection	2017	57,012.26	Employment	Reinstatement of Employment, Retroactive Salary Payment, Restored Accrued Leave/ Retirement Credits	“It is agreed this document and any and all matters concerning this Agreement will be regarded as confidential.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOE	Department of Early Education and Care	2013	N/A	Separation of Employment Agreement and Mutual General Release	Separation from Employment	“[T]he Agreement, itself, any discussion and/or negotiation relating to this Agreement, the circumstances giving rise to this Agreement and the consideration paid hereunder shall be treated by Employee as strictly confidential.”	Confidential
EOED	Division of Occupational Licensure	2022	\$125,000.00	Union Grievance	Union—Claims Arising out of Separation from Employment	“This Settlement Agreement is not for publication.”	Not for publication
EOED	Executive Office of Economic Development	2014	\$27,230.00	Employment Complaint	Release of Claims of Workplace Discrimination; Reinstatement of Employment with Retroactive Salary Payment	“Because this Agreement constitutes a personnel records, both the Commonwealth . . . and you agree not to disclosure	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						the fact and terms of this Agreement.”	
EOHHS	Veterans Home at Chelsea	2019	N/A	FW removed, ULP withdrawn	Union—Formal warning reduced to informal warning re: unacceptable performance	None	None
EOHHS	Veterans Home at Chelsea	2019	N/A	FW removed, ULP withdrawn	Union—unfair labor practice charge; Removal of all current formal and informal warnings from personnel file	“This Agreement is not for publication.”	Not for publication
EOHHS	Department of Children and Families	2016	\$5,000.00	lump sum	Union—unfair labor practice charge; neutral employment reference	“This Settlement Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	
EOHHS	Department of Children and Families	2018	\$12,500.00	Termination changed to Resignation	Union— termination converted to resignation	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Children and Families	2016	\$100,000.00	lump sum	Union— termination converted to resignation	“This Settlement Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Children and Families	2020	\$10,000.00	Termination changed to Resignation	Union— Termination converted to voluntary resignation	“The parties further agree this settlement is not for publication.”	Not for publication
EOHHS	Department of Children and Families	2017	\$10,000.00	lump sum	MCAD & US Equal Employment Opportunity Commission (EEOC) / HUD	“[Complainant] agrees that [complainant] will keep all information relating in any way to this Agreement . . . completely confidential, and that she will not disclose any information.”	Confidential
EOHHS	Department of Children and Families	2018	N/A	Demoted to SW I, Grade 19, Step 8 and transferred to FRAO	Union— Demotion	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Children and Families	2016	\$100,000.00	lump sum	Union— Termination converted to resignation	“This Settlement Agreement is not for publication and the Parties agree that they will not release the Agreement	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Children and Families	2016	\$5,000.00	lump sum and resignation in lieu of termination	Union— Termination converted to resignation	<p>itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”</p> <p>“This Settlement Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms and conditions contained herein absent a legal or compulsory requirement to do so.”</p>	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Children and Families	2018	4-days pay at rate at time of suspension	Reduced to 1 day suspension	Union—Reduction of Suspension	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Children and Families	2018	N/A	Transferred to WWAO effective 1/21/18	Union—Transfer	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2021	\$10,000.00	Settlement: Moved work location	Union—Transfer, removal of formal warning & Restoration of Accrued Leave Time; DLR charges of Prohibited Practices	“This settlement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2019	\$10,000.00	Resignation in lieu of termination, withdrawal of the grievance	Union—Separation from employment deemed Resignation	“The parties further agree this settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Developmental Services	2014	\$15,000.00	Lump sum	Union— Termination rescinded and deemed resignation	“The parties further agree this settlement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2022	N/A	Settled at 5 day suspension and reinstating employee without backpay.	N/A	Unknown	Unknown
EOHHS	Department of Developmental Services	2014	\$8,500.00	Lump sum	Union— termination converted to resignation	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2016	\$5,000.00	Lump sum	Union— Termination reclassified as Resignation	“This settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Developmental Services	2013	\$14,000.00	Lump sum	Settlement arising out of Employment Action in Superior Court	None	None
EOHHS	Department of Developmental Services	2013	\$15,000.00	Lump sum	Union— termination converted to resignation	“[Parties] shall not disclose the fact of this Agreement, the settlement amount, the terms of this Agreement, the facts and circumstances giving rise to this Agreement.”	Confidential
EOHHS	Department of Developmental Services	2013	\$19,000.00	Lump sum	MCAD	“This confidential, non-precedent setting settlement agreement . . . The Complainant shall never introduce, rely upon, or refer to this agreement in any	Confidential, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						publication . . . The Complainant shall not disclose the facts of this agreement, the terms of this agreement, the facts and circumstances giving rise to this agreement."	
EOHHS	Department of Developmental Services	2016	\$13,951.00	Lump sum	Union— Termination converted to suspension	"This settlement is not for publication."	Not for publication
EOHHS	Department of Developmental Services	2021	Compensated 13 days of wages	Settled at a 7 day suspension	Union— Suspension Reduction	"This Agreement is not for publication."	Not for publication
EOHHS	Department of Developmental Services	2016	Employee was reimbursed \$3500.00	Employee was reinstated to their position and reflect a 3-day suspension on record in lieu of termination	Union— Reinstatement and termination reduced to suspension	"This settlement agreement is not for publication."	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Developmental Services	2021	1 day of lost wages	Compensated for 1 day of lost wages	N/A	Unknown	Unknown
EOHHS	Department of Developmental Services	2015	\$7,500.00	back pay	N/A	Unknown	Unknown
EOHHS	Department of Developmental Services	2014	\$75,000.00	Lump sum	N/A	Unknown	Unknown
EOHHS	Department of Developmental Services	2017	\$1,506.84	Lump sum	N/A	Unknown	Unknown

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Developmental Services	2013	\$19,999.00	Lump sum	Union— Termination converted to Resignation	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2015	\$25,000.00	Lump sum	Union— Termination converted to Resignation	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2014	\$2,000.00	Lump sum	Union— Reinstatement	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2014	\$12,000.00	Lump sum	N/A	Unknown	Unknown
EOHHS	Department of Developmental Services	2015	\$78,003.03	back pay	N/A	Unknown	Unknown

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Developmental Services	2019	N/A	Reduced to a Informal warning	N/A	Unknown	Unknown
EOHHS	Department of Developmental Services	2016	\$3,500.00	Lump sum	Union— Termination converted to Suspension	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2014	\$4,500.00	Lump sum	Union— Termination reclassified as Resignation	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2022	\$3,209.40	Claim payment	Union— Grievance	None	None
EOHHS	Department of Developmental Services	2015	\$5,750.00	Lump sum	MCAD	None	None

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Developmental Services	2014	\$50,981.01	back pay	Union— Termination due to allegations of workplace violence reduced to suspension without pay	None	None
EOHHS	Department of Developmental Services	2017	\$10,000.00	Lump sum	MCAD	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2015	\$5,000.00	Lump sum	Union— Termination converted to voluntary resignation	None	None
EOHHS	Department of Developmental Services	2014	\$1,098.00	back pay	Union - Reduced Suspension	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Developmental Services	2016	\$8,500.00	Lump sum	Union— Termination converted to voluntary resignation	None	None

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Mental Health	2015	\$19,500.00	Compromise of Claims	Union— Separation, MCAD— Discrimination on the Basis of Gender & Disability, Sexual Harassment, and Retaliation	“The Settlement Agreement if not for publication.”	Not for publication
EOHHS	Department of Mental Health	2018	1 day's pay	No letter of abuse of sick time given. Employee was placed NOP 12/31/16	Union— Reimbursement for wages	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Public Health	2020	1 day's pay	1-day suspension— poor work performance— yanked/pulled patient gait belt	Union— Suspension related to poor work performance	“This agreement is not for publication.”	Not for publication
EOHHS	Department of Public Health	2018	1 day's pay	Grievant was suspended for 1 day for time and attendance. No call/no show/failure to follow procedure.	settlement to resolve pay for suspension	“This settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Public Health	2018	\$221.61	1-Day Suspension for time and attendance issues—failing to report for a voluntary overtime shift that the employee agreed to accept.	N/A	Unknown	Unknown
EOHHS	Department of Public Health	2021	4 hours of sick time	Denial of 4 hours of sick leave time	Union—Payroll adjustment from “Not on Payroll” to “Sick”	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Transitional Assistance	2020	N/A	10-day Suspension	Union— Suspension Without Pay	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Transitional Assistance	2020	30.238 hours pay at rate earned 9/26 - 9/29/17	EE credited 30.238 hours pay, 34.357 hours sick leave, 2 hours personal leave, 19.905 hours vacation leave	Union— Reimbursement/ Credit of Pay and leave	“This Settlement Agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Transitional Assistance	2019	2 days pay	Reduced to 1-day	Union—Reduced suspension	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Transitional Assistance	2020	N/A	Credit Bereavement Leave	Union—Credit for Bereavement Leave	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Transitional Assistance	2018	1-days pay at rate at time of suspension	Demoted to HSA, Grade 15, Step 12 at Worcester TAO; Suspension rescinded	Union—Demotion, Rescission Suspension, and withdrawal of MCAD Complaint (Age Discrimination)	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Transitional Assistance	2017	\$19,500.00	Financial for Release, neutral reference, Pf will not reapply	MCAD	“The Parties agree that this Settlement Agreement shall be kept confidential.”	Confidential
EOHHS	Department of Transitional Assistance	2019	15 hours pay at rate earned at time of incident	5-day reduced to 3-day suspension	Union—Reduced suspension due to failure to follow department protocol and	“This Settlement Agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
					policy regarding processing client documentation		
EOHHS	Department of Youth Services	2019	2 hours overtime at rate as of 9/24/15	2 hours overtime	Union— Overtime Payroll Correction	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2019	1-day's pay at rate earned at time of Suspension	1-day suspension reduced to formal warning	Union— Suspension reduced to warning due to lack of union notification	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2018	\$400.00	Grievance: Out of Title	Union—Working in a higher title without compensation	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2018	1 day's pay at rate earned 8/15/17	Suspension reduced to Formal Warning	Union— Suspension reduced to formal warning	“This Settlement Agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Youth Services	2021	2 days pay at rate at time of suspension	Suspension reduced to 3-day suspension	Union— Reduction of Suspension	“This agreement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2020	2-days pay at rate earned at time of suspension	3-day reduced to 1-day suspension	Union— Reduction of Suspension	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2019	4 days pay at rate earned at time of suspension	3-day suspension reduced to 1-day; 5-day suspension reduced to 3-day	Union— Reduction of suspension due to unprofessional conduct	“This settlement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2018	1-day's pay at rate earned at time of Suspension	3-day reduced to 2-day suspension	Union— Reduction of suspension	“This settlement is not for publication.”	Not for publication
EOHHS	Department of Youth Services	2019	1 day's pay at rate earned 1/20/17	Suspension reduced to Formal Warning	Union— Suspension reduced to formal written warning	“This settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Department of Youth Services	2020	1 day's pay at rate at time of suspension	1-day suspension reduced to formal warning	Union— Suspension reduced to Formal Warning	"This Settlement Agreement is not for publication."	Not for publication
EOHHS	Department of Youth Services	2019	N/A	Reinstate with 1-day suspension	Union— Termination converted to Suspension and Reinstatement due to personal cell phone use	"The parties further agree this agreement is not for publication."	Not for publication
EOHHS	Department of Youth Services	2018	\$88,000.00	Back pay agreement	Union— Termination converted to Reinstatement and Suspension	"This Settlement Agreement is not for publication."	Not for publication
EOHHS	Department of Youth Services	2019	1-day's pay at rate earned at time of Suspension	Suspension reduced to Written Warning	Union— Suspension reduced to Written Warning	"This Settlement Agreement is not for publication."	Not for publication
EOHHS	EOHHS	2014	\$0.00	Suspension reduction	Union— Suspension reduction due to inappropriate remarks to supervisor	"The parties further agree this settlement is not for publication."	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	EOHHS	2018	N/A	3-day suspension	Union— Suspension due to use of Commonwealth electronic devices to communicate inappropriate personal information with a co-worker	“This Settlement Agreement is not for publication.”	Not for publication
EOHHS	Veterans Home at Holyoke	2020	\$5,000.00	Term became resignation, paid out \$5,000	Union— Termination converted to Resignation; Withdrawal of Arbitration related to Suspension	“This agreement is not for publication.”	Not for publication
EOHHS	Veterans Home at Holyoke	2019	\$7,000.00	Settled in Arbitration as a resignation	Union— Termination converted to Resignation; Withdrawal of Arbitration related to Suspension	“This agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOHHS	Massachusetts Commission for the Blind	2016	\$19,999.99	Lump sum	N/A	Unknown	Unknown
EOHHS	Massachusetts Commission for the Blind	2011	\$8,945.84	back pay	N/A	Unknown	Unknown
EOHLC	EOHLC	2012	\$30,000.00	Grievance Arbitration	Union—Termination from Employment	“This settlement is not for publication.”	Not for publication
EOHLC	EOHLC	2012	\$1,121.00	Union Grievance over 5-Day Suspension	Union—Reduced Period of Suspension	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Industrial Accidents	2022	N/A	Grievance—Promotion	Union—Promotion	“This settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Unemployment Assistance	2012	N/A	Grievance/ Disciplinary	Union— Suspension reduced Written Warning	“This Settlement Agreement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2012	N/A	Grievance/Comp Time Due	Union— Compensatory Time	“This Settlement Agreement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2012	N/A	Grievance/ Disciplinary	Union—Reduced Period of Suspension	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2013	N/A	Grievance/ Disciplinary	Union—Removal of Suspension	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2014	N/A	Grievance— Promotion	Union—Posting and Promotions	“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum,	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Unemployment Assistance	2014	N/A	Grievance—Promotion	Union—Denial of Promotion	bargaining session, or any other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Unemployment Assistance	2014	N/A	Grievance—Promotion	Union—Promotion	<p>enforce its terms.”</p> <p>“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum, bargaining session, or any other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”</p>	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Unemployment Assistance	2015	N/A	Grievance/Last Chance Agreement	Union—Last Chance Agreement	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2015	N/A	Grievance/Disciplinary	Union—Removal of Suspension	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2016	\$5,000.00	Grievance/Voluntary Layoff Incentive	Union—Separation from Employment (Laid off)	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2017	N/A	Grievance/Recall	Union—Retroactive Step Increase	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2017	\$2,500.00	Arbitration/Termination	Union—Termination converted to Resignation	“This Settlement Agreement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Unemployment Assistance	2018	N/A	Grievance—Promotion	Union—Promotion	“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum, bargaining session, or any other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”	Confidential
EOLWD	Department of Unemployment Assistance	2018	N/A	Grievance—Promotion	Union—Promotion	“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum, bargaining session, or any	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”	
EOLWD	Department of Unemployment Assistance	2019	N/A	Grievance—Promotion/Demotion	Union—MCAD Complaint; Reinstatement to Previous Position and Discontinuation of Remedial Development Plan	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2022	N/A	Grievance/Disciplinary	Union—Suspension reduced to a written warning	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Unemployment Assistance	2022	\$18,500.00	MCAD	MCAD—Discrimination	“[Complainant] agrees that [Complainant] will keep the terms of this Release including the final Settlement	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						Payment confidential. "[Complainant] further agrees that she will not disparage the Commonwealth of Massachusetts."	
EOLWD	EOLWD	2014	\$7,000.00	Grievance/Promotion	Union—DLR Complaint	None	None
EOLWD	EOLWD	2010	N/A	DLR Charge/Prohibited Practice	Union—DLR complaint about Return to Previous Job Classification Without Loss of Salary	"The parties agree that this settlement is not for publication."	Not for publication
EOLWD	EOLWD	2012	\$315.00	Grievance/Wages Due	Union—Payroll Correction	"This Settlement Agreement is not for publication."	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	EOLWD	2013	N/A	Sick Leave	Union—Improper Use of Sick Leave and Restoration of Sick Leave	“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum, bargaining session, or any other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”	Confidential
EOLWD	EOLWD	2013	N/A	Grievance/Leave	Union—Payroll and Leave	“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum, bargaining session, or any	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”	
EOLWD	EOLWD	2014	N/A	Grievance/ Disciplinary	Union—Violation of Code of Conduct— Formal Warning Removed from Personnel File	“This settlement is not for publication.”	Not for publication
EOLWD	EOLWD	2014	\$10,000.00	ULP/DLR and MCAD	Union—MCAD complaint & DLR for Separation from Employment	“The parties agree that they will not disclose the terms of this Agreement.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	EOLWD	2015	N/A	Grievance/Leave	Union—Leave Denial	“This confidential, non-precedent setting settlement agreement.”	Confidential
EOLWD	EOLWD	2019	\$1,800.00	Termination/Resignation	Union—Termination without Cause converted to resignation	“This Settlement Agreement is not for publication.”	Not for publication
EOLWD	EOLWD	2020	\$2,000.00	Arbitration/Resignation	Union - Termination converted to resignation	“[Parties] further agree that this settlement is not for publication....”	Not for publication
EOLWD	Department of Career Services	2012	\$5,000.00	Grievance/Voluntary Resignation	Union—Separation from Employment	“[Parties] shall keep confidential and not disclose the existence or any of the terms of this agreement.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Career Services	2016	N/A	Grievance/ Disciplinary	Union— Suspension reduced to formal warning	“The parties shall never introduce, rely upon, or refer to this Settlement Agreement in any publication, proceeding, forum, bargaining session, or any other matter of official interest to the parties unless and only they are (1.) legally required to do so or (2.) they seek to enforce its terms.”	Confidential
EOLWD	Department of Career Services	2016	N/A	Grievance/Recall	Union—Step Increase and Removal from Recall List on Separation from Employment	“This settlement is not for publication.”	Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Career Services	2017	N/A	Grievance/ Disciplinary	Union—Removal of Suspension	“This settlement is not for publication.”	Not for publication
EOLWD	Department of Career Services	2020	\$19,000.00	MCAD	MCAD—Sexual Harassment and Gender discrimination	“[Claimant] agrees that [Claimant] will keep the terms of this Release including the final settlement payment, and any and all settlement discussions, confidential as to the Commonwealth of Massachusetts Executive Office of Labor and Workforce Development. [Claimant] agrees that she shall not publicize or disclose the terms of this release.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOLWD	Department of Career Services	2022	N/A	Grievance— Promotion	Union— Promotion	“This settlement is not for publication.”	Not for publication
EOTSS	EOTSS	2016	-\$22,787.28	Litigation— Recoupment of Overpayment	Recovery of Wage Overpayment	“This Agreement is not for publication and the Parties agree that they will not release the Agreement itself or disclose publicly or to a third party any of the terms of conditions contained herein absent a legal or compulsory requirement to do so.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOTSS	EOTSS	2018	\$24,180.77	Employment Action	Separation from Employment— Transition	“[Complainant] agrees that he shall refrain from making disparaging remarks . . .” “This Settlement Agreement is not for publication.”	Non-disparagement, Not for publication
EOTSS	EOTSS	2017	\$139,172.12	Discrimination Claim	MCAD— Discrimination on the Basis of Age	“Mutual Non Disparagement” “Non-Publication”	Non-disparagement, Not for publication
EOTSS	EOTSS	2017	\$19,482.63	Employment Action	Severance Agreement on Voluntary Resignation	“This Agreement is not for publication.”	Not for publication
EOTSS	EOTSS	2019	\$10,204.92	Employment Action	Separation from Employment— Facilitate Transition	“[Complainant] agrees that he shall refrain from making disparaging remarks . . . EOTSS agrees that it shall . . . refrain from making disparaging	Non-disparagement

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
						remarks about [Complainant].”	
EOTSS	EOTSS	2019	\$10,204.92	Employment Action	Elimination of Position—Transition	“[Complainant] agrees that he shall refrain from making disparaging remarks . . . EOTSS agrees that it shall . . . refrain from making disparaging remarks about [Complainant].”	Non-disparagement
EOTSS	EOTSS	2018	\$21,538.46	Employment Action	Separation from Employment (lay off)—Transition	“[Complainant] agrees that he shall refrain from making disparaging remarks about [EOTSS] . . .” “This Settlement Agreement is not for publication.”	Non-disparagement, Not for publication

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
EOTSS	EOTSS	2019	\$12,245.91	Employment Action	Separation from Employment (position eliminated)—Transition	“[Complainant] agrees that he shall refrain from making disparaging remarks about [EOTSS] . . .” “This Agreement and Release is not for publication.”	Non-disparagement, Not for publication
EOTSS	EOTSS	2019	\$12,357.69	Employment Action	Separation from Employment (position eliminated)—Transition	“[Complainant] agrees that he shall refrain from making disparaging remarks about [EOTSS] . . .” “This Agreement and Release is not for publication.”	Non-disparagement, Not for publication
GOV	GOV	2019	\$62,500	Lump Sum	EEOC charge	“The parties agree to keep the existence and terms of this Agreement confidential, except as may be required by law.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
MassDOT	MassDOT	2010	N/A	Employment Action	Union— Demotion and Corrective Action Plan due to allegations of impairment on the job/ substance abuse	“To the extent possible, the parties agree not to disclose or publicize the terms of this agreement.”	Confidential
MassDOT	MassDOT	2011	\$50,000.00	Discrimination	MCAD— Discrimination on the Basis of Age	“The Complainant agrees to keep confidential, and not to disclose or communicate the contents and nature of this agreement to other parties.”	Confidential
MassDOT	MassDOT	2014	\$12,000.00	Employment Action	MCAD and EEOC—Sexual Harassment and Constructive discharge; sexual harassment training for staff member	“The Complainant agrees to keep confidential, and not to disclose or communicate the contents and nature of this agreement to other parties.”	Confidential

Executive Office	Agency	Settlement Year	Amount of Settlement	Self-Reported Description of Settlement	OSA Description of Settlement	Confidentiality or Other Restrictive Language	Confidentiality or Other Restrictive Clause
MassDOT	MassDOT	2015	\$12,965.53	Employment Action	MCAD—Discrimination on the Basis of Sex	“Complainant hereby agrees to keep confidential and not to disclose there terms of this agreement. . . . The parties agree that they shall not disparage the other.”	Confidential
MassDOT	MassDOT	2018	N/A	Employment Action	Unable to locate	“Take the following reasonable measures to insure such confidentiality.”	Confidential

APPENDIX B

Breakdown of Object Code 1 Field Within the Office of the Comptroller of the Commonwealth's Settlements and Judgments Access Database

Object Code 1	Number of Occurrences Within SJ Access Data	Percentage	Object Code Description
A11\S/J	878	52.64%	Employment related settlements and judgments
A11\SJP	613	36.75%	Settlement/judgment payment subject to retirement deduction
A11\APK	56	3.36%	Settlement/judgment payment during accounts payable period subject to retirement Deduction
A11\APJ	43	2.58%	Settlement/judgment payment during accounts payable period not subject to retirement deduction
E52	19	1.14%	Tax reportable damages to claimant – claimant and attorney co-payees, or attorney sole payee
B10	12	0.72%	Exigent job-related expenses
E54	10	0.60%	Non-employee settlements and judgments: not tax reportable to claimant - claimant and attorney co-payees or attorney sole payee
E53	6	0.36%	Non-employee settlements and judgments: not tax reportable to claimant - claimant sole payee
E50	5	0.30%	Settlements and judgments: tax reportable to non-employee claimant - claimant sole payee
IPP	5	0.30%	"Injured by a patient or prisoner". Associated with object code D24.
B02	3	0.18%	In-state travel
A11 S/J	3	0.18%	Employment related settlements and judgments
C11\SJC	3	0.18%	Special employees/contracted services employment related settlements and judgments
IPP/D24	2	0.12%	Workers' compensation payments or injured by a patient or prisoner
IPP\D24	2	0.12%	Workers' compensation payments or injured by a patient or prisoner
A21\DPR	1	0.06%	Payments for deceased employees
A21\APA	1	0.06%	Payments for deceased employees
INT	1	0.06%	
D24/IPP	1	0.06%	Workers' compensation payments or injured by a patient or prisoner
A11/APK	1	0.06%	Settlement/judgment payment during accounts payable period subject to retirement deduction
A11\SJP	1	0.06%	Settlement/judgment payment subject to retirement deduction
D24	1	0.06%	Workers' compensation payments or injured by a patient or prisoner payments
BDS	1	0.06%	
Total	<u>1668</u>	<u>100.00%*</u>	

* Discrepancy in total is due to rounding.

APPENDIX C

State Agencies Included in This Audit

Office of the Governor	Massachusetts Office of Business Development	Department of Mental Health
Office of the Comptroller of the Commonwealth	Office of Consumer Affairs and Business Regulations	Department of Public Health
Executive Office for Administration and Finance	Executive Office of Energy and Environmental Affairs	Department of Transitional Assistance
Civil Service Commission	Department of Agricultural Resources	Department of Youth Services
Department of Revenue	Department of Conservation and Recreation	Executive Office of Elder Affairs
Division of Administrative Law Appeals	Department of Energy Resources	Massachusetts Commission for the Blind
Division of Capital Asset Management and Maintenance	Department of Environmental Protection	Massachusetts Commission for the Deaf and Hard of Hearing
Group Insurance Commission	Department of Fish and Game	Massachusetts Rehabilitation Commission
Human Resources Division	Department of Public Utilities	Office for Refugees and Immigrants
Massachusetts Office on Disability	Massachusetts Environmental Police	Office of Medicaid (MassHealth)
Operational Services Division	Executive Office of Technology Services and Security	Executive Office of Veterans Services
State Library of Massachusetts - George Fingold Library	Massachusetts Department of Transportation	Veteran Home of Massachusetts—Chelsea
Supplier Diversity Office	Registry of Motor Vehicles	Veteran Home of Massachusetts—Holyoke
Executive Office of Education	Executive Office of Labor and Workforce Development	Executive Office of Public Safety and Security
Department of Early Education and Care	Department of Career Services	Department of Correction, MCI
Department of Elementary and Secondary Education	Department of Economic Research	Department of Criminal Justice Information Services
Department of Higher Education	Department of Industrial Accidents	Department of Fire Services
Executive Office of Housing and Livable Communities	Department of Labor Relations	Department of State Police
Executive Office of Economic Development	Department of Labor Standards	Massachusetts Emergency Management Agency

Department of Telecommunications and Cable	Department of Family and Medical Leave	Military Division (Massachusetts National Guard)
Division of Banks	Department of Unemployment Assistance	Municipal Police Training Committee
Division of Insurance	Division of Apprentice Standards	Office of the Chief Medical Examiner
Division Of Occupational Licensure	Executive Office of Health and Human Services	Parole Board
Division of Standards	Department of Children and Families	Sex Offender Registry Board
Massachusetts Marketing Partnership	Department of Developmental Services	State 911 Department

APPENDIX D

Funding Sources of Self-Reported Employee Settlement Agreements by Department

The following information was compiled based on information provided to us the agencies in their original lists. We grouped funding sources by type and totaled it for each department.

Agency Name	Agency Funds	CTR Settlements and Judgments Fund	Combination	Non-monetary	Employee Repayment	Blank	Total
Executive Office for Administration and Finance							
Division of Capital Asset Management and Maintenance	2	3	-	3	-	-	8
Department of Revenue	5	-	-	38	2	-	45
Human Resources Division	-	-	-	1	-	2	3
Operational Services Division	-	-	-	-	-	2	2
Executive Office of Education							
Department of Elementary and Secondary Education	28	9	-	14	-	-	51
Department of Higher Education	-	1	-	1	-	-	2
Department of Early Education and Care	2	1	-	2	-	-	5
Executive Office of Economic Development							
Division of Insurance	-	-	-	1	-	-	1
Division of Occupational Licensure	-	-	-	-	-	1	1

Agency Name	Agency Funds	CTR Settlements and Judgments Fund	Combination	Non-monetary	Employee Repayment	Blank	Total
Department of Telecommunications and Cable	-	-	-	-	-	1	1
Executive Office of Economic Development	-	-	-	1	-	1	2
Office of Consumer Affairs and Business Regulation	-	-	-	2	-	-	2
Executive Office of Energy and Environmental Affairs							
Department of Agricultural Resources	2	1	-	-	-	-	3
Department of Conservation and Recreation	19	48	-	-	-	-	67
Department of Public Utilities	-	5	-	-	-	-	5
Executive Office of Energy and Environmental Affairs	4	10	-	-	-	-	14
Department of Environmental Protection	1	17	-	-	-	-	18
Department of Fish and Game	-	1	-	-	-	-	1
Executive Office of Housing and Livable Communities							
Executive Office of Labor and Workforce Development							
Department of Industrial Accidents	-	-	-	1	-	-	1
Department of Unemployment Assistance	1	3	-	15	-	-	19

Agency Name	Agency Funds	CTR Settlements and Judgments Fund	Combination	Non-monetary	Employee Repayment	Blank	Total
Executive Office of Labor and Workforce Development	1	5	-	5	-	-	11
Department of Career Services	1	1	-	4	-	-	6
Executive Office of Technology Services and Security	13	1	-	-	-	-	14
Executive Office of Public Safety and Security							
Massachusetts Emergency Management Agency	3	1	-	-	-	-	4
Department of Criminal Justice Information System	1	-	-	-	-	-	1
Department of Fire Services	-	1	-	3	-	-	4
Department of Correction	-	41	-	444	-	-	485
Military Division	-	6	-	-	-	-	6
Office of the Chief Medical Examiner	3	2	-	-	-	-	5
Parole Board	2	2	-	-	-	-	4
State Police	42	21	1	-	-	-	64
Sex Offender Registry Board	1	1	-	4	-	-	6
Office of the Governor	1	-	-	-	-	-	1
Executive Office of Health and Human Services							
Veterans Home at Chelsea	-	-	-	4	-	-	4
Department of Children and Families	23	11	-	49	-	3	86

Agency Name	Agency Funds	CTR Settlements and Judgments Fund	Combination	Non-monetary	Employee Repayment	Blank	Total
Department of Developmental Services	74	1	-	106	-	34	215
Department of Mental Health	24	35	-	24	-	24	107
Department of Public Health	23	2	-	18	-	4	47
Department of Transitional Assistance	9	9	-	28	-	4	50
Department of Youth Services	18	2	-	31	-	10	61
Executive Office of Health and Human Services	3	6	-	13	-	2	24
MassHealth	-	-	-	2	-	-	2
Executive Office of Elder Affairs	-	1	-	3	-	1	5
Veterans Home at Holyoke	1	-	-	3	-	2	6
Massachusetts Commission for the Blind	2	-	-	3	-	-	5
Massachusetts Commission for the Deaf and Hard of Hearing	-	-	-	2	-	-	2
Massachusetts Rehabilitation Commission	1	5	-	4	-	-	10
Massachusetts Department of Transportation	217	-	-	310	-	-	527
Comptroller of the Commonwealth	-	-	-	1	-	-	1
Grand Total	<u>537</u>	<u>255</u>	<u>1</u>	<u>1,143</u>	<u>2</u>	<u>91</u>	<u>2,029</u>

APPENDIX E

Claim Types of Employee Settlement Agreements—Self-Reported by Department

The following information was compiled based on information provided to us by the agencies. We grouped claims by type based on the descriptions provided to us in the lists or by reviewing source documentation.

Agency Name	Discrimination	Employment Action	Grievance Total	Harassment	Other	Unknown	Total
Executive Office for Administration and Finance							
Division of Capital Asset Management and Maintenance	1	1	4	1	1	-	8
Department of Revenue	2	-	39	-	4	-	45
Human Resources Division	-	2	1	-	-	-	3
Operational Services Division	-	1	-	-	1	-	2
Executive Office of Education							
Department of Elementary and Secondary Education	-	30	4	-	2	15	51
Department of Higher Education	-	1	-	-	-	1	2
Department of Early Education and Care	-	3	-	-	2	-	5
Executive Office of Economic Development							
Division of Insurance	-	-	1	-	-	-	1
Division of Occupational Licensure	-	-	1	-	-	-	1
Department of Telecommunications and Cable	1	-	-	-	-	-	1
Executive Office of Economic Development	-	1	-	-	1	-	2
Office of Consumer Affairs and Business Regulation	-	-	2	-	-	-	2

Agency Name	Discrimination	Employment Action	Grievance Total	Harassment	Other	Unknown	Total
Executive Office of Energy and Environmental Affairs							
Department of Agricultural Resources	-	1	1	-	1	-	3
Department of Conservation and Recreation	-	65	-	-	-	2	67
Department of Public Utilities	-	5	-	-	-	-	5
Executive Office of Energy and Environmental Affairs	-	14	-	-	-	-	14
Department of Environmental Protection	-	17	-	-	-	1	18
Department of Fish and Game	-	1	-	-	-	-	1
Executive Office of Housing and Livable Communities							
	-	3	11	-	1	-	15
Executive Office of Labor and Workforce Development							
Department of Industrial Accidents	-	-	1	-	-	-	1
Department of Unemployment Assistance	2	1	16	-	-	-	19
Executive Office of Labor and Workforce Development	1	3	6	-	1	-	11
Department of Career Services	1	-	5	-	-	-	6
Executive Office of Technology Services and Security							
	-	12	-	-	2	-	14
Executive Office of Public Safety and Security							
Massachusetts Emergency Management Agency	1	-	2	-	-	1	4
Department of Criminal Justice Information System	-	-	-	-	-	1	1

Agency Name	Discrimination	Employment Action	Grievance Total	Harassment	Other	Unknown	Total
Department of Fire Services	-	4	-	-	-	-	4
Department of Correction	8	1	475	-	-	1	485
Military Division	-	5	-	1	-	-	6
Office of the Chief Medical Examiner	-	3	-	-	2	-	5
Parole Board	1	-	-	-	2	1	4
State Police	7	9	44	-	1	3	64
Sex Offender Registry Board	-	-	5	-	1	-	6
Office of the Governor	1	-	-	-	-	-	1
Executive Office of Health and Human Services							
Veterans Home at Chelsea	-	-	4	-	-	-	4
Department of Children and Families	7	48	29	-	1	1	86
Department of Developmental Services	9	34	142	-	6	24	215
Department of Mental Health	12	42	48	-	-	5	107
Department of Public Health	10	17	18	-	-	2	47
Department of Transitional Assistance	4	27	16	1	-	2	50
Department of Youth Services	6	25	24	1	3	2	61
Executive Office of Health and Human Services	3	11	10	-	-	-	24
MassHealth	1	1	-	-	-	-	2
Executive Office of Elder Affairs	-	3	2	-	-	-	5
Veterans Home at Holyoke	-	1	4	-	1	-	6
Massachusetts Commission for the Blind	-	1	4	-	-	-	5
Massachusetts Commission for the Deaf and Hard of Hearing	-	-	2	-	-	-	2
Massachusetts Rehabilitation Commission	6	1	3	-	-	-	10
Massachusetts Department of Transportation	12	513	-	-	2	-	527

Agency Name	Discrimination	Employment Action	Grievance Total	Harassment	Other	Unknown	Total
Comptroller of the Commonwealth	1	-	-	-	-	-	1
Grand Total	97	907	924	4	35	62	2029

APPENDIX F

The following are communication between the Office of the State Auditor and the Office of the Governor referenced in our audit report.

1. Communication between the Office of the State Auditor and the Office of the Governor regarding access to records of the prior administrations¹⁹

From: Lissauskas, Stephen P. (SAO) >
Sent: Monday, December 11, 2023 4:49 PM
To: Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>
Subject: Audit of Governor's Office, Next Steps

Hi Kate,

I wanted to thank the Governor's Office team for meeting with me and my colleagues from the Office of the State Auditor (OSA) on Friday. At this meeting, we discussed our outstanding document requests regarding our audit of employee settlements used by the Office of the Governor from January 1, 2010 through December 31, 2022.

During the meeting, your staff indicated that it had not conducted a search for records requested in our audit. They further indicated that they would not search for or provide us the requested documents because of "separation of powers" concerns. They acknowledged that OSA's enabling statute grants us authority to audit the Office of the Governor, but opined that it did not provide us authority to audit the work of prior Offices of the Governor under the theory that prior offices are not "offices" under M.G.L. Chapter 11, Section 12. When asked if this applied to other offices of the Executive Department, such as the Executive Office of Public Safety and Security, your staff indicated that it did not.

We disagree with these positions, which do not appear to be supported by the law. We also disagree with the separation of powers concerns between your office and the offices of prior Governors. All of these offices and Governors were inhabitants of the Executive Department and therefore separation of powers concerns do not attach.

19. In accordance with Generally Accepted Government Auditing Standards, individual names have been redacted.

Your office indicated that they would provide the records we requested only if we sought and obtained permission from prior general counsels to prior Governors, or under court order. We do not believe it is proper or necessary to request the permission of non-governmental officials to release these records, which belong to Office of the Governor, the Commonwealth, and, ultimately, the people of the Commonwealth. Moreover, any such permission, if required, should be sought by your office, as the auditee, not by our audit team. Given that your office has not produced any records of settlements since we first engaged your office over six months ago, and has not even conducted a search to determine which documents exist, we can only assume that these records will continue to not be produced.

Given this, please be advised that the OSA will initiate steps to compel production of these records in Superior Court, as proposed by your staff and pursuant to our enabling statute. We would be happy to receive all requested documents before Thursday, December 14, forestalling such action. Please note that we will also take steps to compel production of records from other Executive Department agencies that have not made good faith efforts to provide records requested in our audit.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Steve

From: Boodoo, Jesse M. (GOV) <Jesse.M.Boodoo@mass.gov>
Sent: Wednesday, December 13, 2023 5:22 PM
To: Lisauskas, Stephen P. (SAO) <Stephen.Lisauskas@sao.state.ma.us>; Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@SAO.State.MA.US>
Cc: Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>; Viator, Gabrielle (GOV) <Gabe.Viator@mass.gov>; Scott Reed, Paige (GOV) <pscottreed@mass.gov>
Subject: RE: Audit of Governor's Office, Next Steps

Dear Steve and Michael,

I write to follow up on Steve's email below. The email mischaracterizes the extent to which the Governor's Office has sought to work with you cooperatively. Contrary to the statements in the email, and notwithstanding our disagreement concerning the scope of G. L. c. 11, s. 12, we have sought responsive records of settlements. After conversations with prior Administrations, and review of the records accessible to us, we believe that we have located the only employee settlement at the Office of the Governor during the audit period – the [REDACTED] matter, referenced in row 1 of the spreadsheet from the Comptroller.

I am providing the only two documents related to the [REDACTED] settlement, the settlement agreement, and the settlement and judgments authorization form.

As discussed at our meeting, the matters described in rows 2-4 of the Comptroller spreadsheet were not employee settlements. The [REDACTED] (row 2) involved a gubernatorial appointee to the Parole Board and not an employee of the Governor's Office. I was not able to locate it within our records, but the AGO agreed to provide me with their copy of the settlement agreement. That copy is attached here.

Finally, I have followed up with the three Secretariats from whom you are awaiting response. I expect that they will each be touch with you this week. Please let me know if you do not hear from them. I understand that each Secretariat has been in ongoing communications with the audit team about their duly diligent efforts to collect documents and their preparation of responses. Similarly, our office has worked – and will continue to work – on this matter in a spirit of cooperation and consistent with our own legal obligations. I am happy to schedule a conversation to discuss further.

Thanks,
Jesse

From: Lisauskas, Stephen P. (SAO) <Stephen.Lisauskas@sao.state.ma.us>
Sent: Thursday, December 14, 2023 5:11 PM
To: Boodoo, Jesse M. (GOV) <Jesse.M.Boodoo@mass.gov>; Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@SAO.State.MA.US>
Cc: Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>; Viator, Gabrielle (GOV) <Gabe.Viator@mass.gov>; Scott Reed, Paige (GOV) <pscottreed@mass.gov>
Subject: RE: Audit of Governor's Office, Next Steps

Dear Jesse,

Thank you for your email of December 13th and for providing records requested as part of our audit of employee settlement agreements. Thank you also for contacting the Secretariats that have not provided documents in response to our audit. We are sensitive to the operational and other needs of these agencies, which is why we sought to work with them for more than six months before raising this issue with you. We appreciate your intervention and look forward to their future, timely participation in this important work.

I am grateful for the records you provided and look forward to our audit team's review of these documents. As part of every audit, our audit teams conduct data reliability assessments, which require us to test that the information provided to us is reliable, complete, and can be used to make professional audit judgments. In that spirit, could you please stipulate if:

1. Your Office has conducted a full search for records covering the period January 1, 2010 through December 31, 2022?
2. The records you provided us represent all responsive records?

We are required by our professional standards, promulgated and enforced by the United States Government Accountability Office, to ensure that all records have been searched for and provided. If that is not possible, we may be required to document and publish in our audit report that an auditee refused to participate in the audit.

Please know that, as part of data reliability, we will soon announce a hotline for members of the public to provide information about employee settlement agreements they have entered into or know about. This will assist in identifying settlement agreements that state entities may be withholding, may have been misplaced, or that may have gone missing. Please also know that our office has received information alleging the existence of additional settlement agreements with the Office of the Governor during the audit period. These allegations concern settlements that predate Governor Healey's election and swearing-in but are not included on the list produced by the Office of the Comptroller or your Office.

Thank you for your assistance with this matter. As we complete data collection, we will move to data reliability and verification. This will entail additional requests for information. I look forward to our continued correspondence.

Steve

From: Boodoo, Jesse M. (GOV) <Jesse.M.Boodoo@mass.gov>

Sent: Tuesday, December 19, 2023 2:18 PM

To: Lisauskas, Stephen P. (SAO) <Stephen.Lisauskas@massauditor.gov>; Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@massauditor.gov>

Cc: Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>; Viator, Gabrielle (GOV) <Gabe.Viator@mass.gov>; Scott Reed, Paige (GOV) <pscottreed@mass.gov>

Subject: RE: Audit of Governor's Office, Next Steps

Dear Steve,

Thank you for your response. I can confirm we have conducted a diligent search for responsive records of employee settlements for the audit period, and we have located no other responsive records to produce. If you are able to provide additional detail concerning the "additional settlement agreements with the Office of the Governor during the audit period," as referenced below, we will of course endeavor to use that information to augment our search. At this point, as I noted last week, we are not aware of any employee settlements during the audit period except the [REDACTED] matter.

Thanks,
Jesse

2. Communication between the Office of the State Auditor and the Office of the Governor regarding access to personnel files

From: Kaplita Jr., William J. (SAO) <William.Kaplita@massauditor.gov>

Sent: Friday, November 22, 2024 1:37 PM

To: Boodoo, Jesse M. (GOV) <Jesse.M.Boodoo@mass.gov>; Lorenzi, Reina I. (SAO) <Reina.Lorenzi@massauditor.gov>; Scott Reed, Paige (GOV) <pscottreed@mass.gov>; Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>; Brown, Timothy R. (SAO) <Timothy.Brown@massauditor.gov>; Carlton-Kelley, Tyler B (SAO) <Tyler.Carlton-Kelley@massauditor.gov>; Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@massauditor.gov>

Subject: RE: Informal Exit Conference

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

At the 11/7/2024 informal exit conference, you did indeed clear up the OSA's misunderstanding concerning the Office of the Governor's assertion that it had provided the OSA with a complete listing of all settlements from the audit period. You subsequently provided December 2023 emails sent to the OSA, confirming that your office "conducted a diligent search for responsive records of employee settlements for the audit period, and we have located no other responsive records to produce." Those assertions have been reflected in the audit report.

In regards to the production of records provided by the executive branch agencies in June and July 2024, some clarification is necessary. After some delay, all executive branch agencies eventually responded to our requests. However, after reviewing the records provided, some of the supporting documentation requested was not provided. For example, we requested supporting information such as Comptroller authorization forms, originating claim, and approval e-mail support for a sample of settlements. These requests were not always fully satisfied. This was summarized in our meeting on November 7th and will be reflected in the audit report.

In regards to the personnel file review, the OSA has consistently maintained that 66A notifications are not required as G.L. c. 66A provides the OSA with access as authorized by statute. Based on our disagreement regarding the applicability of G.L. c. 66A, the OSA took this issue to the Office of the Attorney General, who offered the expedited 66A notification proposal to resolve the issue. In discussions/communications with both your office and the AGO, we have rejected that proposal for the following reasons. First, as a practical matter, the OSA cannot further delay a report that has been marked with by other delays related to auditees' providing requested records. We are in the reporting phase of the audit, nearing issuing a draft report for your review, and the audit must progress towards issuance. More importantly, your 66A based objection to the OSA's authority to access records in connection with our audit is novel and has never been raised by an auditee, including by auditees who provided us direct access to personnel records in other audits, without protest. The position of your office presents an existential threat to the OSA's ability to conduct its audits as the OSA routinely and regularly must access records that would otherwise be protected under FIPA. If the OSA were to concede that our statutory access is not exempted by the provision in G.L. 66A § 2(c) that allows access if authorized by statute, our ability to conduct audits would be fundamentally compromised.

We understand and appreciate your position, as presented in your email below, but disagree with it strongly. It would prevent us from conducting not only this audit but approximately two dozen other audits we are currently conducting, and multiple other audits we are preparing to conduct. Our objection to the position of your office has been communicated clearly up to this point, but if it has not, please accept our apologies. Our office remains available to you to discuss this matter more if that is helpful to you.

Thank you,

William Kaplita

Director of State Audits

Office of the State Auditor Diana DiZoglio

521 East Street

Chicopee, MA 01020

857-242-5685 (Direct)

William.Kaplita@MassAuditor.gov

From: Boodoo, Jesse M. (GOV) <Jesse.M.Boodoo@mass.gov>
Sent: Thursday, December 5, 2024 10:02 PM
To: Kaplita Jr., William J. (SAO) <William.Kaplita@massauditor.gov>; Lorenzi, Reina I. (SAO) <Reina.Lorenzi@massauditor.gov>; Scott Reed, Paige (GOV) <pscottreed@mass.gov>; Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>; Brown, Timothy R. (SAO) <Timothy.Brown@massauditor.gov>; Carlton-Kelley, Tyler B (SAO) <Tyler.Carlton-Kelley@massauditor.gov>; Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@massauditor.gov>
Subject: RE: Informal Exit Conference

Hi all –

Starting tomorrow, MassDOT, EOPSS, EOHHS, and the Governor’s Office will be sending out notices under Chapter 66A, Section 2(k) to the impacted personnel record subjects, giving an opportunity for those individuals to object to the requested review of their personnel records should they wish to do so. We would be happy to provide the SAO team with in-person access to any personnel record for which no response is received starting on December 19. Pasted below is a copy of the notice that will be sent.

To schedule and coordinate logistics, SAO can work through me for Governor’s Office records; through General Counsel Doug McGarrah and Managing Counsel Eileen Fenton for MassDOT; through General Counsel Sharon Boyle and Deputy General Counsel Erica Crystal for EOHHS; and through General Counsel Suleyken Walker for EOPSS. Please feel free to reach out to me with any questions or if you would like to schedule a time to discuss.

Thanks,
Jesse

Pursuant to Section 2(k) of Massachusetts General Laws Chapter 66A, the [AGENCY] is providing notification to you that the Office of the State Auditor has requested to review your

personnel record as on file with the [AGENCY]. The Office of the State Auditor is conducting a statutory performance audit at executive branch agencies, and the Office of the State Auditor's request to review your personnel record was made as part of this audit. We have been informed by the Office of the State Auditor that your personnel record was randomly selected for review.

Section 2(k) of Massachusetts General Laws Chapter 66A requires agencies to "maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed." Accordingly, if you object to the Office of the State Auditor's request to review your personnel record and intend to seek to quash such request, please advise us of your intent to do so by contacting [CONTACT INFO] by 5 p.m. on December 17, 2024.

From: Kaplita Jr., William J. (SAO) <William.Kaplita@massauditor.gov>

Sent: Friday, December 6, 2024 11:49 AM

To: Boodoo, Jesse M. (GOV) <Jesse.M.Boodoo@mass.gov>; Lorenzi, Reina I. (SAO) <Reina.Lorenzi@massauditor.gov>; Scott Reed, Paige (GOV) <pscottreed@mass.gov>; Cook, Kate R. (GOV) <Kate.R.Cook@mass.gov>; Brown, Timothy R. (SAO) <Timothy.Brown@massauditor.gov>; Carlton-Kelley, Tyler B (SAO) <Tyler.Carlton-Kelley@massauditor.gov>; Leung-Tat, Michael K. (SAO) <Michael.Leung-Tat@massauditor.gov>

Subject: RE: Informal Exit Conference

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Hello,

Thank you for the email, Jesse. As previously communicated to the Governor's Office, the OSA's access to the requested records is not subject to the notice requirements of G.L. c. 66A as our access is authorized by statute. While we appreciate your efforts to resolve this issue, the OSA cannot accept your proposal which imposes this unrequired and unnecessary restriction on our authority to access records. Moreover, the proposal is untimely as we are out of the filed work phase and finalizing a draft report for review by you and other auditees.

Thanks,

William Kaplita

Director of State Audits

Office of the State Auditor Diana DiZoglio

521 East Street

Chicopee, MA 01020

857-242-5685 (Direct)

William.Kaplita@MassAuditor.gov

Please note my email has recently changed. My new address is now William.Kaplita@MassAuditor.Gov. Please update your records accordingly and direct all future emails to my new address.

Ways to connect with our office

[Facebook](#) [Twitter](#) [Instagram](#) [LinkedIn](#)

From: [Boodoo, Jesse M. \(GOV\)](#)
To: [Kaplita Jr., William J. \(SAO\)](#); [Lorenzi, Reina I. \(SAO\)](#); [Scott Reed, Paige \(GOV\)](#); [Cook, Kate R. \(GOV\)](#); [Brown, Timothy R. \(SAO\)](#); [Carlton-Kelley, Tyler B \(SAO\)](#); [Leung-Tat, Michael K. \(SAO\)](#)
Subject: RE: Informal Exit Conference
Date: Friday, December 6, 2024 1:42:45 PM

Hi Bill –

To clarify, I was letting you know our plan rather than seeking further negotiation. The notification letters have been sent out. While we do not agree, we certainly understand your position that it was not legally necessary to do so. As mentioned, the records for anyone who does not indicate an intent to move to quash are available to you starting on December 19. I will advise if we receive any such responses, and will await word from you on whether you wish to schedule time to review the personnel records.

Thanks,
Jesse

3. Communication between the Office of the State Auditor and the Office of the Governor regarding notification letters made



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH
STATE HOUSE, BOSTON 02133

TEL (617) 727-2075
FAX (617) 727-3014

December 16, 2024

VIA EMAIL

Her Excellency Maura T. Healey, Governor
Commonwealth of Massachusetts
State House, Room 360
Boston, MA 02133

Dear Governor Healey:

As you are aware, the Office of the State Auditor (OSA) is currently conducting an audit, reviewing the use of employee settlement agreements by the Office of the Governor and its subordinate agencies for the period January 1, 2010 through December 31, 2022. The audit is in its final stages prior to issue; indeed, our office sent your office a draft audit report on December 10, 2024 for your response.

During the course of the audit, our offices have had a well-documented disagreement regarding our July 2024 request to review a random sample of personnel files in order to test the reliability, accuracy, and completeness of the employee settlement listings provided to us by your office other executive offices, departments and agencies.¹ Specifically, G.L. c. 66A provides the OSA with access to personnel files and is authorized by our enabling statute, G.L. c. 11, s. 12. Therefore, notification to individuals for whom we have requested access to their personnel records is not required. I note again that no auditee has ever raised this objection or employed this novel interpretation of G.L. c. 66A to obstruct our access to records. On September 6, 2024, our office engaged the Office of the Attorney General to compel the production of the requested records.

Over the course of the past three months and discussions with your office and the AGO, we have rejected your proposal for a G.L. c. 66A notification process, citing that it was legally

¹ As with all data that our office accesses in connection with our audits, we maintain the highest standards with regard to confidentiality, data protection, and data security. We do not disclose personally identifiable, confidential, or other sensitive information in our audits. Moreover, we cannot disclose such information under GAGAS, the standards by which we statutorily conduct our audits.

not required and impractical given the timeline of the audit. At the November 7, 2024 informal exit conference, our office provided you with the audit's preliminary findings and again rejected the notice proposal, indicating that the audit would include a scope impairment in connection with our inability to access and review the personnel files to perform the required data reliability and completeness testing. On December 5, 2024, Deputy Chief Counsel Jesse Boodoo emailed our office, informing us that "[s]tarting tomorrow [December 6, 2024], MassDOT, EOPSS, EOHHS, and the Governor's Office would be sending out notices under Chapter 66A, Section 2(k) to the impacted personnel record subjects, giving an opportunity for those individuals to object to the requested review of their personnel records should they wish to do so." The email also stated that our office would have "in-person access to any personnel record for which no response is received starting on December 19." On December 6, 2024, the OSA again reiterated that its access to the requested records is not subject to the notice requirements of G.L. c. 66A and rejected the proposal on both legal grounds and as untimely given the nearly completed status of the audit. Despite our documented objections, your office inappropriately sent the notifications anyway.

Unsurprisingly, our office has been contacted by several individuals, the Massachusetts State Troopers Association, and union officials on behalf of individuals who have received notifications and are seeking information and answers. I myself have been asked by Massachusetts State troopers, who did not even receive notifications, to explain our audit and justify our requests for these records. Our office is disappointed with your approach that has unnecessarily disrupted the lives of these active and former public servants. We are auditing the Office of the Governor and its agencies, not these individuals for whom these notifications needlessly create confusion and uncertainty. This office views this act as an intentional misinterpretation of the law aimed at influencing and manufacturing obstacles to our audit work. Moreover, inviting these individuals to object to our statutory authority to access records in connection with our audit is problematic. We cannot conduct independent audits if we allow auditees to determine whether or not they are subject to audit, the topics that our office can audit, and records that our office can review in connection with our audits. We intend to maintain the integrity of our audits, abide by the law, and follow all requirements in accordance with GAGAS.

As we await your responses to the draft report, your office's actions and our concerns will be noted in the final audit report.

Regards,



Diana DiZoglio
Auditor of the Commonwealth