

I believe that my privacy has been violated in Massachusetts, do I have a legal claim and are there legally recognized damages?

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Answer: Quite possibly and quite possibly.

Massachusetts provides a statutory “right against unreasonable, substantial or serious interference with . . . privacy.” Mass. Gen. Laws c. 214, § 1B. The superior court of Massachusetts is granted with jurisdiction to decide such matters. Id. Equitable relief, such as an injunction, is available under the statute as well. Id.

Case law has interpreted the statute are requiring either a substantial or serious invasion, along with it being unreasonable. Schlesinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 409 Mass. 514, 518 (1991) (“The statute obviously was not intended to prohibit serious or substantial interferences which are reasonable or justified.”); O’Connor v. Police Comm’r, 408 Mass. 324, 330 (1990) (“We think that it is highly unlikely that the Legislature intended to provide a right of action to a person whose privacy was substantially or seriously interfered with, but reasonably so.”). So, substantial or serious invasions of privacy are permitted if the invasion was reasonable.

In perusing the case law, in general there appears to be two categories of allegations, those involving claims that people/entities bothered the plaintiff. See e.g., Schlessinger v. Merrill Lynch Pierce, Fenner & Smith, Inc., 409 Mass. 514 (1991) (unwanted telemarketing by financial services company). Another category being claims that people/entities improperly released information, etc. about the plaintiff to others. See e.g., Tower v. Hirschhorn, 397 Mass. 581 (1991) (disclosure by neurologist of medical information to adversaries in litigation).

The argument that there are no damages is typically raised by prospective defendants, as the usual type of “hard” damages may not exist or be difficult to show in a violation of privacy matter. However, this is an incorrect approach to the proper evaluation of a violation of privacy claim because the “right to privacy . . . concerns one’s own peace of mind [and] . . . may take into account mental suffering.” Ullian Thermo v. The New England Newspaper Pub. Co., 306 Mass. 54, 57 (1940). Nonetheless, damages in a right to privacy case appear to be highly subjective and a point of contention in practice. There also appears to be a significant variation of opinion about what is a “serious” or “substantial” invasion of privacy. The matter should be objectively evaluated before considering bringing a claim.

If you believe that your statutory right to privacy may have been violated, feel free to contact this office to discuss.

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