



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

November 6, 2019  
**SPR19/2181**

Seah Levy  
Records Access Officer  
Office of the City Clerk  
City of Cambridge  
Cambridge, MA 02139

Dear Ms. Levy:

I have received the petition of Kristen Noyes appealing the response of the City of Cambridge (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on September 23, 2019, Ms. Noyes requested an “unredacted police report regarding a crash that happened at 13:26 on 8/31/19 at Windsor St and Cambridge St in Cambridge.”

***Previous appeal***

The requested record was the subject of a previous appeal. See SPR19/2062 Determination of the Supervisor of Records (October 23, 2019). I closed SPR19/2062 after I learned that the City provided a supplemental response dated October 22, 2019. The City’s October 22<sup>nd</sup> response provided additional information regarding how Exemptions (c) and (f) apply to withhold portions of the records from disclosure. G. L. c. 4, § 7(26)(c), (f). Unsatisfied with the City’s response, Ms. Noyes petitioned this office and this appeal, SPR19/2181, was opened as a result. It appears Ms. Noyes is appealing the withholding of witness information. While this appeal was pending, the City provided a supplemental response on November 5, 2019.

***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### *The City's October 22<sup>nd</sup> response*

In its October 22, 2019 response, the City claims Exemptions (f) and (c), to withhold witness information.

#### *Exemption (f)*

Exemption (f) permits the withholding of:

investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest

G. L. c. 4, § 7(26)(f).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979). Exemption (f) invites a "case-by-case consideration" of whether disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." See Reinstein, 378 Mass. at 289-90.

As a matter of course, witness provided information is essential to efficient and effective law enforcement. This exemption is intended to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly and voluntarily about matters. Id. at 62. Any information contained in a witness statement, which if disclosed would create a grave risk of directly or indirectly identifying the voluntary witness is subject to

withholding. Globe Newspaper Co., 388 Mass. at 438. The disclosure of the names and other identifying information of victims, complainants and voluntary witnesses may deter other potential witnesses and citizens from providing information to law enforcement agencies in future investigations. Therefore, Exemption (f) will allow the withholding of the name and identifying details of any victims, complainants and voluntary witnesses, and where the individuals can be indirectly identified even with redaction.

Under Exemption (f), citing the language of the statute and the policy considerations behind the exemption, the City indicates that it “. . . redacted the name and date of birth of a voluntary witness (uninvolved in the motor vehicle crash) who provided a statement to the Cambridge Police Department.” The City asserts that “[r]edaction of the voluntary witness’ identity was proper, . . . because this redaction serves ‘to preserve the anonymity of voluntary witnesses’ and ‘encourages witnesses to come forward and speak freely with police’ during a law enforcement investigation. Antell, 52 Mass. App. Ct. at 248; Bougas, 371 Mass. 62.” The City cites other case law to support its position.

#### *Exemption (c)*

Exemption (c) permits the withholding of:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy

G. L. c. 4, § 7(26)(c).

#### *Second clause of Exemption (c) – privacy*

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-34 (1983). Only the second clause of Exemption (c) is applicable to this determination. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of Real Property Dep’t, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This clause does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 292 (2017).

The types of personal information which the second clause of this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. *Id.* at 292 n.13; *see also Doe v. Registrar of Motor Vehicles*, 26 Mass. App. Ct. 415, 427 (1988) (holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).

This clause requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. *PETA*, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. *Id.* at 292.

The City claims that “Exemption (c) also supports the redaction due to the significant personal privacy interest of the voluntary witness. *Globe Newspaper Co.* 419 Mass. at 860 (upholding the redaction of ‘citizen witness’ names and addresses in police records, pursuant to Exemption (c)).” The City posits that Exemption (c) is warranted, “. . . because the policy considerations for Exemption (f) implicitly recognize a significant interest in the personal privacy of a voluntary witness. *Bougas*, 371 Mass. at 63 (noting that police departments ‘depend on reports from private citizens’ and disclosing letters from citizens would have a ‘harmful effect on the normal operation of law enforcement’). Thus, the City may withhold the identity of the voluntary witness, in accordance with Exemption (f) and Exemption (c).”

In its November 5, 2019 supplemental response, the City indicates that it restates and incorporates the arguments raised in its October 22<sup>nd</sup> response. As such, the City asserts that “. . . the name and date of birth of the voluntary witness (who was not involved in the motor vehicle crash) is exempt from disclosure under [Exemptions (f) and (c)]. . . .”

Based on the City’s response, I find it has met its burden to explain how the records were redacted to prevent the disclosure of the identity of a voluntary witness. As such, I find the City acted properly in withholding the name of the voluntary witness under Exemption (f) of the Public Records Law. However, it is unclear how disclosing the date of birth would create a grave risk of directly or indirectly identifying the voluntary witness.

Additionally, with respect to Exemption (c), I find the City has neither demonstrated that the date of birth of the voluntary witness is an intimate detail of a highly personal nature nor how disclosure would result in personal embarrassment to an individual of normal sensibilities. It is additionally uncertain whether this information is available from other sources. *PETA*, 477 Mass. at 292. Consequently, I find the City has not met its burden to withhold the date of birth under Exemption (c). *See Doe v. Registrar of Motor Vehicles*, 1 Mass. L. Rptr. 156, 21 (1993) (finding that an individual’s “date of birth is not information that a person of ‘normal sensibilities’ would go to great lengths to keep private”).

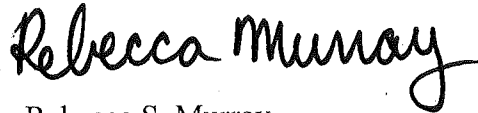
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***Conclusion***

Accordingly, the City is ordered to provide Ms. Noyes with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray  
Supervisor of Records

cc: Kristen Noyes