



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

Rebecca S. Murray
Supervisor of Records

February 3, 2020
SPR20/0103

Shawn M. Draper, Esq.
Senior Legal Counsel
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

Dear Attorney Draper:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Massachusetts Port Authority (Massport) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Rocheleau requested the following records:

- Any/all MOUs, MOAs, or other agreements Massport has entered into to allow one or more law enforcement agencies to install, maintain, repair, and/or access data from Automatic License Plate Recognition (ALPR) cameras and associated equipment.
- Any/all lists, inventory records, and/or maps of ALPR cameras/readers, including but limited to fixed, mobile, portable, trailer-mounted, cruiser- or vehicle-mounted devices, that Massport owns or has access to, including but not limited to records showing the cameras' locations.
- Any/all receipts of grant, award, and other funding for ALPR technology and any/all expenditures for ALPR technology.

Previous appeals

This request was the subject of previous appeals. See SPR19/1027 Determination of the Supervisor of Records (May 28, 2019); SPR19/1076 Determination of the Supervisor of Records (June 12, 2019); SPR19/1404 Determination of the Supervisor of Records (July 30, 2019); SPR19/1700 Determination of the Supervisor of Records (September 4, 2019); SPR19/2341 Determination of the Supervisor of Records (December 5, 2019). In my December 5th

determination I ordered Massport to provide Mr. Rocheleau with a response, in a manner consistent with the order, the Public Records Law and its Regulations. In the alternative, I indicated that Massport may provide this office with un-redacted copies of the responsive records for an *in camera* inspection without delay. Massport provided a response on January 16, 2020. Mr. Rocheleau appealed and SPR20/0103 was opened as a result.

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.

Current appeal

In a May 13, 2019 response Massport indicated it does not have documents responsive to the 1st or 3rd categories of the request and cited Exemption (n) of the Public Records Law to withhold records responsive to the 2nd category. Massport subsequently provided multiple responses regarding the existence of records as well its Exemption (n) claim.

In my December 5th determination I found Massport had not met its burden to show how inventory records that reveal the number of devices owned and the cost of each device sufficiently “resemble the records listed as examples in the statute” as contemplated in People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280 (2017). I also found Massport had not provided “sufficient factual heft,” to conclude that a reasonable person would agree that disclosure of “the number of ALPR cameras/readers and how much they cost,” as sought by Mr. Rocheleau, is “likely to jeopardize public safety or cyber security” as required by Exemption (n). I further indicated that Massport must describe the responsive records it possesses. See G. L. c. 66, § 10(b)(iv)

Massport’s January 16th response provides additional information regarding the existence of records as well its Exemption (n) claim. In his current appeal petition Mr. Rocheleau asserts “[w]hereas Massport’s response provides no new information or legal basis for withholding the materials it is withholding, the Globe asks that the Supervisor order the agency to provide the responsive records immediately.”

Costs of ALPR cameras/readers

In its January 16th response Massport indicates “. . . costs for ALPR cameras/readers are not separately itemized in project costs. Accordingly, Massport does not have documents responsive to this request. . . .”

In light of its January 16th response, it appears Massport is not withholding records responsive to the cost of ALPR cameras/readers; rather, it asserts that it does not possess such records. Based on his appeal petition in which Mr. Rocheleau objects to the withholding of records, I find it is unnecessary to opine on Massport’s position regarding the existence of records related to costs of ALPR cameras/readers.

The number of ALPR cameras/readers

Exemption (n)

Exemption (n) applies to:

records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

G. L. c. 4, § 7 (26)(n).

Exemption (n) allows for the withholding of certain records which if released would jeopardize public safety. The first prong of Exemption (n) examines “whether, and to what degree, the record sought resembles the records listed as examples in the statute,” specifically, the “inquiry is whether, and to what degree, the record is one a terrorist ‘would find useful to maximize damage.’” PETA, 477 Mass. at 289-90.

The second prong of Exemption (n) examines “the factual and contextual support for the proposition that disclosure of the record is ‘likely to jeopardize public safety.’” Id. at 289-90. The PETA decision further provides that “[b]ecause the records custodian must exercise ‘reasonable judgment’ in making that determination, the primary focus on review is whether the custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian’s determination given the context of the particular case.” Id.

Massport previously provided several responses in support of its position to withhold records related to the number of ALPR cameras/readers. In its January 16th response Massport contends “[a]dditionally, Massport reiterates, as stated in its August 20th response, the number and/or location of ALPR cameras/readers would reveal a security protocol at Massport properties.”

In a previous appeal petition Mr. Rocheleau asserted, in part, “[k]nowing the number of ALPR cameras/readers and how much they cost would not provide anyone with information about where the cameras/readers are or what type are being used or any other information that could be helpful if they intended to commit a bad act.”

Despite its November 19th response, I find Massport has not met its burden to show how inventory records that reveal the number of devices owned sufficiently “resemble the records listed as examples in the statute” as contemplated in PETA. *Id.* The examples provided in the statute are “blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure.” G. L. c. 4, § 7(26)(n). As such, it is unclear how the requested inventory records that demonstrate the number of ALPR cameras/readers are similar to these examples.

Further, I find Massport has not provided “sufficient factual heft,” to conclude that a reasonable person would agree that disclosure of “the number of ALPR cameras/readers” as sought by Mr. Rocheleau, is “likely to jeopardize public safety or cyber security” as required by Exemption (n). *See PETA*, 477 Mass. at 289-90. For example, it is unclear how revealing this information would help an individual determine where these cameras are located and/or reveal a security protocol at Massport properties. Massport must provide any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a); Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are narrowly construed and are not blanket in nature).

Conclusion

Accordingly, Massport is ordered to review responsive records that reveal the number of devices owned, redact where necessary and provide such records to Mr. Rocheleau, in a manner consistent with this order, the Public Records Law and Regulations within 10 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.

Shawn M. Draper, Esq.
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Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Matthew Rocheleau