



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

Rebecca S. Murray  
*Supervisor of Records*

August 24, 2020  
**SPR20/1339**

Captain Paul Hamilton  
Everett Police Department  
45 Elm Street  
Everett, MA 02149

Dear Captain Hamilton:

I have received the petition of Wayne Napolitano appealing the response of the Everett Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on July 30, 2020, Mr. Napolitano requested records “. . . of all internal affairs complaints and lawsuits” filed against an identified police officer. The Department provided a response dated August 7, 2020. Unsatisfied with the Department’s response, Mr. Napolitano petitioned this office and this appeal, SPR20/1339, 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.

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 Department's August 7<sup>th</sup> response***

In its August 7, 2020 response, the Department states the identified police officer “left the police department in September of 2017, he is no longer an employee.”

***Burden of specificity***

Pursuant to the Public Records Law, the burden shall be upon the records custodian to establish the applicability of an exemption. G. L. c. 66, § 10(b)(iv) (written response must “identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based . . .”); see also Globe Newspaper Co. v. Police Comm’r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511.

The Department’s response did not contain the specificity required in a denial of access to public records. Based on the Department’s response, it is unclear whether it possesses records responsive to Mr. Napolitano’s request. The Department is reminded that the duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Consequently, I find the Department must confirm if it possesses records responsive to this request. To the extent that records exist, I find the Department must provide them in a manner consistent with the Public Records Law or identify an exemption that applies to withhold the records from disclosure. G. L. c. 66, § 10(b).

***Conclusion***

Accordingly, the Department is ordered to provide Mr. Napolitano with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations as soon as practicable. 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,



Rebecca S. Murray  
Supervisor of Records

cc: Wayne Napolitano