



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

Rebecca S. Murray
Supervisor of Records

September 16, 2020
SPR20/1532

Colleen M. Mejia, Esq.
City Solicitor
City of Everett
484 Broadway, Room 21
Everett, MA 02149

Dear Attorney Mejia:

I have received the petition of Jim Haddadin, Investigative Producer at *NBC10 Boston*, appealing the response of the City of 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, Mr. Haddadin requested: “copies of records that describe all alleged misconduct complaints filed with the Everett Police Department during calendar years 2010 through 2019.” Mr. Haddadin requested that the records be provided in electronic format.

Prior appeal

The requested records were the subject of a prior appeal. See SPR20/1356 Determination of the Supervisor of Records (Supervisor) (August 26, 2020). Despite being notified of the opening of the prior appeal, the Department did not provide a response to the request. Therefore, on August 26th, I ordered the Department to provide a response to the request in compliance with my order, the Public Records Law, and its Regulations.

On August 31, 2020, the Department provided records in response to Mr. Haddadin’s June 24th request; however, the Department redacted certain of the information regarding the Department’s officers under the second clause of Exemption (c), the privacy clause.

As a result of the redactions, Mr. Haddadin petitioned the Supervisor, and the current appeal, SPR20/1532, was opened. In his August 31st petition, Mr. Haddadin asserts, “[w]hile we acknowledge the potential privacy interest that former police officers may have in keeping their misconduct records from the public, the records at issue contain only cursory information about misconduct complaints. Those details include the name of the officer who was the subject of the complaint, the date it was filed, the nature of the complaint and a categorical description of the [Department’s] findings.”

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) (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...”); 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).

Exemption (c)

Exemption (c) applies to:

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).

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983).

Second clause of (c) - privacy

The Department redacted the complaint information of certain police officers on the list under the second clause of Exemption (c). 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 Department did not establish that the information pertaining to former officers that were investigated due to complaints against them is the type of information that Exemption (c) is designed to protect. Neither did the Department establish that the redacted information would result in personal embarrassment to an individual of normal sensibilities; whether the materials sought contain intimate details of a highly personal nature; and whether the same information is available from other sources. See PETA, 477 Mass. at 292. Further, it is unclear how any privacy right would be outweighed by the public interest. PETA, 477 Mass. at 291; see also Worcester Telegram & Gazette Corp., 58 Mass. App. Ct. 1, 2 (2003).

Complaints against police officers – Investigations of Internal affairs and citizen complaints

Please note that the Massachusetts courts have contrasted the public status of disciplinary investigation materials of law enforcement personnel from the “ordinary evaluations, performance assessments, and disciplinary determinations” included in the public records exemption for other public employees due to the significance of maintaining the transparency of the police department’s internal affairs process. Worcester Telegram, 58 Mass. App. Ct. at 2. The Appeals Court reasoned that openness in a police internal affair investigatory process, facilitated by the release of the relevant documents, was necessary to foster the public trust in law enforcement. Id. at 7-8.

The Appeals Court in Worcester defined the internal affairs process as follows:

An internal affairs investigation is a formalized citizen complaint procedure, separate and independent from ordinary employment evaluation and assessment. Unlike other evaluations and assessments, the internal affairs process exists specifically to address complaints of police corruption (theft, bribery, acceptance of gratuities), misconduct (verbal and physical abuse, unlawful arrest, harassment), and other criminal acts that would undermine the relationship of trust and confidence between the police and the citizenry that is essential to law

enforcement. The internal affairs procedure fosters the public's trust and confidence in the integrity of the police department, its employees, and its processes for investigating complaints because the department has the integrity to discipline itself. A citizenry's full and fair assessment of a police department's internal investigation of its officer's actions promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights.

Id., *citing*, Globe Newspaper Co., 419 Mass. at 866.

The Department has not met its burden to withhold the information pertaining to Department officers that were investigated and to explain how the records are not internal affairs records or information as described in Worcester above.

Order

Accordingly, the Department is ordered to provide Mr. Haddadin with the responsive information requested, in a manner consistent with this order, the Public Records Law and its Regulations within ten (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.

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: Jim Haddadin, *NBC10 Boston*