



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

Rebecca S. Murray  
*Supervisor of Records*

October 6, 2020  
**SPR20/1767**

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.

***Previous appeal***

The requested records were the subject of a previous appeal. See SPR20/1339 Determination of the Supervisor of Records (August 24, 2020). In my August 24<sup>th</sup> determination, I indicated that it was unclear whether the Department possessed responsive records. Accordingly, I ordered the Department to provide Mr. Napolitano with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations. Subsequently, the Department provided a response dated August 26, 2020. Unsatisfied with the Department’s response, Mr. Napolitano petitioned this office and this appeal, SPR20/1767, 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 24<sup>th</sup> response***

In its August 24, 2020 response, the Department states that it still maintains its original position in its August 7<sup>th</sup> response, that the identified police officer is no longer with the Department. The Department explains that the identified police officer “. . . is a civilian, no longer a police officer; his life is not an open book and is not subject to prying eyes by the public. Exemption (c) provides a limited executive privilege for information highly personal in nature, See G.L. c. 4 §7(26)(c). This exemption is intended to limit release of materials related 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; such information may include employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information See Wakefield Teacher's Association v. School Committee of Wakefield, 431 Mass. 792, 802 (2000); see also Brogan v. School Committee of Westport, 401 Mass. 306, 308 (1987); Pottle v. School Committee of Braintree, 395 Mass. 861, 866 (1985); George W. Prescott Publishing Company v. Register of Probate for Norfolk County, 395 Mass. 274, 278 (1985).”

The Department further explains that “[a]lthough the Appeals Court deemed internal affairs files not exempt, it is the City's position that former employees' files may constitute an unwarranted invasion of personal privacy and thus that information will be withheld under exemption (c). [The identified police officer] was never the subject of any lawsuits while employed as an Everett Police Officer.”

### ***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).

### ***First clause of Exemption (c) – personnel***

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). The first clause creates a categorical exemption for personnel information that relates to an identifiable individual and is of a “personal nature.” Id. at 434. Massachusetts courts have found that “core categories of personnel information that are ‘useful in making employment decisions regarding an employee’” may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, “employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee,” may be withheld pursuant to the first clause of Exemption (c). Wakefield Teachers Ass’n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under the first clause. See Globe Newspaper Co. v. Exec. Office of Admin. and Finance, Suffolk Sup. No. 11-01184-A (June 14, 2013).

Nevertheless, there is a strong public interest in monitoring public expenditures and public employees have a diminished expectation of privacy with respect to public employment matters. See George W. Prescott Publishing Co. v. Register of Probate for Norfolk County, 395 Mass. 274, 278 (1985); Globe Newspaper Co., 388 Mass. at 436 n.15. Further, the public has an interest in knowing whether public employees are “carrying out their duties in an efficient and law-abiding manner.” Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 158 (1979). As a result, certain information that is considered personal in the ordinary sense of the word may be considered part of a public record if relating to an individual’s official responsibilities. See Brogan v. School Comm. of Westport, 401 Mass. 306, 309 (1987).

### *Internal affairs records*

Please note that the 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 “personnel [file] or information” for other public employees due to the significance of maintaining the transparency of the police department’s internal affairs process. Worcester, 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.

Based on the Department's response, I find that it has neither demonstrated how the "internal affairs complaints" are exempt from disclosure under the first clause of Exemption (c) nor established how they constitute one of the core categories of personnel information, such as an employment application, employee work evaluation, disciplinary documentation, or promotion, demotion, or termination information pertaining to a particular employee, which may be properly withheld from disclosure under the personnel clause of Exemption (c). Consequently, I find the Department has not met its burden to explain how the internal affairs records of the identified police officer, whether currently employed with the Department or not, falls within the first clause of Exemption (c).

*Second clause of Exemption (c) – privacy*

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.

Under the second clause of Exemption (c), although the Department states that “. . . it is [its] position that former employees’ files may constitute an unwarranted invasion of personal privacy . . .[.]” the Department has not demonstrated how the responsive records constitute intimate details of a highly personal nature nor how disclosure would result in personal embarrassment to an individual of normal sensibilities. It is additionally uncertain whether any of the information is available from other sources. PETA, 477 Mass. at 292. Also, I find the Department has not identified a privacy interest about an identified individual that substantially outweighs the public interest in obtaining this information. Consequently, I find the Department has not met its burden to withhold the responsive records from disclosure pursuant to the second clause of Exemption (c).

### ***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 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](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: Wayne Napolitano