



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

Rebecca S. Murray
Supervisor of Records

November 3, 2020
SPR20/2027

Joanne M. Roomey
Paralegal/Records Access Officer
City of Salem Legal Department
93 Washington Street
Salem, MA 01970

Dear Ms. Roomey:

I have received the petition of Rachel Hazelton appealing the response of the City of Salem Legal Department (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Hazelton requested:

- “1. Any and all records pertaining to ANY incident involving [identified police officer] and [an identified business establishment’s] employees’ who called the City’s police department (Department) to report their concern regarding an [identified police officer]...;
2. Any and all records pertaining to how [the Department] responded to this call;
3. Any and all records as to who/how took possession of [an identified police officer’s] Department-issued vehicle that was parked at [an identified location]...;
4. Any and all records of the GPS log of the Department-issued vehicle that details this incident;
5. A record of the recording of the call made on a Department recorded line from an [identified location];
6. Any and all records of internal investigations and/or documentation, any and all records relating to this incident involving [an identified police officer];
7. Any and all records as to who and how [the Department] took possession of the [identified police officer’s] Department-issued firearm [during the incident];
8. Any and all records of who and how [the Department] took possession of the [identified police officer’s] Department-issued vehicle...;
9. Any and all records of the City’s policy on [D]epartment-issued vehicles;
10. Any and all records of all official written disciplinary policy of how a scenario like this...is handled by the Department/City? Ex. [i]nternal investigation? criminal charges? superior officer disciplined, etc?

11. Any and all records of the official written policy of the Department/City, that defines ‘conduct unbecoming a police officer;’
12. Any and all records showing who was the [o]fficer in [c]harge at the time of the call to the Department [and at the time of the incident];
13. Any and all records of the shift assignment sheet at the time of this incident that details all officers and civilian employees who were on duty/on shift at the time of the incident involving the call to the Department [from an identified location].”

On October 1, 2020, Ms. Hazelton also made a request to the City’s Legal Department and Mayor’s Office. Specifically:

- “Any and all records of civilian complaints made against [an identified police officer] to the City and/or the Department;
- Any and all records of proof including date and time of proper destruction and disposal of [an identified person’s] DNA sample that as of 4/24/2020 was still being stored by the Department/City; and
- Any and all records of any and all communication between the Department’s employees and/or the City’s employees regarding the storage and destruction and disposal of an [identified person’s] DNA that was still stored as of 4/24/2020 in evidence.”

In an October 19, 2020 response, the City’s Legal Department provided Ms. Hazelton with records responsive to her Requests Numbered 1, 2, 5, 6, 9, 10, 11, 12 and 13. The City withheld certain of the information contained in the responsive records pertaining to Requests Numbered 1 and 6 pursuant to Exemption (c) of the Public Records Law. The City also provided records responsive to Ms. Hazelton’s request to the Legal Department/Mayor’s Office for all records of civilian complaints made against the identified officer. The City also informed Ms. Hazelton that it previously provided her with the request for communications between Department employees and/or the City’s employees regarding the storage and destruction of an identified employees’ DNA sample that was stored as evidence.

No responsive records

In addition, the City explained that it has no records responsive to her Requests Numbered 3, 4, 7 and 8; and also, no records responsive to her request for the records of proof of the storage and destruction and disposal of an identified person’s DNA. Under the Public Records Law, there is no obligation to create a record in response to a public records request. The duty to comply with requests for information extends only to those records that exist and are in the custody of the custodian of records at the time of the request. See G. L. c. 4, § 7(26); see also 32 Op. Att’y Gen. 157, 165 (May 18, 1977).

Unsatisfied with the Department’s response, Ms. Hazelton appealed and SPR20/2027 was opened as a result.

Based upon a conversation between a Senior Attorney in the Public Records Division and Victoria B. Caldwell, Assistant City Solicitor, it is my understanding that the City intends on providing a subsequent response to address the redactions made to the responsive records pursuant to Exemption (c).

Conclusion

Accordingly, the City is ordered to provide Ms. Hazelton with a subsequent response to her request, in a manner consistent with the Public Records Law and its Access Regulations within 10 business days. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us. Ms. Hazelton may appeal the substantive nature of the City's response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, prominent "R" and "M".

Rebecca S. Murray
Supervisor of Records

cc: Rachel Hazelton
Victoria B. Caldwell, Esq., Assistant City Solicitor