



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

Rebecca S. Murray  
Supervisor of Records

December 21, 2020  
**SPR20/2419**

Mark Yankopoulos, Esq.  
Records Access Officer  
Soldiers' Home in Holyoke  
110 Cherry Street  
Holyoke, MA 01040

Dear Attorney Yankopoulos:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Soldiers' Home in Holyoke (Home/HLY) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on November 3, 2020, Mr. Rocheleau requested the following records:

1. Any/all materials submitted by each of the following individuals as part of their applications in 2016 for the job opening for administrator/superintendent of the Soldiers' Home in Holyoke, including but not limited to any/all resumes, cover letters, letters of recommendation, and references...
2. Any/all materials the Holyoke Soldiers' Home Board of Trustees sent to the Governor's office and/or sent to EOHHS in 2016 regarding filling the vacancy for administrator/superintendent of the Holyoke Soldiers' Home, including but not limited to any/all candidate score sheet(s) as well as any/all recommendations about the top three candidates and/or final selections.
3. Any/all materials the Holyoke Soldiers' Home Board of Trustees received from the governor's office and/or received from EOHHS in 2016 regarding filling the vacancy for administrator/superintendent of the Holyoke Soldiers' Home, including but not limited to any/all candidate score sheet(s) as well as any/all recommendations about the top three candidates and/or final selections.

The Home provided a response on December 4, 2020, indicating it does not possess certain records and denying access to portions of the responsive records, pursuant to Exemption (c) of the Public Records Law. G. L. c. 4, § 7(26)(c). Unsatisfied with the Home's response, Mr. Rocheleau petitioned this office and this appeal, SPR20/2419, 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 Home’s December 4<sup>th</sup> response***

In its December 4, 2020 response and with respect to item 1, the Home explains that “. . . the only materials submitted by the individual applicants . . . were cover letters and resumes. HLY does not have recommendations or references, if any, submitted by applicants in its possession.” The Home asserts that it “. . . is withholding the cover letters and resumes as they constitute personnel materials under [Exemption (c)] . . . See, *Wakefield Teacher’s Association v. School Committee of Wakefield*, 431 Mass. 792, 798-802 (2000) (finding generally personnel information that is useful in making employment decisions regarding an employee is sufficiently personal to be exempt pursuant to the first clause. Such information may include employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information.).”

The Home further states that “[w]hile these materials were used by the Board of Trustees in their meetings, the meetings for the purpose of reviewing resumes and interviewing candidates were held in executive session. They are therefore subject to M.G.L. c. 30A, §22(f), which states in pertinent part that ‘[w]hen the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege *or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.*’ (emphasis added). In this case, as noted above, the cover letters and resumes submitted by the applicants and considered by the Board of Trustees constitute personnel materials under M.G.L. c. 4, §7, clause 26 (c) (the personnel exemption). Accordingly, they are being withheld.”

With respect to items 2 and 3, the Home states that the only potentially responsive records in its possession are “resumes and cover letters submitted by applicants and a candidate scoresheet.” The Home indicates that it is withholding these records, including the candidate scoresheet per the above explained reasons under Exemption (c) and G. L. c. 30A, §22(f).

*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).

***Open Meeting Law***

Given that this appeal is related to documents received and completed by the Board of Trustees, this raises issues that potentially invoke the Open Meeting Law. Given that an

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interpretation of the Open Meeting Law falls within the authority of the Office of the Attorney General (AGO) and not this office, I decline to provide a determination under the Public Records Law at this time. See G. L. c. 30A, § 23. It is recommended that you contact the AGO should you seek determination on this issue.

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