



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

Rebecca S. Murray
Supervisor of Records

January 7, 2021
SPR20/2563

Shawn Williams, Esq.
Director of Public Records
City of Boston
1 City Hall Square, Room 615
Boston, MA 02201

Dear Attorney Williams:

I have received the petition of Andrew Ryan of the *Boston Globe* appealing the response of the Boston 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 October 13, 2020, Mr. Ryan requested “. . . all complaints and discipline records for former BPD officer. . . . We’re seeking all complaints against [the identified officer], the supervisor’s recommendation that goes along with each complaint, and all other records and documents. That should include -- but is not limited to -- the following cases: Year 1995 case #28195, Year 2006 case #7806, Year 2007 case P03507.” The Department responded on October 18, 2020, providing certain records and denying access to other portions of the responsive records pursuant to Exemptions (a) and (c) of the Public Records Law. G. L. c. 4, § 7(26)(a), (c). Unsatisfied with the Department’s response, Mr. Ryan petitioned this office and this appeal, SPR20/2563, 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 October 18th response

IAD# 310-06.

In its October 18, 2020 response, the Department enclosed records pertaining to IAD# 310-06.

IAD # 078-06

With respect to records associated with IAD # 078-06, the Department indicates that the records “. . . have been redacted pursuant to Exemption (c) of the Massachusetts Public Records Law, as the redacted information contains data relating to specifically named individuals, the disclosure of which may constitute an unwarranted invasion of privacy.”

Exemption (c)

Exemption (c) permits the withholding of:

personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.

G. L. c. 4, § 7(26)(c).

Analysis under 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 exemption 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 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 exemption 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.

Although the Department states that it redacted “. . . data relating to specifically named individuals[,]” it is unclear the type(s) of information that was redacted from the responsive records or how the information falls within Exemption (c). A 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 G. L. c. 66, § 10(b)(iv).

IAD# 281-95

With respect to records associated with the above, the Department indicates that it “. . . has withheld records relating to IAD# 281-95, under the statutory exemption to the public records law, G.L. c. 4 §7(26)(a), as the Department is prohibited from disseminating such records pursuant to G.L. c. 41 §97D.”

Exemption (a)

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to

a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

The statute states in relevant part:

All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality . . .

G. L. c. 41, § 97D.

Based on the Department's response, it is unclear how the records relating to an internal affairs investigation falls within the type of records contemplated in G. L. c. 41 § 97D. The Department merely cites the statute without any further explanation as to the statute's applicability to the responsive records. A records custodian is required to not only cite an exemption but to specifically explain the applicability of the exemption to the requested records for compliance with the Public Records Law. G. L. c. 66, § 10(b)(iv). It is additionally uncertain what type(s) of records associated with IAD# 281-95 were withheld from disclosure. To deny access to a record under the Public Records Law, a records access officer must identify the record, categories of records, or portions of the record it intends to withhold. G. L. c. 66, § 10(b)(iv); see also 950 C.M.R. 32.06(3)(c)(4).

Conclusion

Accordingly, the Department is ordered to provide Mr. Ryan 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.

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: Andrew Ryan