



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

Rebecca S. Murray
Supervisor of Records

March 16, 2021
SPR21/0524

Theresa S. Finnegan, Esq.
General Counsel
Hampden County Sheriff's Department
627 Randall Rd.
Ludlow, MA 01056

Dear Attorney Finnegan:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Hampden County Sheriff's Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 11, 2021, Mr. Rocheleau requested "[a]ny/all disclosures of immediate family working in Massachusetts state government that were made by individuals who applied for employment with the Hampden Sheriff's Department between Jan. 1, 2015 and present." Mr. Rocheleau claimed "[t]he records sought by this public records request are, by law, a matter of public record. Specifically, M.G.L. Part IV, Title I, Chapter 268A, Section 6B."

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.

Current Appeal

On March 1, 2021, the Department provided records to Mr. Rocheleau. Mr. Rocheleau made an appeal to this office on March 2, 2021, stating that the Department “redacted all of the names and other responsive information on every document” and “did not state any exemption under the public record law, or provide any explanation, for why the records were redacted.” Mr. Rocheleau also requested the “Supervisor order the office to provide all future responses electronically. The Globe explicitly requested these records be provided in electronic format, and the sheriff’s office has the capability to scan the responsive records and send them electronically (via email or google drive or dropbox or some other online file sharing means).”

The Department provided a supplemental response on March 2, 2021, explaining the reasoning for the redactions. The Department claimed, “the names of the employees and their relatives who were disclosed are exempt from disclosure under the Privacy Exemption pursuant to G.L. c. 4 section 7 (26)(c).”

The Department further explained that, “[p]roviding documents that reveal the names of employees and their relatives would constitute an unwarranted invasion of their personal privacy. The applications are personnel records and personnel records are specifically mentioned as being exempt under subsection (c). As stated in the Massachusetts Guide to Public Records Law, Generally the first clause applies to core categories of personnel information. . . . For example, ‘*employment applications*, employee work evaluations, disciplinary documentation, promotion, demotion, or termination information pertaining to a particular employee’ (emphasis added). The redacted versions provided would not be exempt because they ‘do not permit the identification of any individual’... and are ‘wholly unrelated to any individual’s privacy interest.’ *See Wakefield Teacher’s Association v. School Comm. of Wakefield*, 431 Mass. 792, 800 (2000).” Mr. Rocheleau maintains, “that no exemptions apply to the responsive records, including but not limited to exemption (c).”

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. Att’y Gen., 391 Mass. 1, 9 (1984); Att’y 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.

G. L. c. 268A, § 6B

The statute requiring candidates for state employment to disclose the names of certain relatives who are state employees is as follows:

Each candidate for employment as a state employee shall be required by the hiring authority as part of the application process to disclose, in writing, the names of any state employee who is related to the candidate as: spouse, parent, child or sibling or the spouse of the candidate's parent, child or sibling.

The contents of a disclosure received under this section from an employee when such employee was a candidate shall be considered public records under section 7 of chapter 4 and chapter 66.

All disclosures made by applicants hired by a state agency shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

G. L. c. 268A, § 6B.

The statute provides that these written disclosures, including the names of certain state employee relatives of candidates, are public records. Id. The statute evidences a legislative intent to make these records, including the name of any state employment

candidate's spouse, parent, child, or sibling of the candidate's parent, child or sibling, available for inspection. Id.

Preferred Format

A records access officer shall, to the extent feasible, provide public records to a requestor in electronic format unless the record is not available in electronic form or the requestor does not have the ability to receive or access the records in electronic format and if feasible, in the requesters preferred format. In the absence of a preferred format, the records shall be provided in a searchable machine-readable form. See 950 C.M.R. 32.04(5)(d).

The Department stated the "applications are not stored electronically; [the Department] received the documents redacted and each one of the 542, applications stapled together for each individual. The Human Resources Department has informed [the Department] that staff members spent approximately 40 plus hours fulfilling this request. [The Department] did not want to request that they return to the task, remove the staples from each set and scan them." The Department further explained that the "Globe would receive the information in a much more timely manner if staff did not have to return to the drawing board and take these extra steps. Finally, so much of our staff time and tax payers dollars were already invested in preparing the response for which we agreed to waive fees. Staff had to stay late or come in early in some instances to fulfill this request, and often worked on it to the detriment of being available for their regular job duties. Our Human Resources Department has been especially hard hit with staffing issues due to the managing of staff issues related to the Pandemic."

Mr. Rocheleau has indicated that he prefers to receive the records electronically via email. It is unclear why it is not feasible to send the requested records via email. The Department must clarify this.

Conclusion

Accordingly, the Department is ordered to provide Mr. Rocheleau with a response, in a manner consistent with this order, the Public Records Law and its Regulations within 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: Matthew Rocheleau