



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

Rebecca S. Murray
Supervisor of Records

March 30, 2021
SPR21/0654

Joanne Roomey
Salem Police Department
95 Margin Street
Salem, MA 01970

Dear Mr. Roomey:

I have received the petition of Rachel Davis appealing the response of the City of Salem (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 3, 2021, Ms. Davis requested “a list of all names of all internal applicants, employees currently employed by the Salem police department, that applied for the current open position of Chief of Police for the City of Salem.”

On March 17, 2021, the City replied that “[i]t is the opinion of this office that the applications for employment are not public record.” The City also notes in its response that “the information on the four (4) finalists” was released to the public. Unsatisfied with the City’s response, Ms. Davis appealed, and SPR21/0654 was opened as a result.

Current Appeal

In her appeal petition, Ms. Davis asks for “the specific law that allows [the City] to deny the public access to a list of names of applicants for a civil service position.” She also reiterates that she is “not requesting a record of the individual’s application, resume or any personal information. [She] only requested a record that lists the names of internal applicants, those officers currently employed by the City of Salem/SPD, who applied for the open position for Chief of police.”

The City’s March 23rd Response

In an email to this office on March 23, 2021, the City claimed to withhold responsive records pursuant to Exemption (c). Among other things, the City stated:

3. There were nine (9) candidates evaluated.
4. After the grades were provided to Civil Service [the Department of Human Resource

Management], Civil Service sent the City a list they generated that showed candidate rankings based on their grade. The list included all nine (9) candidates even though they were not finalists.

5. Four finalists' names were released to the public pursuant to Civil Service rule that the top three shall be considered for appointment (there was a tie for third). The other five (5) names were not provided due to privacy Exemption (c).

As a result of above and privacy concerns for those applicants not named finalist, the City is claiming the names should be withheld due to the privacy Exemption (c).

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.

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.

Identity of Candidates Not Hired

A general applicant who fails to advance past the initial application stage maintains an undiminished privacy interest in his or her identity. Thus, certain information may be withheld pursuant to Exemption (c). The Supreme Judicial Court has “noted the possible adverse effect of disclosure on an applicant’s attempt to obtain future employment, on his ability to function in the job he then held, and on his standing in his community.” See Attorney Gen. v. Sch. Comm. of Northampton, 375 Mass. 127, 132 n.5 (1978). In contrast, for those who advance beyond an initial screening to become “finalists,” the Court has explained “that an applicant who reached that level of consideration would expect open and public discussion of his [or her] professional competence.” Id. at 130. The Court further explained, “that the reasons for protecting the identity of such candidates were less substantial than the reasons for protecting the identity of applicants who had not reached that level of consideration.” Id. at 130.

In this case, the City released to the public the names of the four finalists who were recruited, assessed, and evaluated as candidates for Police Chief. The City withheld the names of the five who did not advance beyond the initial evaluation stage. Based on the City’s response, I find the City has met its burden to show that those five candidates hold a privacy interest in having their names withheld under Exemption (c) to the Public Records Law. G. L. c. 4, § 7(26)(c).

In its March 23rd response, the City also raises the fact that it outsourced the recruitment and assessment of applicants to a vendor, and the vendor, rather than the City, created the list of applicants. As the identities of applicants may be withheld under Exemption (c) to the Public Records Law, I decline to address the other issues raised by the City in its response.

Conclusion

Accordingly, I will consider this administrative appeal closed. If Ms. Davis is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, § 10(b) (pursuing administrative appeal does not limit availability of applicable judicial remedies).

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: Rachel Davis