



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

Rebecca S. Murray
Supervisor of Records

March 31, 2021
SPR21/0650

David O'Sullivan, Esq.
Essex County District Attorney's Office
10 Federal Street
Salem, MA 01970

Dear Attorney O'Sullivan:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Essex County District Attorney's Office (Office) 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 Eastern District Attorney 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."

Previous appeals

This request was the subject of previous appeals. See SPR21/0240 Determination of the Supervisor of Records (February 17, 2021) and SPR21/0405 Determination of the Supervisor of Records (March 4, 2021). I closed SPR21/0405 with the understanding that the Office would provide a subsequent response. The Office provided Mr. Rocheleau with a response on March 16, 2021. Unsatisfied with the Office's response, Mr. Rocheleau petitioned this office and this appeal SPR21/0650, 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 Office's March 16th response

In its March 16, 2021 response, the Office indicates that it withheld from disclosure nine applications that disclosed information that was outside the scope of the original request, and was not required to be disclosed pursuant to G. L. c. 268A. The Office asserts that the applications that disclosed family members who are not a "spouse, parent, child or sibling or the spouse of the candidates' parent, child or sibling," are exempt under Exemption (p), which exempts from disclosure "'the name . . . of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).'"

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.

Exemption (p)

Exemption (p) applies to:

the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

G. L. c. 4, § 7(26)(p).

Where Exemption (p) permits the nondisclosure of certain information of a family member of a commonwealth employee, I find the Office may permissibly withhold those portions from disclosure. However, given that G. L. c. 268A, § 6B requires these disclosures “be made available for public inspection to the extent permissible by law” it is unclear how the records can be withheld in their entirety. See Reinstein, 378 Mass. at 289-90 (the statutory exemptions are narrowly construed and are not blanket in nature). Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a).

Conclusion

Accordingly, the Office is ordered to review the records, redact where necessary and provide Mr. Rocheleau with responsive records, 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. I will consider this administrative appeal closed.

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