



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

Rebecca S. Murray
Supervisor of Records

April 16, 2021
SPR21/0846

Meagen K. Monahan, Esq.
Assistant District Attorney
Records Access Officer
Norfolk County District Attorney's Office
45 Shawmut Road
Canton, MA 02021

Dear Attorney Monahan:

I have received the petition of Laura Crimaldi of the *Boston Globe* appealing the response of the Norfolk 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 March 31, 2021, Ms. Crimaldi requested the following records: "any and all records concerning [named person] and/or [named] Stoughton police officer; e-mails and/or text messages between [named] Stoughton police officer's department issued e-mail address and/or cellphone and telephone number [identified number] and [personal e-mail address]; and any and all records concerning inquiries by the Stoughton Police Dept. or its representatives about [named] Officer since Dec. 1, 2020."

The Office responded on March 31, 2021. Unsatisfied with the Office's response, Ms. Crimaldi appealed and SPR21/0846 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(d)(iv) (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..."); 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).

The Office's March 31st response

In its March 31st response, the Office responded and stated, “[d]ue to an active and ongoing investigation, the records you seek are exempt from public disclosure at this time pursuant to statutory exemptions, G.L. c. 4, § 7 (26) (f).”

Exemption (f)

Exemption (f) permits the withholding of:

investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest

G. L. c. 4, § 7(26)(f).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979). Exemption (f) invites a “case-by-case consideration” of whether disclosure “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” See Reinstein, 378 Mass. at 289-90.

As a matter of course, witness provided information is essential to efficient and effective law enforcement. This exemption is intended to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly and voluntarily about matters. Bougas 371 Mass at 62. Any information contained in a witness statement, which if disclosed would create a grave risk of directly or indirectly identifying the voluntary witness is subject to withholding Globe Newspaper Co., 388 Mass. at 438. The disclosure of the names and other identifying information of victims, complainants and voluntary witnesses may deter other potential witnesses and citizens from providing information to law enforcement agencies in future investigations. Therefore, Exemption (f) will allow the withholding of the name and identifying details of any victims, complainants and voluntary witnesses, and where the individuals can be indirectly identified even with redaction.

The Office's March 31st response did not provide supporting information on how the records fall under Exemption (f) in their entirety. It remains unclear what responsive records the

Office possesses. The Office must identify what records it has in its possession, custody or control that are responsive to Ms. Crimaldi's request. See G. L. c. 66, § 10(b)(iv); 950 C.M.R. 2.06(3)(c)(4) (a records access officer must provide a written response that identifies the record, categories of records, or portions of the record it intends to withhold). It is additionally uncertain how disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" as required by Exemption (f). Further, it is unclear why the Office cannot redact where necessary to preserve confidentiality and provide the remaining portions of the record. See Antell, 52 Mass. App. Ct. at 248.

As a result, I find that the Office did not satisfy its burden in responding to this records request.

Order

Accordingly, the Office is ordered to provide Ms. Crimaldi with a response to the request, provided 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: Laura Crimaldi