



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

Rebecca S. Murray  
Supervisor of Records

May 3, 2021  
**SPR21/0988**

Allison Hynes, Esq.  
Staff Legal Counsel  
Department of State Police  
470 Worcester Road  
Framingham, MA 01702

Dear Attorney Hynes:

I have received the petition of Craig Shibley appealing the response of the Department of State Police (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 20, 2021, Mr. Shibley requested a copy of the “. . . Case Master Report 2012-115-0065” of a criminal investigation that concluded in November 2018.

***Previous appeals***

This request was the subject of previous appeals. See SPR21/0176 Determination of the Supervisor of Records (February 10, 2021) and SPR21/0592 Determination of the Supervisor of Records (March 25, 2021). In my March 25<sup>th</sup> determination, I directed the Department to confirm whether it possesses the case master report in its ACISS system. Accordingly, I ordered the Department to provide Mr. Shibley with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations. Subsequently, the Department provided a response on March 29, 2021. Unsatisfied with the Department’s response, Mr. Shibley petitioned this office and this appeal, SPR21/0988, 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 March 29<sup>th</sup> response***

In its March 29, 2021 response, the Department indicates, “. . . ACISS is a database created by the Department for specific units and divisions to utilize in the creation and maintenance of their records. Not all Department employees have access to ACISS as access is on an as needed basis. If a Department employee does have access to ACISS, such access may be restricted based on his/her position and title as well as the nature of the investigation.”

Based on the Department's response, it is unclear how it does not have the requested report in its possession, custody or control, even though access to the database is restricted to certain Department employees. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). The Department must produce the record or claim an exemption(s) under the Public Records Law that permits it to withhold the requested record from disclosure. If the Department does not possess a copy of the requested record, it must indicate as such.

### ***Order***

Accordingly, the Department is ordered to provide Mr. Shibley 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](mailto:pre@sec.state.ma.us).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Craig Shibley