



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

Manza Arthur
Supervisor of Records

October 5, 2022
SPR22/2165

Shawn A. Williams, Esq.
Director of Public Records
Record Access Officer
City of Boston
One City Hall Square
Boston, MA 02201

Dear Attorney Williams:

I have received the petition of Emily Sweeney, of the *Boston Globe*, appealing the response of the City of Boston (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On September 15, 2022, Ms. Sweeney requested, "... a recording of the 911 emergency call that was made to report the alleged package explosion that occurred at Northeastern University's Holmes building around 7 p.m. Tuesday[.]"

The City responded on September 15, 2022. Unsatisfied with the response, Ms. Sweeney petitioned this office and this appeal, SPR22/2165, 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 agency or municipality 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.

The City's September 15th Response

In its September 15, 2022 response, the City cited Exemption (f) to withhold the requested records in their entirety.

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. Bogas 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. Att'y 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.

In its response, the City asserted, "[t]he records you requested are associated with an active and ongoing investigation. As such, your request is denied, as all records associated with this matter are exempt from disclosure pursuant to the investigative exemption to the public records law. See G. L. c. 4, § 7 (26) (f). Disclosure of any responsive records would harm the investigative efforts of the FBI and the Boston Police Department."

Where the requested record pertains to an ongoing investigation, I find the City may permissibly withhold the responsive record from disclosure under Exemption (f) at this time. Please note, a change in the status of the investigation will impact the application of Exemption (f).

Conclusion

Accordingly, I will consider this administrative appeal closed.

Shawn A. Williams, Esq.
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Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is written in a cursive, flowing style with a large initial "M".

Manza Arthur
Supervisor of Records

cc: Emily Sweeney