



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

Manza Arthur
Supervisor of Records

October 17, 2022
SPR22/2229

Agapi Koulouris, Esq.
General Counsel
Department of Criminal Justice Information Services
200 Arlington Street, Suite 2200
Chelsea, MA 02150

Dear Attorney Koulouris:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Massachusetts Department of Criminal Justice Information Services (DCJIS) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On July 27, 2022, Ms. Ryley requested, "... firearms transactions reported pursuant to 803 CMR 10.00, from Jan. 1, 2014, or the earliest date available once MIRCS was operational, through the most recent date available on the day my data is exported including specific data information."

DCJIS provided a response on August 11, 2022. Unsatisfied with the response, Ms. Ryley petitioned this office and this appeal, SPR22/2229, was opened as a result.

Fee estimate - agencies

An agency may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Agencies may not assess a fee for the first 4 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested. G. L. c. 66; § 10(d)(ii). Where appropriate, agencies may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id.

A fee shall not be assessed for time spent segregating or redacting records unless such

segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, §10(d)(ii); 950 C.M.R. 32.06(4).

Current appeal

In her appeal, Ms. Ryley appealed based upon "... redaction of the 'occupation' column, the \$50 fee, and the 30-day delivery time for the data."

DCJIS' August 11th Fee Estimate

In its August 11, 2022 response, DCJIS advised, "[d]ue to the magnitude and the complexity of the records sought in response to this request, DCJIS has concluded that in accordance with M.G.L. c. 66, § 10(b) and 950 C.M.R. 32.07(2), that a charge of \$50.00 is necessary to process this production. This amount includes approximately two hours of work to generate the report and requested records, and four hours to redact exempt information as referenced above. The first four hours are provided free of charge in accordance with the public records laws and regulations. As such, the cost estimate reflects a total charge for two hours of work at the rate of \$25.00 per hour. . . ."

Based on DCJIS' response, I find it has not met its burden to explain how the indicated amount of time is necessary to search, review, segregate, and/or redact responsive records. DCJIS must confirm that the \$25 rate is that of the lowest paid employee who has the necessary skill to complete the search. Further, it is not clear what tasks are involved to prepare responsive records for production. As such, DCJIS must provide further details regarding its fee estimate. See G. L. c. 66, § 10(d)(iv) (requiring the amount of the fee be reasonable).

DCJIS and Ms. Ryley are encouraged to communicate further to determine whether any responsive records may be provided more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (an agency shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency to produce records sought more efficiently and affordably).

DCJIS further redacted certain information pursuant to Exemptions (a) and (j) of the Public Records Law.

Exemption (j)

Exemption (j) of the Public Records Law permits a records custodian to withhold or redact portions of records containing:

the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on

sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards

G. L. c. 4, § 7(26)(j).

The scope of the exemption is limited to restricting the public disclosure of the name and address of the individual. A records custodian may withhold an entire firearms record if the requestor knows with certainty that this particular record pertains to a specific address or individual. In this instance, redaction would be futile as it would not protect the identity of the license holder(s). See id.; see also G. L. c. 140, §§ 121-131P.

In its response, DCJIS states, "... to the extent the records you seek identify any firearms license holder, DCJIS asserts that the records you seek are exempt from public disclosure pursuant to M.G.L. c. 4, § 7, cl. 26(a) and (j) and M.G.L. c. 66, §10B. Pursuant to G.L. c. 66, §10B, DCJIS '...shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms...' except as authorized under said section. Likewise, G.L. c. 4, § 7, cl. 26(j) exempts '...the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms...' Therefore, any records produced in response to this request will not include individual identifying information."

In light of DCJIS' response, it is unclear why Exemption (j) permits DCJIS to redact the "occupation" column from the records. I find that DCJIS must clarify its position.

Conclusion

Accordingly, DCJIS is ordered to provide Ms. Ryley 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.

Sincerely,



Manza Arthur
Supervisor of Records

cc: Sarah Ryley