



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

Manza Arthur
Supervisor of Records

October 25, 2022
SPR22/2292

Allison Mondello
Primary Records Access Officer
Massachusetts Department of State Police
470 Worcester Road
Framingham, MA 01702

Dear Ms. Mondello:

I have received the petition of Craig P. 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 August 15, 2022, Mr. Shibley requested “[t]he activation dates of all murder cold cases since ACISS went live in 2011 along with a copy of each approved case initiation report ... [and] the corresponding case file numbers ... and each victim’s name.”

Previous appeal

This request was the subject of a previous appeal. See SPR22/2080 Determination of the Supervisor of Records (September 20, 2022). The Department responded on October 11, 2022. Unsatisfied with the response, Mr. Shibley petitioned this office and this appeal, SPR22/2292, 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 Office's October 11th response

In its October 11, 2022 response, the Office cited Exemption (f) to withhold the records and stated the following:

M.G.L. c. 66, § 10(a)(ii) requires production of records only where “the public record is within the possession, custody or control of the agency.” Given the operational function that SPDU members perform for the district attorneys as described above, the records that may be responsive to your public records request are in the possession, custody, and control of the Worcester County District Attorney’s office, and to the extent that these records were created by SPDU members, the members created them only as agents of the Worcester County District Attorney. For the above mentioned reasons, please direct your public records request and any future public record requests related to the 1951 death of Trooper Alje Savela to the Worcester County District Attorney’s Office.

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. 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 Department asserted, “[t]o the extent that [Mr. Shibley’s] request seeks any responsive records that are solely in the possession of the Department, in consultation with the Worcester County District Attorney’s Office, the Department has determined that these

records relate to an ongoing investigation and thus are exempt from public disclosure pursuant to G.L. c. 4, §7, cl. 26 (f)."

Although the Department claims it has an open investigation regarding the requested records, it is unclear how the records in their entirety can be withheld under Exemption (f). It is additionally uncertain from the Department's response whether the records contain confidential investigative techniques that would be prejudicial to the ongoing investigation if disclosed. The Department did not demonstrate how disclosure of the activation dates, the approved case initiation report, the corresponding case file numbers and each victim's name, or of any portion of the responsive records "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest[,]" as required under Exemption (f). 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). The Department must clarify these matters.

Conclusion

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur", written in a cursive style.

Manza Arthur
Supervisor of Records

cc: Craig Shibley