



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

Manza Arthur
Supervisor of Records

November 1, 2022
SPR22/2355

Detective Sergeant Arthur Newhook
Records Access Officer
Berkley Police Department
3 North Main Street
Berkley, MA 02779

Dear Detective Sergeant Newhook:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Berkley Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On October 6, 2022, Ms. Ryley requested:

[T]he following records from the Berkley Police Department pertaining to licensed firearms businesses (including individuals licensed as such), covering the time period of Jan. 1, 2017 through the date that [the] records are retrieved:

- 1) Applications for licenses to sell, rent, or lease firearms, rifles, shotguns, and machines guns; to perform gunsmithing services; or to sell ammunition; including any records during the course of the application process, such as correspondences and attachments.
- 2) Inspections, and any records provided to [the Department] as a result of inspections.
- 3) Referrals and complaints from any person or agency on potential violations of federal or state laws, and records of any action taken.
- 4) Investigations
- 5) Records of enforcement actions by [the Department], or any other agency that are in [the Department's] possession.

The Department responded on October 13, 2022, and subsequently on October 19, and October 20, 2022, citing Exemption (j) of the Public Records Law for withholding responsive records. See G. L. c. 4, § 7(26)(j). Unsatisfied with the Department's response, Ms. Ryley appealed, and this case 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. Att’y 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 Responses

In its October 13, 2022 response, the Department states that it is withholding responsive records pursuant to Exemption (j) of the Public Records Law. See G. L. c. 4, § 7(26)(j).

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 such an 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 October 19th response, under Exemption (j), the Department argues the following:

[T]he information requested was for Applications for licenses to sell, rent, or lease firearms, rifles, shotguns, and machines guns; to perform gunsmithing services; or to sell ammunition; including any records during the course of the application process, such as correspondences and attachments. This information contains the names and addresses for persons who are licensee's. All the other information requested would also identify the parties.

Although portions of the responsive records may fall under Exemption (j), based on the Department's response, it is unclear how the records may be withheld in their entirety. Specifically, the Department must explain whether it is able to redact the names and addresses of the individuals so that segregable portions of the records can be provided. See G. L. c. 66, § 10(a); Reinstein, 378 Mass. at 289-90 (1979) (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).

Additionally, it is unclear from the Department's response which specific records the Department intends to withhold. The Department must identify the records, categories of records, or portions of records it intends to withhold under Exemption (j). See G. L. c. 66, § 10(b)(iv) (a 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").

Conclusion

Accordingly, the Department is ordered to provide Ms. Ryley with a response to her request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us.

Sincerely,



Manza Arthur
Supervisor of Records

cc: Sarah Ryley