



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

Manza Arthur
Supervisor of Records

November 1, 2022
SPR22/2354

Donna McNamara
Chief of Police
Stoughton Police Department
26 Rose Street
Stoughton, MA 02072

Dear Chief McNamara:

I have received the petition of on Attorney Jacob Hentoff, of the *Boston Globe Media Partners, LLC*, on behalf of Laura Crimaldi, appealing the response of the Stoughton Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On July 12, 2022, Ms. Crimaldi requested “. . . any/all records from an internal affairs case for [a named person] . . .”

The Department responded on August 4, 2022 and October 12, 2022. Unsatisfied with the Department’s responses, Attorney Hentoff petitioned this office and this appeal, SPR22/2354, 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 Department's responses

In its August 4, 2022 and October 12, 2022 responses, the Department cited Exemptions (c) and (f) to redact the requested records.

Exemption (c)

Exemption (c) applies to:

personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation

G. L. c. 4, § 7(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Att'y Gen., 391 Mass. 1, 9 (1984); Att'y Gen. v. Assistant Comm'r of Real Prop. Dep't, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

Massachusetts courts have found that "core categories of personnel information that are 'useful in making employment decisions regarding an employee'" may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, "employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee," may be withheld pursuant to Exemption (c). Wakefield Teachers Ass'n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under Exemption (c). See Globe Newspaper Co. v. Exec. Office of Admin. and Fin., Suffolk Sup. No. 11-01184-A (June 14, 2013).

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

The types of personal information which this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 292 n.13; see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988) (holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).

This exemption requires a balancing test which provides that where the public interest in

obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. Id. at 292.

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.

As a matter of course, witness provided information is essential to efficient and effective law enforcement. This exemption is intended to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly and voluntarily about matters. Bougas, 371 Mass at 62. Any information contained in a witness statement, which if disclosed would create a grave risk of directly or indirectly identifying the voluntary witness is subject to withholding Globe Newspaper Co., 388 Mass. at 438. The disclosure of the names and other identifying information of victims, complainants and voluntary witnesses may deter other potential witnesses and citizens from providing information to law enforcement agencies in future investigations. Therefore, Exemption (f) will allow the withholding of the name and identifying details of any victims, complainants and voluntary witnesses, and where the individuals can be indirectly identified even with redaction.

In its response, the Department opined, “... the Department has one internal affairs report, in draft form, responsive to your request. Please be advised that such internal affairs record involves a former police officer, who is no longer a police officer with the Town of Stoughton. Given that the allegations at issue in said investigation were never resolved and final findings have not been made in this matter, the Police Department is redacting certain portions of

the preliminary internal affairs report regarding a former police officer who submitted retirement papers, and the Police Department, as required, accepted his retirement ...”

The Department further advised, “... disclosure of these unresolved allegations may result in personal embarrassment to individuals of normal sensibilities. As a result, after careful consideration of the PETA factors identified above and after a careful review of the record at issue, which also includes investigative and law enforcement matters and the identities of third-parties that may be withheld under Exemption (f), and in light of prior court and Supervisor determinations interpreting the privacy interests embodied in Exemption (c), the Department is redacting portions of the internal affairs record given the unresolved allegations contained therein. Lastly, the names of voluntary complainants and witnesses to this investigation, as well as matters relating to law enforcement investigatory materials have been redacted under Exemption (f).”

Although, the Department may redact the names of voluntary complainants and witnesses to this investigation, the Department’s response did not provide supporting information on how the investigative process is ongoing. It is additionally uncertain how disclosure “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest” as required by Exemption (f).

Further, I find that based upon the update to Exemption (c) where the amendment states that this “subclause shall not apply to records related to a law enforcement misconduct investigation,” it is unclear how the requested records can be withheld pursuant to Exemption (c).

As a result, I find that the Department has not met its burden to redact the requested records under Exemptions (c) and (f) of the Public Records Law.

Conclusion

Accordingly, the Department is ordered to provide Attorney Hentoff with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within 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: Jacob Hentoff, Esq.