



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

Manza Arthur
Supervisor of Records

November 1, 2022
SPR22/2359

Robert H. Haigh, Jr.
Chief of Police
Records Access Officer
Greenfield Police Department
321 High Street
Greenfield, MA 01301

Dear Chief Haigh:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Greenfield 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 Greenfield 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, citing Exemption (a) of the Public Records Law for withholding responsive records. See G. L. c. 4, § 7(26)(a). 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 October 13th Response

In its October 13, 2022 response, the Department cites Exemption (a) of the Public Records Law, and G. L. c. 66, § 10B for withholding records responsive to Parts 1 and 2 of the request, and states that there are no records responsive to Parts 3 through 5 of the request.

Exemption (a)

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See Att’y Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

The Department cites G. L. c. 66, § 10B, which provides in pertinent part:

[A]ny licensing authority, as defined in section 121 of chapter 140, shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said chapter 140, and names and addresses of persons licensed to carry or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in section 167 of chapter 6 and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

G. L. c. 66, § 10B.

Additionally, G. L. c. 140, § 121 provides the following definition:

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

G. L. c. 140, § 121.

In its October 13th response, the Department states that Parts 1 and 2 of the request fall under Exemption (a) and G. L. c. 66, § 10B. Additionally, the Department states that it has “1 license issued in this category.”

Although portions of the responsive records may fall under Exemption (a) and G. L. c. 66, § 10B, 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 name and address of the individual so that segregable portions of the record 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, although the Department states that it has issued one license, 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 (a) and G. L. c. 66, § 10B. 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”).

Records in Existence

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). In its October 13th response, the Department states that “with reference to points 3-5 of [Ms. Ryley’s] request ... no record exists.” Where the Department has confirmed that no records exist responsive to these portions of the request, I find the Department has met its burden in responding to Parts 3 through 5 of Ms. Ryley’s request.

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,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, written in a professional style.

Manza Arthur
Supervisor of Records

cc: Sarah Ryley