



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

Manza Arthur
Supervisor of Records

November 1, 2022
SPR22/2361

Lieutenant Robert W. Sibilio
Records Access Officer
Records and Training Bureau
Framingham Police Department
1 William H Welch Way
Framingham, MA 01702

Dear Lieutenant Sibilio:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Framingham Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On September 29, 2022, Ms. Ryley requested:

[T]he following records 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 14, 2022. Also, on October 14, 2022, Ms. Ryley modified Part 1 of her request by stating, "could you please just confirm if the following federally licenses firearms dealers and manufacturers in Framingham also have state dealers licenses: [ten identified firearm dealers.]" The Department provided two additional responses on October 14, 2022. Unsatisfied with the Department's responses, Ms. Ryley petitioned this office

and this appeal, SPR22/2361, was opened as a result. While this appeal was opened, the Department provided a further response on October 20, 2022.

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 initial October 14, 2022 response, the Department states that it will be redacting responsive records pursuant to Exemptions (a) and (j) of the Public Records Law. See G. L. c. 4, § 7(26)(j). The Department also provided a fee estimate of \$693.75. In a further response dated October 14, 2022, the Department states that it is withholding Part 1 of the records request pursuant to Exemptions (a) and (j). The Department also stated that it is withholding Parts 2-5 of the records request pursuant to Exemption (j). In a subsequent response dated October 20, 2022, the Department stated that it will be providing the records responsive to Parts 2-5 with redactions pursuant to Exemptions (a), (c), and (j).

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.

Criminal Offender Record Information (CORI)

The current definition of CORI is as follows:

“Criminal offender record information,” records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

G. L. c. 6, § 167.

Under Exemption (a), citing the CORI Act, the Department explains that “[t]he packets may contain documents and data that would not be releasable under the public records laws, including information pertaining to Exemption A, Criminal Offender Record Information[.]”

Additionally, the Department in its October 20, 2022 response states, “[E]xemption (a) [would be used] to redact potential CORI information” for Parts 2-5 of the records request. The Department has not met its burden of specificity to show that the records may be redacted or withheld pursuant to CORI. The Department must clarify this matter.

G. L. c. 66, § 10B

G. L. c. 66, § 10B provides, in pertinent part, that:

[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 20th response, the Department argues:

The Public Records Law contains an independent provision expressly *prohibiting* the release, by the state or any licensing authority, of information “divulging or tending to divulge” names and addresses of individuals who own, possess, or are licensed to carry firearms.... Thus, a request of firearm records of a specific individual or entity needs to be denied in its entirety, as there is no other way to shield the individual’s identity.

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).

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.

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.

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).

In its October 20th response, the Department, in regard to Parts 2-5, states that "Exemption (c) would be used in this instance to redact information like social security numbers."

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 regard to Part 1 of the records request, in an October 14th response, the Department asserts that pursuant to Exemption (j), “[t]he records you requested contain records pertaining to named persons licensed to own, possess, sell or rent firearms in Massachusetts. As a result, such information must be withheld under the law.”

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 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).

In regard to Parts 2-5 of the records request, in its October 20th further response, under Exemption (j), the Department argues the following:

For parts 2-5 of the amended request, the City has previously indicated that the records would be withheld in their entirety. The City is amending its position and will provide these records with redactions under appropriate exemptions, not limited to but most likely including [exemption (j)]....[E]xemption (j) [would be used] to redact all names and address of applicants[.]

Ms. Ryley, in a response dated October 20, 2022, states:

Part 2: Most agencies have been sending me a checklist and/or dispatch logs, which generally only contain the sellers’ name and address and the results of the inspections, so there should be no redactions necessary.

Parts 3-5: I’m only seeking referrals and complaints, investigations, and enforcement actions related to the gun business. I’m not seeking other types of complaints, like vandalism or a car accident in the parking lot. In that case, I don’t

expect this portion of my request should result in many records.

In light of Ms. Ryley's correspondence, this office encourages Ms. Ryley and the Department to continue to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (a municipality 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 municipality to produce records sought more efficiently and affordably).

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, with the first name "Manza" being the most prominent part.

Manza Arthur
Supervisor of Records

cc: Sarah Ryley