



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

Manza Arthur
Supervisor of Records

November 1, 2022
SPR22/2368

Abigail Hunt
Records Bureau
Pittsfield Police Department
39 Allen Street
Pittsfield, MA 01201

Dear Ms. Hunt:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Pittsfield 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 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 19, 2022, citing Exemption (a), G. L. c. 66, § 10B, and Exemption (j) of the Public Records Law for withholding responsive records. See G. L. c. 4, § 7(26)(a), (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 October 19th Response

In its October 19, 2022 response, the Department cites Exemptions (a), G. L. c. 66, § 10B, and (j) of the Public Records Law for withholding responsive records. See G. L. c. 4, § 7(26)(a), (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.

In its October 19th response, 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.

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.

Duty to Segregate; Identify the Records

Under Exemption (a), G. L. c. 66, § 10B, and under Exemption (j), the Department argues that “the requested material is exempt from disclosure.”

Although portions of the responsive records may fall under G. L. c. 66, § 10B, and 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 G. L. c. 66, § 10B, and 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