



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

Manza Arthur
Supervisor of Records

November 2, 2022
SPR22/2369

Lieutenant David Zemotel
Records Access Officer
Hanover Police Department
129 Rockland Street
Hanover, MA 02339

Dear Lieutenant Zemotel:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Hanover 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. Unsatisfied with the Department's response, Ms. Ryley petitioned this office and this appeal, SPR22/2369, 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 provided the responsive records in Parts 1 and 2, with redactions pursuant to Exemption (j) and G. L. c. 66, § 10B. See G. L. c. 4, § 7(26)(j); G. L. c. 66, § 10B. The Department also stated that it has no responsive records for Parts 3 through 5 of the records 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.

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.

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.

Current Appeal

In her appeal, Ms. Ryley argues:

The exemptions cited don't apply to licenses to sell firearms, and even so, the exemptions only apply to names and addresses of individuals, not business names, occupations, and other types of information.

The names and addresses of these businesses and business owners are already public. State-licensed dealers are required to display their license in their place of business in a clearly visible location.

The Department's response did not contain the specificity required in a denial of access to public records. See G. L. c. 66, § 10(b)(iv) ("the burden shall be upon the custodian to prove with specificity the exemption which applies"); see also Globe Newspaper Co. v. Police Comm'r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511. Specifically, the Department has not met its burden to show how the redacted portions fall within an exemption. The Department is advised that a records custodian is required to not only cite an exemption, but to specifically explain the applicability of the exemption to the requested records in order to comply with the Public Records Law and its Regulations. The Department must explain how the redactions, including the redactions of the business names and addresses, are permitted under Exemption (j) and G. L. c. 66, § 10B.

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