



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

Manza Arthur  
Supervisor of Records

November 7, 2022  
**SPR22/2410**

Agapi Koulouris, Esq.  
General Counsel  
Massachusetts Department of Criminal Justice Information Services  
200 Arlington Street, Suite 2200  
Chelsea, MA 02150

Dear Attorney Koulouris:

I have received the petition of Sarah Ryley, of the *Boston Globe*, appealing the response of the Department of Criminal Justice Information Services (Department/DCJIS) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On July 26, 2022, Ms. Ryley requested the following:

Referrals or notifications, both formal and informal, that the Department has made to the Office of the Attorney General or any law enforcement agency concerning firearms transactions that are potential violations of local, state or federal law, and any subsequent communication about these referrals or notifications.

***Previous Appeal***

This request was the subject of a previous appeal. See SPR22/2228 Determination of the Supervisor of Records (October 17, 2022). In my October 17<sup>th</sup> determination, I closed SPR22/2228 in light of the Department providing a response to Ms. Ryley on October 14, 2022. Unsatisfied with the Department's response, Ms. Ryley further 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.

### ***The Department’s October 14<sup>th</sup> Response***

In its October 14, 2022 response, the Department cites G. L. c. 66, § 10B and Exemptions (f) and (j) of the Public Records Law for withholding responsive records. See G. L. c. 4, § 7(26)(f), (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 response, the Department cites G. L. c. 66, § 10B, which provides in pertinent part:

The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any 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.

*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*

Under Exemption (a), G. L. c. 66, § 10B, and under Exemption (j), the Department states that the “records are exempt from public 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).

*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.

Under Exemption (f), the Department argues the following:

DCJIS would be unable to determine from its own records whether a requested notification or communication related to an ongoing investigation subject to such other agencies’ privileges. In other words, making the requested records public may alert the subject of an investigation under circumstances where the investigating law enforcement agency could assert an exemption, but DCJIS itself would not know whether such an exemption applied.

Based on the Department’s response, I find the Department has not met its burden to withhold the responsive records under Exemption (f). Specifically, it is unclear whether the requested records are part of an ongoing investigation or prosecution. Further, it is unclear how disclosure of the records “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest,” as required to withhold records under Exemption (f). The Department must clarify these matters.

*Identify the Records*

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 Exemptions (j) and (f). 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](mailto: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 more prominent and the last name "Arthur" following in a similar style.

Manza Arthur  
Supervisor of Records

cc: Sarah Ryley