



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

Manza Arthur  
Supervisor of Records

March 24, 2023  
**SPR23/0490**

Sergio Cornelio  
City Clerk  
City of Everett  
484 Broadway  
Everett, MA 02149

Dear Mr. Cornelio:

I have received the petition of Paula Sterite appealing the response of the City of Everett (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 3, 2023, Ms. Sterite requested a "... copy of the report ... (the investigator) provided to the SC in 2018."

The City responded on March 3, 2023. Unsatisfied with the response, Ms. Sterite petitioned this office and this appeal, SPR23/0490, 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. Attorney 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 City's March 3<sup>rd</sup> response***

In its March 3<sup>rd</sup> response, the City claimed privacy and attorney-client privilege to withhold the requested records.

*Exemption (c)*

Exemption (c) permits the withholding of:

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).

Massachusetts courts have found that “core categories of personnel information that are ‘useful in making employment decisions regarding an employee’” may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, “employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee,” may be withheld pursuant to Exemption (c). Wakefield Teachers Ass’n v. Sch. Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under Exemption (c). See Globe Newspaper Co. v. Exec. Office of Admin. and Fin., Suffolk Sup. No. 11-01184-A (June 14, 2013).

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 does not protect all data relating to specifically named individuals. Rather, 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).

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.

### ***Common law attorney-client privilege***

A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived. See Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 450 n.9 (2017); see also Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies). Records custodians seeking to invoke the common law attorney-client privilege "are required to produce detailed indices to support their claims of privilege." Suffolk, 449 Mass. at 460.

Pursuant to the Public Records Law, in assessing whether a records custodian has properly withheld records based on the claim of attorney-client privilege the Supervisor of Records "shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed." G. L. c. 66, § 10A(a).

In its March 3, 2023 response, the City asserted that, "[t]he request is denied since this report is a confidential personnel investigation in my possession, custody and control and releasing that information in my view would constitute an invasion of privacy of the person(s) who were the subject of the report, violate the attorney-client privilege, and compromise the identity of numerous witnesses who cooperated in the investigation. The City further advised, "[t]he Boston Globe previously attempted to obtain a court order obligating the School Committee and Asst. District Attorney's offices to release this report in Malden District Court and this order was denied."

Based on the City's response, it is unclear how the report constitutes one of the core categories of personnel information that is useful in making employment decisions regarding an employee. It is additionally uncertain how the report contains intimate details of a highly personal nature, nor how disclosure would result in personal embarrassment to an individual of normal sensibilities. It is also not clear whether this information is available from other sources. PETA, 477 Mass. at 292. Further, the City did not provide information with respect to examining whether the public interest in obtaining the requested information outweighs the seriousness of any invasion of privacy. Id. Also, it is unclear whether segregable portions can be provided. Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a).

Further, although the City claims attorney-client privilege to withhold the report, I find that the City must clarify that the report constitutes a communication received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such and that the communication was made in confidence and that the privilege has not been waived. Further, the City must provide the required privilege log in accordance with G. L. c. 66, § 10A(a).

***Conclusion***

Accordingly, the City is ordered to provide Ms. Sterite with a response to the 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 this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us). Ms. Sterite may appeal the substantive nature of the City's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

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

Manza Arthur  
Supervisor of Records

cc: Paula Sterite