



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

Manza Arthur
Supervisor of Records

April 26, 2023
SPR23/0751

Mary F. Watson
Town Clerk
Town of Monson
110 Main Street
Monson, MA 01057

Dear Ms. Watson:

I have received the petition of Robert Kaddy appealing the response of the Town of Monson (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 19, 2023, Mr. Kaddy requested an unredacted copy of a specific investigation report that was submitted to the Town by the Chief Executive Officer of Safety and Respect at Work, LLC.

Previous appeal

This request was the subject of a previous appeal. See SPR23/0408 Determination of the Supervisor of Records (March 16, 2023). The Town provided a response on March 29, 2023. Unsatisfied with the response, Mr. Kaddy petitioned this office and this appeal, SPR23/0751, 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 Town's March 29th response

In its March 29, 2023 response, the Town cited Exemptions (c) and (f) of the Public Records Law to redact the requested records.

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).

Medical information that is of a personal nature and relates to a specifically named individual is exempt from disclosure. Brogan v. Sch. Comm. of Westport, 401 Mass. 306, 308 (1987); Globe Newspaper Co. v. Boston Ret. Bd., 388 Mass. 427, 438 (1983). Generally, medical information is sufficiently personal to warrant exemption. Id. at 432-34. There is a strong public policy in Massachusetts that favors confidentiality as to medical data about a person's body. Globe Newspaper Co. v. Chief Med. Exam'r, 404 Mass. 132, 135 (1987).

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.

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).

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.

In its response, the Town stated the following:

The limited redactions in the report were the names and identifiable information of residents and private individuals that were part of the investigation as well as personnel and medical information. Such information is exempt from disclosure pursuant to G. L. c. 4, § 7(26)(c) as such permits the withholding of personnel and medical information and any other materials relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

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).

Exemption (f) is intended to allow investigative officials to provide an assurance of confidentiality to individuals so that they will speak openly about matters under investigation. Redactions may be appropriate where they serve to preserve the anonymity of complainant and 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); Bougas, 371 Mass. at 62. Any information contained in a witness statement, which if disclosed would create a grave risk of directly or indirectly identifying the voluntary witness is subject to withholding. Globe

Newspaper Co. v. Boston Ret. Bd., 388 Mass. 427, 438 (1983). The Supreme Judicial Court has held that “the inquiry as to what constitutes identifying information regarding an individual must be considered not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual and his [or her] career.” Id. at 438.

In its response, the Town stated that “...the names and identifiable information of residents and private individuals are exempt from disclosure pursuant to G. L. c. 4, § 7 (26)(f) in order to preserve the anonymity of voluntary witnesses in the investigation.”

In camera inspection

In order to facilitate a determination as to the applicability of the Town’s Exemptions (c) and (f) claims to redact the requested records, the Town must provide this office with an un-redacted copy of the responsive records for *in camera* inspection. See 950 C.M.R. 32.08(4). After I complete my review of the records, I will return the records to the Town’s custody and issue an opinion on the public or exempt nature of the record.

The authority to require the submission of records for an *in camera* inspection emanates from the Code of Massachusetts Regulations. 950 C.M.R. 32.08(4); see also G. L. c. 66, § 1. This office interprets the *in camera* inspection process to be analogous to that utilized by the judicial system. See Rock v. Mass. Comm’n Against Discrimination, 384 Mass. 198, 206 (1981) (administrative agency entitled deference in the interpretation of its own regulations). Records are not voluntarily submitted, but rather are submitted pursuant to an order by this office that an *in camera* inspection is necessary to make a proper finding.

Records are submitted for the limited purpose of review. This office is not the custodian of records examined *in camera*, therefore, any request made to this office for records being reviewed *in camera* will be denied. See 950 C.M.R. 32.08(4)(c).

This office has a long history of cooperation with governmental agencies with respect to *in camera* inspection. Custodians submit copies of the relevant records to this office upon a promise of confidentiality. This office does not release records reviewed *in camera* to anyone under any circumstances. Upon a determination of the public record status, records reviewed *in camera* are promptly returned to the custodian. To operate in any other fashion would seriously impede our ability to function and would certainly affect our credibility within the legal community. Please be aware, any cover letter submitted to accompany the relevant records may be subject to disclosure.

Order

Accordingly, the Town is ordered to provide this office with an un-redacted copy of the responsive records for *in camera* inspection without delay.

Mary F. Watson
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Sincerely,

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

Manza Arthur
Supervisor of Records

cc: Robert Kaddy