



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

Manza Arthur
Supervisor of Records

April 27, 2023
SPR23/0741

Christopher J. Burns
Chief of Police
Palmer Police Department
4417 Main Street
Palmer, MA 01069

Dear Chief Burns:

I have received the petition of Donovan Lee appealing the response of the Palmer Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 29, 2023, Mr. Lee requested the following:

1. Any and all weapons inventory lists maintained by the department, to include all “less Lethal” weapons, that are owned or authorized by the department
2. Any and all logs of each officer’s qualifications and re-qualifications with firearms or “less-lethal” weapons.

The Department responded on April 11, 2023, citing Exemption (n) of the Public Records Law for denying the request. Unsatisfied with the Department’s response, Mr. Lee 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 April 11th Response

In its April 11, 2023 response, the Department cites Exemption (n) of the Public Records Law for withholding the responsive records. See G. L. c. 4, § 7(26)(n).

Exemption (n)

Exemption (n) applies to:

records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

G. L. c. 4, § 7(26)(n).

Exemption (n) allows for the withholding of certain records which if released would jeopardize public safety. The first prong of Exemption (n) examines “whether, and to what degree, the record sought resembles the records listed as examples in the statute;” specifically, the “inquiry is whether, and to what degree, the record is one a terrorist ‘would find useful to maximize damage.’” People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 289-90 (2017).

The second prong of Exemption (n) examines “the factual and contextual support for the proposition that disclosure of the record is ‘likely to jeopardize public safety.’” Id. at 289-90. The PETA decision further provides that “[b]ecause the records custodian must exercise ‘reasonable judgment’ in making that determination, the primary focus on review is whether the custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian’s determination given the context of the particular case.” Id.

PETA also provides that “[t]hese two prongs of exemption (n) must be analyzed together, because there is an inverse correlation between them. That is, the more the record sought

resembles the records enumerated in exemption (n), the lower the custodian's burden in demonstrating 'reasonable judgment' and vice versa." PETA, at 290.

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

The Department, in its reasonable judgement, believes that providing [Mr. Lee] with the requested information would undermine public safety as it relates to the Department's security measures and emergency preparedness. As such, the disclosure of information responsive to [Mr. Lee's] request may prove detrimental to the Department's law enforcement and public safety efforts.

In its response, the Department also refers to previous determination letters issued by the Supervisor of Public Records in 2014 and 2015. Please note that these determination letters were issued prior to the Supreme Judicial Court's 2017 ruling in PETA, discussed above.

Based on the Department's response, it is unclear how the requested records in this case resemble the records listed in the statute. See id. at 289. Where the record bears little resemblance to the types listed in the statute, the burden on the custodian is correspondingly at its highest. See id. at 290-91. Further, it is unclear how disclosure of the records is "likely to jeopardize public safety or cyber security" as required by Exemption (n). Id. at 290-91. The Department must clarify these matters.

Additionally, it is unclear how the requested records may be withheld in their entirety. Please note that that any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). See Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are narrowly construed and are not blanket in nature). Accordingly, the Department must explain whether segregable portions of the records can be provided.

Conclusion

Accordingly, the Department is ordered to provide Mr. Lee with a response to his 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: Donovan Lee