



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

Manza Arthur
Supervisor of Records

May 5, 2023
SPR23/0787

Janice E. Thompson, Esq.
Assistant City Solicitor
Law Department
City of Worcester
455 Main Street, Room 301
Worcester, MA 01608

Dear Attorney Thompson:

I have received the petition of Robert Belsito appealing the response of the City of Worcester (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 9, 2023, Mr. Belsito referred to an investigation regarding a city Police Chief and requested “all reports associated with the investigation.”

The City responded on February 6, 2023. Unsatisfied with the City’s response, Mr. Belsito petitioned this office and this appeal, SPR23/0787, 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(d)(iv) (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...”); 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).

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 City's February 6th Response

In its February 6, 2023 response, the City cited Exemption (c) of the Public Records Law to withhold the requested records.

Current Appeal

In his appeal, Mr. Belsito states, "I requested records that are related to a police misconduct investigation by the City... I was not provided with a copy of the City's investigatory findings..."

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.

In its response, the City states, “[t]he record is related to a Human Resources matter involving another employee. The requested records constitute personnel file information, and these records have been withheld accordingly...”

Internal affairs records

Please note that the courts have contrasted the public status of disciplinary investigation materials of law enforcement personnel from the “ordinary evaluations, performance assessments, and disciplinary determinations” included in the public records exemption for “personnel [file] or information” for other public employees due to the significance of maintaining the transparency of the police department’s internal affairs process. Worcester, 58 Mass. App. Ct. at 2. The Appeals Court reasoned that openness in a police internal affair investigatory process, facilitated by the release of the relevant documents, was necessary to foster the public trust in law enforcement. Id. at 7-8.

The Superior Court addressed the application of the Worcester decision to the records of non-criminal Internal Affairs investigations in Leeman v. Cote. 21 Mass.L.Rptr. 411, 2006 WL 2661436 (Mass.Sup.Ct. 2006). In Leeman, the court specifically rejected a police department’s attempt “to distinguish *Worcester Telegram* on the basis of the identity of the applicant for the file and the absence of issues of theft, bribery, acceptance of gratuities, verbal or physical abuse, unlawful arrest, or harassment.” Id. at 5. The court found that “these considerations may temper the degree of public interest in disclosure of the [records], but they do not qualify the record as a personnel file or personnel information.” Id. The court further stated that “[t]he statutes contain no ‘non-police matter’ exemption.” Id.

The court likewise rejected the argument that the identity of the complainant who initiated the investigation affects the status of the records. The court found that “the competence and integrity of a police force are intrinsically public concerns. That concern endures without regard to the

identity of a complainant or inquisitor as either a member of the force or a member of the citizenry.”
Id. at 6.

Additionally, based upon the update to Exemption (c) where the amendment states that this “subclause shall not apply to records related to a law enforcement misconduct investigation,” it is unclear how the requested records can be withheld. .

Therefore, I find that the City has not met its burden to withhold the responsive records pursuant to Exemption (c).

Conclusion

Accordingly, the City is ordered to provide Mr. Belsito with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) 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.

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: Robert Belsito