



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Shawn A. Williams
Director

February 19, 2015
SPR14/679

Lieutenant Charles Gray
North Andover Police Department
1475 Osgood Street
North Andover, MA 01845

Dear Lieutenant Gray:

I have received a petition from Todd Wallack of the *Boston Globe* appealing the response of the North Andover Police Department (Department) to his request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, Mr. Wallack requested a copy of the police report for a motor vehicle crash and arrest involving a specifically named individual that occurred on or about March 3, 2014. Mr. Wallack also requested copies of high-resolution photos of the automobile crash and the booking photograph of the arrested individual. The Department provided Mr. Wallack with a copy of the police report; however the Department denied the request for the photographs of the crash and the booking photograph.

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10(c); 950 C.M.R. 32.08(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 town 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(c); see also *District Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

The Department denied Mr. Wallack's request for photographs regarding the motor vehicle crash pursuant to the investigatory exemption of the Public Records Law. The Department also denied access to the booking photograph pursuant to the Criminal Offender Record Information Act (CORI) as it operates pursuant to the statutory exemption of the Public Records Law. G. L. c. 4, § 7(26)(a), (f); G. L. c. 6, § 167; 803 C.M.R. 2.03(3).

Exemption (f)

Exemption (f), the so-called investigatory exemption, permits investigatory officials to withhold:

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) provides limited protection for those law enforcement activities that require a cloak of confidentiality to succeed. This exemption, however, does not provide a blanket exemption for all investigatory materials. Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 289 (1979). Instead, "it invites case-by-case consideration of whether access 'would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.'" Id.

In your letter to Mr. Wallack you state that the motor vehicle crash photographs are evidence that the Department anticipates will be used in an on-going criminal case, and that release would prejudice the possibility of effective law enforcement. I find that the Department has not met its burden of proving that disclosure of the photographs requested by Mr. Wallack would be harmful to investigative efforts.

Exemption (a)

The Department is withholding a booking photograph as CORI. Exemption (a), the statutory exemption, allows for 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 Exemption (a) as a basis for withholding requested materials where the language of the exempting statute suggests that the public's right to inspect records under the Public Records Law is restricted. Attorney General v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

A government record custodian may withhold a record as CORI if it is a record compiled by the Department concerning an identifiable individual and relates to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing,

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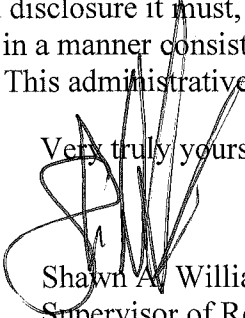
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incarceration, rehabilitation, or release. The Department withheld the booking photograph as CORI both by statute and by regulation as a record created as the result of initiation of a criminal proceeding. See G. L. c. 6, § 167. 803 C.M.R. 2.03(3).

The Department of Criminal Justice Information Services (DCJIS) has previously defined the "initiation of criminal proceedings" as "the point when a criminal investigation is sufficiently complete that the investigating officers take actions toward bringing a specific suspect to court." I find that the requested booking photograph falls within the definition of CORI. Accordingly, it is the finding of this office that the Department acted appropriately in withholding the requested record as CORI.

The Department is hereby ordered, within ten (10) days of this order, to provide Mr. Wallack with the requested automobile crash photographs. If the Department maintains that any portion of the remaining records are exempt from disclosure it must, within ten (10) days provide Mr. Wallack with a written explanation provided in a manner consistent with this order, the Public Records Law and its Access Regulations. This administrative appeal is now closed.

Very truly yours,



Shawn A. Williams
Supervisor of Records

cc: Mr. Todd Wallack