



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

Rebecca S. Murray  
Supervisor of Records

September 18, 2017  
**SPR17/1211**

Brian M. Maser, Esq.  
Town of Tisbury  
Box 1239  
51 Spring Street  
Vineyard Haven, MA 02568

Dear Attorney Maser:

I have received the petition of George Brennan of the *Martha's Vineyard Times* appealing the response of the Town of Tisbury (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Brennan requested investigative reports, including "any and all discipline reports" regarding an identified police officer.

***Previous appeals***

This request was the subject of previous appeals. See SPR17/782 Determination of the Supervisor of Records (June 21, 2017); SPR17/927 Determination of the Supervisor of Records (July 21, 2017); and SPR17/1078 Determination of Supervisor of Records (August 18, 2017). I closed SPR17/1078 with the proviso that the Town provide Mr. Brennan with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations.

In a letter dated August 31, 2017, the Town provided a response in which it again explains that redactions were made pursuant to Exemption (f) of the Public Records Law. G. L. c. 4, § 7 (26)(f). Unsatisfied with the response, Mr. Brennan petitioned this office and SPR17/1211 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 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(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.

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 Town's August 31<sup>st</sup> response*

In the Town's August 31<sup>st</sup> response, the Town indicates that "[t]o clarify, the redactions made by the Town in the 2015 investigation report redacted the names of voluntary complainants and witnesses who provided information to the Department during the course of its investigation of the verbal report that initiated same. Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. See Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979); Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001)."

The Town also indicated that "[t]he Department's investigation involved witnesses who are members of the Tisbury Police Department and neighboring police departments. Disclosure of their identities may expose them to retaliation or reprisal within the Department and/or community and possibly lead to conflict amongst members of the Tisbury Police Department and/or neighboring law enforcement agencies. Disclosure of the names of these voluntary witnesses would likely be detrimental to the Department's ability to conduct future investigations in a thorough and complete manner if confidentiality was not afforded to the individuals who came forward." Therefore, "[t]he names of the witnesses who came forward during the Department's investigation were appropriately redacted to protect the individuals' identities pursuant to Exemption (f)."

### *Exemption (f)*

The Town claimed it redacted the identities of voluntary complainants and witnesses under Exemption (f).

Exemption (f), the investigatory exemption, 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).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979). Exemption (f) invites a "case-by-case consideration" of whether disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." See Reinstein, 378 Mass. at 289-90.

As a matter of course, witness provided information is essential to efficient and effective law enforcement. This exemption is intended to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly and voluntarily about matters. Id. 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 Retirement Bd., 388 Mass. 427, 438 (1983). The disclosure of the names and other identifying information of victims, complainants and voluntary witnesses may deter other potential witnesses and citizens from providing information to police in future investigations. Therefore, Exemption (f) will allow the withholding of the name and identifying details of any victims, complainants and voluntary witnesses, and where the individuals can be indirectly identified even with redaction.

In the Town's response, it indicated that the officers were voluntary witnesses who are members of the Tisbury Police Department and neighboring police departments who "provided information to the Department during the course of its investigation..."

In discussing the voluntary status of police officer witnesses, the Supreme Judicial Court (Court) distinguishes the testimony of an officer from that of a citizen witness by noting, "[a] police officer would be obliged to make an incident report or to respond to questions in the course of a firearms investigation, on pain of otherwise losing his job..." Reinstein, 378 Mass. at 292. Further, when examining the public status of the identities of police officers interviewed by the Internal Affairs Division (IAD) of the City of Boston Police Department, the Court found that "[n]or is there sufficient basis under the privacy exemption to withhold the identities of the police officers interviewed by IAD investigators." Globe Newspaper Co. v. Police Comm'r, 419 Mass. 852, 864 (1995).

Brian Maser, Esq.  
Page 4  
September 18, 2017

SPR17/1211

Given this distinction between voluntary, citizen witnesses and police officers providing information in the course of their jobs, the Town has not met its burden in establishing how these police officers voluntarily provided this information rather than providing it in furtherance of their obligations as police officers.

***Order***

Accordingly, I will consider this appeal closed with the proviso that the Department provide Mr. Brennan with the requested records or a response explaining with specificity how these requested records are not subject to disclosure. A copy of any such response must be provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. 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).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray  
Supervisor of Records

cc: George Brennan