



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

Rebecca S. Murray
Supervisor of Records

October 20, 2017
SPR17/1415

Jennifer P. Migliaccio, Esq.
Staff Counsel
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702

Dear Attorney Migliaccio:

I have received the petition of Todd Wallack of the *Boston Globe* appealing the response of the Massachusetts Department of State Police (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Wallack requested "copies of any reports, studies, memos, analysis, or similar documents outlining the potential impact of closing any [State Police] barracks, including locations in Brookfield, Oak Bluffs, and Nantucket since January 1, 2010." The Department previously provided a record with portions redacted. This appeal pertains to two additional responsive reports.

Previous appeals

This request was the subject of previous appeals. See SPR17/187 Determination of the Supervisor of Records (February 13, 2017); SPR17/304 Determination of the Supervisor of Records (March 21, 2017); SPR17/459 Determination of the Supervisor of Records (April 18, 2017); SPR17/642 Determination of the Supervisor of Records (May 11, 2017); SPR17/651 Determination of the Supervisor of Records (May 25, 2017); SPR17/821 Determination of the Supervisor of Records (June 30, 2017); SPR17/1132 Determination of the Supervisor of Records (September 1, 2017).

I closed SPR17/1132 by ordering the Department to provide Mr. Wallack with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations.

In a response dated October 4, 2017, the Department cites Exemptions (b), (d) and (n) of the Public Records Law to support certain redactions and the withholding of a report. G. L. c. 4, § 7(26)(b), (d), (n). Mr. Wallack appealed and SPR17/1415 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 Department’s October 4th response

The Department is withholding a document entitled “Division of Field Services: Closure and Patrol Realignment Proposals” in its entirety. The Department redacted portions of the document entitled “FY16 Analysis & Recommendations for Staffing, Hiring, Consolidation & Efficiencies.” In addition to the Department’s exemption claims, the Department also provided a memorandum from Major Richard Prior of the Department’s Special Operations who asserts “it is my opinion that any individual wanting to do harm, including terrorists, would find the disclosure of State Police staffing levels and operations very helpful in planning an attack, not only upon State Police facilities, but also on targets within the patrol and jurisdiction of the State Police.”

In camera inspection of records

It is the finding of this office that an *in camera* review of an unredacted copy of the responsive records would facilitate a determination as to the applicability of Exemptions (b), (d), and (n). See 950 C.M.R. 32.08(4). In particular, this review will enable this office to determine whether any purely factual information exists and understand what specific type of barrack staffing and assignment information is contained within the records.

After I complete my review of the documents, I will return the records to your custody and issue an opinion on the public or exempt nature of the record. I understand a Public Records Division staff attorney contacted you about this appeal.

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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. Massachusetts 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.

Accordingly, you are hereby ordered to provide this office with an unredacted copy of the responsive records without delay. The Department may provide this office with an explanation of its position regarding the applicability of an exemption to the responsive records. Please be advised that, unlike the materials provided for *in camera* review, any such additional correspondence would be placed in the file for this appeal and would be subject to public disclosure as a public record.

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: Todd Wallack