



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

Rebecca S. Murray  
Supervisor of Records

September 12, 2018  
**SPR18/1110**

Michelle Kalowski  
Massachusetts Port Authority  
One Harborside Drive, Suite 200S  
East Boston, MA 02128

Dear Ms. Kalowski:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Massachusetts Port Authority (Massport) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Rocheleau requested “[a] list of all authority employees who were suspended/placed on involuntary leave since Jan. 1, 2017, showing their names, titles, date suspension began and ended (if it has), and reason for suspension.”

***Previous appeals***

The requested record was the subject of previous appeals. See SPR18/937 Determination of the Supervisor of Records (July 10, 2018) and SPR18/1110 Determination of the Supervisor of Records (August 8, 2018). In my August 8<sup>th</sup> determination, I found that Massport had not met its burden to withhold the names and titles of suspended Massport employees under Exemption (c) of the Public Records Law. As such, I ordered Massport to provide Mr. Rocheleau with responsive records in a manner consistent with the order, the Public Records Law, and its Regulations. In a letter dated August 22, 2018, Massport seeks reconsideration of the determination.

***Request for reconsideration***

In support of non-disclosure of the names and job titles of suspended employees, Massport asserts that “. . . Massachusetts case law has long held that disciplinary documentation or termination information pertaining to a particular employee is categorically exempt from disclosure under the Public Records statute because it is considered a core category of personnel information. Citing to Wakefield, Massport contends that “[i]t is well-established law that such personnel information that permits the identification of an individual is ‘absolutely exempt from disclosure.’” Wakefield, 431 Mass. at 799.

Massport further asserts that “[t]he additional information requested by Mr. Rocheleau (i.e., names and titles of employees who have been suspended), along with the information already provided by [Massport] (i.e., information about suspensions/terminations), is a core category of personnel information because it is a disciplinary information that pertains to a particular individual and permits identification of that individual, and disciplinary information is information that is useful in making future employment decisions about an employee or former employee.” Massport contends that “[a]s a core category of personnel information that identifies a particular individual, such information is categorically and absolutely exempt from disclosure. ‘To conclude that disciplinary reports are anything but ‘personnel file or information’ would ‘distort the plain statutory language [of Exemption (c).]’ Wakefield at 798.”

*Exemption (c)*

Exemption (c) permits the withholding of:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy

G. L. c. 4, §7 (26)(c).

*First clause of Exemption (c) – personnel*

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). The first clause creates a categorical exemption for personnel information that relates to an identifiable individual and is of a “personal nature.” Id. at 434. 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 the first clause of Exemption (c). Wakefield Teachers Ass’n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under the first clause. See Globe Newspaper Co. v. Exec. Office of Admin. and Finance, Suffolk Sup. No. 11-01184-A (June 14, 2013).

Nevertheless, there is a strong public interest in monitoring public expenditures and public employees have a diminished expectation of privacy with respect to public employment matters. See George W. Prescott Publ’g Co. v. Register of Probate for Norfolk County, 395 Mass. 274, 278 (1985); Globe Newspaper Co., 388 Mass. at 436 n.15. Further, the public has an interest in knowing whether public employees are “carrying out their duties in an efficient and law-abiding manner.” Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 158 (1979). As a result, certain information that is considered personal in the ordinary sense of the word may be

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considered part of a public record if relating to an individual's official responsibilities. See Brogan v. School Comm. of Westport, 401 Mass. 306, 309 (1987).

Despite Massport's claim, that the names and titles of the suspended employees is "disciplinary information that pertains to a particular individual and permits the identification of the individual," I find that Massport has not demonstrated that the names and job titles of the employees constitute one of the "core categories of personnel information," such as an employment application, employee work evaluation, disciplinary documentation, or promotion, demotion, or termination information pertaining to a particular employee, which may be properly withheld from disclosure under Exemption (c). Particularly, it is unclear how the names and job titles of employees constitute "disciplinary documentation." See SPR18/1110 Determination of the Supervisor of Records (August 8, 2018). I understand a Public Records Division staff attorney contacted your office about this appeal.

### ***Conclusion***

Accordingly, Massport is ordered to provide Mr. Rocheleau with responsive records 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 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: Mathew Rocheleau