



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

Manza Arthur
Supervisor of Records

November 1, 2023
SPR23/2468

Allison Mondello
Public Records Manager
Department of State Police
470 Worcester Road
Framingham, MA 01702

Dear Ms. Mondello:

I have received the petition of Ted Daniel, of *WFXT-TV*, appealing the response of the Department of State Police (Department) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On October 16, 2023, Mr. Daniel requested, “[c]opies of any video/digital recordings by MSP [identified] Detective Lieutenant from his body worn camera or his dash/interior/cruiser camera activated for/during the arrest and transport of [an identified individual] on 10/11/2023 in Holden, MA to include any video of an identified individual] being transported to Stoughton District Court.”

The Department responded on October 18, 2023. Unsatisfied with the response, Mr. Daniel petitioned this office and this appeal, SPR23/2478, 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(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.

The Department's October 18th Response

In its October 18, 2023 response, the Department stated, “[t]he Department has identified body worn camera footage responsive to your request.” The Department denied the request in its entirety pursuant to Exemption (f) of the Public Records Law.

Exemption (f)

Exemption (f) 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. Att’y 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. Bougas, 371 Mass 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., 388 Mass. at 438. 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 law enforcement agencies 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 its response, the Department stated that the “... records you seek relate to an on-going criminal prosecution. Given the pendency of criminal charges, the records you seek are not subject to public disclosure pursuant to G.L c. 4, §7, cl. 26 (f) ...”

The Department further opined, “[t]he Department maintains that the investigative records at issue exclusively contain, or have interwoven throughout, information that, if disclosed, would prejudice any criminal trial in this matter by: 1) revealing non-public information to the prospective jury pool, thereby narrowing the number of potential impartial jurors; 2) releasing indirectly the names of potential witnesses, and any statements thereto, thereby exposing them to public inquiry, chilling their cooperation, and/or predetermining their testimony; and 3) providing a roadmap to the prosecutions legal strategies, thereby giving the defense an unfair advantage. For these reasons, it would not be in the collective public interest not to disclose these records in their entirety at this time.”

Although the Department claims it has an ongoing criminal prosecution regarding the requested records, it is unclear how the records in their entirety can be withheld under Exemption (f). It is unclear from the Department’s response whether the records contain confidential investigative techniques that would be prejudicial to the ongoing investigation if disclosed. The Department did not demonstrate how disclosure of any segregable portion of the responsive records “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest[.]” as required under Exemption (f). Further, it is uncertain why the Department cannot redact where necessary to preserve confidentiality and provide the remaining portions of the records. See Reinstein, 378 Mass. at 289-90 (the statutory exemptions are narrowly construed and are not blanket in nature). Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). The Department must clarify these matters.

In addition, I find the Department must identify the records in its possession that are responsive to the request. To deny access to a record or portion of a record under the Public Records Law, a records access officer must identify the record, categories of records, or portions of the record it intends to withhold. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3)(c)(4).

Conclusion

Accordingly, the Department is ordered to provide Mr. Daniel 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 the response to this office at pre@sec.state.ma.us. Mr. Daniel may appeal the substantive nature of the Department’s response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,



Manza Arthur
Supervisor of Records

cc: Ted Daniel