



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

Shawn A. Williams
Supervisor of Records

May 13, 2015
SPR15/156

Ms. Nicole I. Taub, Esq.
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Dear Attorney Taub:

I have received the petition of Mike Katz-Lacabe appealing the response of the Boston 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. Katz-Lacabe requested a copy of records related to two specifically named companies and the Federal Bureau of Investigations (FBI). The requested records include a non-disclosure agreement as well as notifications about public records requests sent between the Department, FBI, and the two companies. You denied his request in your written response dated February 13, 2015, claiming that the responsive records are exempt from disclosure pursuant to the investigatory and Public Safety exemptions. G. L. c. 4, § 7(26)(f), (n).

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 Public Records Law states that "the burden shall be upon the custodian to prove *with specificity* the exemption which applies." G. L. c. 66, § 10(c) (emphasis added); see also Globe Newspaper Co. v. Police Comm'r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511.

Exemption (f)

Exemption (f), the "investigatory" exemption, permits the withholding of:

Ms. Nicole I. Taub, Esq.
Page Two
May 13, 2015

SPR15/156

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 under Exemption (f). 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). The exemption is also intended to allow investigative officials to provide an assurance of confidentiality to individuals so that they will speak openly about matters under investigation. Id.

Your response states that the Department is withholding the responsive records because disclosure would not be in the public interest and would prejudice the possibility of effective law enforcement. You also state that withholding such information is essential to ensure that the Department can continue to effectively monitor criminal activity. However, this response does not explain how these requested records pertain to an ongoing investigation, confidential investigative techniques, or witness statements and also fails to demonstrate how disclosure of these particular records would prejudice investigative efforts as required by Exemption (f). With regard to Exemption (n), this response merely cites the exemption and does not address the security-related rationale needed to justify withholding records under this exemption.

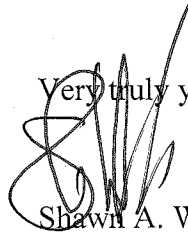
As a result, the Department has failed to satisfy its burden of proving with specificity why the responsive records may be withheld in their entirety under Exemption (f) and Exemption (n). The statutory exemptions are narrowly construed and are not blanket in nature. See Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 289-90 (1979). Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). The Department is advised that a records custodian is required to not only cite an exemption, but to specifically explain the applicability of the exemption to the requested records in order to comply with the Public Records Law and Regulations.

Accordingly, the Department is hereby ordered, within ten (10) days of this order, to provide Mr. Katz-Lacabe with the requested records. If the Department maintains that any portion of the responsive records are exempt from disclosure it must, within ten (10) days, provide to Mr. Katz-Lacabe a written explanation, *with specificity*, how a particular exemption applies to each record.

Ms. Nicole I. Taub, Esq.
Page Three
May 13, 2015

SPR15/156

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn A. Williams". The signature is stylized with a large, circular flourish at the beginning and several vertical strokes.

Shawn A. Williams
Supervisor of Records

cc: Mr. Mike Katz-Lacabe