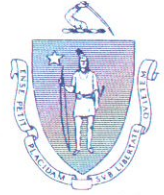




Town of Hanson

Board of Selectmen



542 Liberty Street
Hanson, Massachusetts 02341

(781) 293-2131 FAX (781) 294-0884

www.hanson-ma.gov

May 30, 2017

Via Email: 37481-84826891@requests.muckrock.com

Mr. Brendan Kinsley
MuckRock
DEPT MR 37481
411A Highland Avenue
Somerville, MA 02144-2516

Re: May 19, 2017 Public Records Request

Dear Mr. Kinsley:

I am responding to your modified public records request dated May 19, 2017 in which you request:

Any and all reports that were released by the Town of Hanson to the local newspaper, The Patriot Ledger. Specifically, any and all reports released as thoroughly detailed in an article posted on November 17th, 2012 with an article named Ex-Hanson police said to have inflated arrest statistics. In the article there is clear mention that an investigative report by APD Management was obtained by the Patriot Ledger during that week. The Patriot Ledger as well as other news outlets reported on multiple details and specifics that appear to be from such an investigative report.

This response will supplement my response to your initial request dated May 9, 2017.

APD Management is a private investigation company that was hired by the Town to conduct an investigation of separate complaints of misconduct by the Hanson Police Chief and the Hanson Police Lieutenant for the purpose of determining whether disciplinary action should be taken.

The pertinent exemptions under the public records statute are M.G.L. c. 4, § 7 cl. (26)(c) and (f). They exempt from public disclosure:

- (c) 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.
- (f) 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.

Any report by APD Management was relied upon by the Town in evaluating whether to pursue disciplinary action against the Police Chief and the Lieutenant. Therefore, the APD Management report constitutes personnel information/disciplinary documentation which is exempt from disclosure under exemption (c).

In support of the Town's position, please find attached the Supervisor of Public Records decision, dated April 26, 2013, in a Town of Cohasset matter ("SPR 12/369"). The Town of Cohasset matter was substantially similar to what occurred in Hanson in that it involved an outside investigator investigating allegations against the Police Chief for the purpose of determining whether disciplinary action was warranted. SPR 12/369 states in pertinent part:

"An investigation of a police officer, including a police chief, by a body other than the police department or law enforcement agency for which the officer is employed, would seem to fail in satisfying a key element of whether related records are subject to disclosure was outlined by the Worcester Telegram case. 58 Mass. App. Ct. 1. Therefore, the Worcester Telegram decision is not applicable as this investigation is not comparable to an internal affairs investigation and the investigation was initiated by the Town."

In addition, at least part, if not all, of any report provided to the Town of Hanson by APD Management is also exempt under exemption (f) as it relates to an investigation of internal practices and procedures of the Hanson Police Department, and the disclosure would so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

Mr. Brendan Kinsley
MuckRock
May 30, 2017
Page 3

The Town did respond in 2012 to a public records request from the Patriot Ledger by releasing a redacted APD report. However, at that point, the Supervisor of Public Records had not made the distinction in its application of the 2002 Worcester Telegram decision of the Supreme Judicial Court between a Police Department internal affairs investigation of alleged misconduct by an officer and an investigation by an outside investigator (like APD Management) of such alleged misconduct. The 2013 decision in SPR 12/369 made that distinction, a copy of which is enclosed.

For any or all of the reasons stated above, the APD Management report that you are seeking is exempt from disclosure under the Public Records Law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael W. McCue".

Michael McCue
Town Administrator

Enclosure: SPR 13/269

cc: Joshua R. Coleman, Esq.



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

Shawn A. Williams
Supervisor of Records

April 26, 2013
SPR12/369

Mr. Patrick Ronan
The Patriot Ledger
400 Crown Colony Drive
Quincy, MA 02169

Dear Mr. Ronan:

This office has received your petition appealing the response of Kimberly M. Saillant, Esq., Counsel for the Town of Cohasset (Town), to your November 28, 2012 request for public records. See G. L. c. 66, § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested a copy of the investigatory report completed for the Town by Sjoberg and Associates with respect to police union grievances filed against former Police Chief Mark DeLuca.

“Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, created or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7. A record custodian must 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).

In a February 1, 2013 telephone conversation with Donald White, an attorney on my staff, Attorney Saillant stated that the Town has withheld responsive records as personnel information pursuant to the first clause of Exemption (c) of the Public Records Law.

Exemption (c)

Exemption (c) applies to:

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).

This exemption 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 and medical information. Wakefield Teachers Association v. School Committee of Wakefield, 431 Mass. 792, 798 (2000). The core categories of personnel information include employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. Wakefield Teachers Association v. School Committee of Wakefield, 431 Mass. 792, 798 (2000).

In the February 1st telephone conversation, Attorney Saillant stated that an investigation of Chief DeLuca was conducted by the Town, specifically the Town Manager, based on allegations brought forth by a police union. The investigation was conducted by an outside investigator at the direction of the Town, and as such, the Town does not consider it to be an internal affairs investigation. According to Attorney Saillant, disciplinary action was imposed by the Town subsequent to the conclusion of the investigation.

This office had previously taken a broad interpretation when contemplating the applicability of Exemption (c) to personnel information. However, a 2003 ruling of the Appeals Court of Massachusetts requires a more narrow reading with respect to records of law enforcement internal affairs investigations. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1 (2003).

The internal affairs procedure fosters the public's trust and confidence in the integrity of the police department, its employees, and its processes for investigating complaints because the department has the integrity to discipline itself. A citizenry's full and fair assessment of a police department's internal investigation of its officers' actions promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 12 (2003).

The Worcester decision requires separate treatment for records that may otherwise be considered personnel records, those relating to an internal affairs investigation. This process is defined as one where a police department, or law enforcement agency, conducts an investigation into the actions of one of its own members. The court emphasizes a need for disclosure of related records to ensure that a police department maintains the integrity to discipline itself. See Worcester at 12. An investigation of a police officer, including a police chief, by a body other than the police department or law enforcement agency for which the officer is employed, would seem to fail in satisfying a key element of whether related records are subject to disclosure as outlined by Worcester.

In this instance, the police department was neither responsible for conducting an investigation into the allegations nor did it hold any authority to enact any disciplinary action

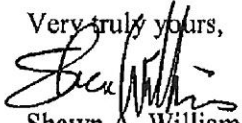
Mr. Patrick Ronan
Page Three
April 26, 2013

SPR12/369

against Chief DeLuca. The Town Manager, with the assistance of an outside investigator, was responsible for both conducting the investigation and taking any determined disciplinary action.

It is the finding of this office that the Worcester decision is not applicable with respect to the requested records because an internal affairs investigation was not conducted by the police department into the actions of one of its members. Instead, the Town conducted an investigation that proved useful in making an employment decision regarding Chief DeLuca, a Town employee. See Wakefield at 798.

This office recognizes that the general public is entitled to a "full and fair assessment" of an internal affairs investigatory process. However, that process did not occur in this instance with respect to the Town's investigation. As a result, records responsive to your request are considered personnel information that the Town may permissibly withhold pursuant to the first clause of Exemption (c). Accordingly, I will consider this administrative appeal closed.

Very truly yours,

Shawn A. Williams
Supervisor of Records

cc: Ms. Kimberly M. Saillant, Esq.