



The Commonwealth of Massachusetts

OFFICE OF THE
DISTRICT ATTORNEY
BRISTOL DISTRICT

THOMAS M. QUINN III
DISTRICT ATTORNEY

888 Purchase Street
New Bedford, MA 02740
(508) 997-0711

January 26, 2022

Andrew Quemere
Aquemere0@gmail.com

Re: Public Records Request
Brady Information

Dear Mr. Quemere:

On January 10, 2022, at 5:31 p.m., you sent an e-mail requesting public records. This response is timely. G.L. c. 66, § 10(a) (response within ten business days from the date of receipt of the request). The responses to each of your four requests appear below:

- 1. Request for this office's *Brady* list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases.**

This office does not maintain a "*Brady* list." There is no responsive record as to this request.

- 2. All *Brady* information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases.**

Please find the attached nine redacted documents containing *Brady* information.

Please be advised that this office cannot publicly provide records regarding **pending** criminal prosecutions of former police officers. G.L. c. 4, § 7, cl. 26(f); Mass. R. Prof. Cond. 3.8(f)(1)-(2); *Commonwealth v. Wood*, 469 Mass. 266, 291-292 (2014). In addition to the Michael Pessoa matter (for which this office is providing a press release), there is one other known former police officer with pending prosecutions in the Fall River District Court. In addition to the pendency of these prosecutions, the records are also exempt from dissemination because they are associated with a named individual's criminal prosecution and are protected from public disclosure under the criminal offender record information (CORI) statute. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. 260, 267-274 (2020); G.L. c. 6, §§ 167, et seq. (CORI statute protecting criminal offender record information from disclosure).

Any records that have been disclosed to criminal defendants pursuant to an impoundment or protective order cannot be disclosed publicly. Two such officers are referenced in *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 642 (2020), attached and labeled 9-8-2020 Pessoa and Fall River two officers. Impoundment is an additional basis to withhold the records from dissemination as public records. *Commonwealth v. Chism*, 476 Mass. 171, 185, n.9 (2017). Additionally, grand jury materials, if deemed responsive, are not subject to public dissemination. Mass. R. Crim. P. 5(d) (grand jury secrecy).

3. All communications with criminal defendants and/or defense counsel advising them of the existence of *Brady* information or an officer's placement on a *Brady* list.

Communications with individual criminal defendants are protected from public disclosure pursuant to the CORI statute. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. 260, 267-274 (2020); G.L. c. 6, §§ 167, et seq. (CORI statute protecting criminal record information from disclosure). This request is therefore denied.

4. All communications with police departments or individual officers regarding the existence or disclosure of *Brady* information or an officer's placement, or potential placement, on a *Brady* list.

Inter-office communications are not subject to the Public Records Law. *DaRosa v. New Bedford*, 471 Mass. 446, 458 (2015), citing G.L. c. 4, § 7, cl. 26(d) (“inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.”) The sharing of such information is necessary for the formulation of policies and decisions. See *In the Matter of a Grand Jury Investigation*, 485 Mass. at 661-662. You have been provided with the letters that signify the completion of *Brady* matters in this office in the attached redacted records.

Redactions

The redactions within the attached records have been applied to the identifying information of individuals or businesses, that are permissible to protect individual privacy rights. G.L. c. 214, § 1B (the state statute on privacy); G.L. c. 4, § 7, cl. 26(a) (“specifically or by necessary implication exempted from disclosure by statute”). The personal privacy exemption within the Public Records Law has been amended. G.L. c. 4, § 7, cl. 26(c). It now reads, “personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.” G.L. c. 4, § 7, cl. 26(c). The records that are being provided to you have been redacted as to the identity of the officers or private individuals or establishments. Michael Pessoa’s identity was made public in a press release and published in an appellate decision that is being provided to you, without redacting his name. Additionally, the Fall River Police Department released the document labeled 6-1-2021 Fall River without redacting officers’ names; therefore that document is being provided to you in the same manner in which it has already been made public.

The redacted records demonstrate the various types of *Brady* materials and how this office addresses such matters, without undermining the personal privacy interests of any individuals. Such individual interests should be accommodated as fully as possible, particularly if no criminal activity is alleged, to provide such officers with the same privacy rights of officers who are charged with crimes and are protected under the CORI statute. Further, these matters do not implicate the public interests described in *Boston Globe Media Partners, LLC v. Department of Criminal Justice Information Services*, 484 Mass. 279, 294 (2020) ("the disclosure of police incident reports regarding alleged offenses by police officers and public officials that do not result in arraignment"). This office is complying with the newly amended language in subclause 26(c) that has not yet been analyzed in this regard, while at the same time protecting individual privacy rights under G.L. c. 214, § 1B.

One record, labeled "8-24-2021 Fall River" relates, in part, to an investigation into a juvenile matter and contains statements of witnesses, as well as criminal offender record information. Juvenile investigations and statements of witnesses are exempt from public dissemination under the Public Records Law. G.L. c. 4, § 7, cl. 26(a) ("specifically or by necessary implication exempted from disclosure by statute"); G.L. c. 119, § 60A (confidentiality of juvenile court records); *Commonwealth v. Boe*, 456 Mass. 337, 344 (2010) (concern for confidentiality of juvenile court records). Statements of identifiable individuals who served as witnesses or who reported information to investigators are exempt from disclosure under the investigatory exception to the Public Records Law. G.L. c. 4, § 7, cl. 26(f) (protection of confidentiality for witnesses to preserve future investigatory techniques). See also *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 438 (1983) (explanation of "identifying details" and "grave risk of indirect identification" of witnesses). Criminal offender record information is also exempt from public disclosure. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. 260, 267-274 (2020); G.L. c. 6, §§ 167, et seq. (CORI statute protecting criminal record information from disclosure). Therefore all references to juvenile reports, witness statements, and CORI have been redacted from that document.

Another record, labeled "2-2-2021 New Bedford" has been redacted to protect the identities of criminal defendants who sought *Brady* materials and the name of the officer in question, as described above.

To the extent that you view this response as a partial denial of your request, you have the right to appeal to the Supervisor of Public Records and to seek a judicial remedy in Superior Court pursuant to 950 C.M.R. 32.06(3)(c); 950 C.M.R. 32.08(1); G.L. c. 66, §§ 10(b), 10A(a).

Sincerely,

Mary Lee

Mary Lee
Assistant District Attorney
Bristol District