



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

Rebecca S. Murray
Supervisor of Records

February 14, 2022
SPR22/0211

Kristen W. Jiang, Esq.
Assistant District Attorney
Essex County District Attorney's Office
10 Federal Street
Salem, MA 01970

Dear Attorney Jiang:

I have received the petition of Andrew Quemere appealing the response of the Essex District Attorney's Office (Office) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 10, 2022, Mr. Quemere requested the following:

- The 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
- 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
- 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
- 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.

On January 31, 2022, the Office provided a response which included requested records and redacted records. Unsatisfied with the Office's response, Mr. Quemere petitioned this office and this appeal, SPR22/0211, 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. Att’y 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.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Office’s January 31st Response

In the Office’s January 31, 2022 response, it stated, “Mr. Quemere is objecting to the redaction of the names of some of the officers or troopers in said documents. For ease of reference, attached please find the only records that were redacted, consisting of 29 pages. To be sure, this Office is precluded from disclosing ‘Criminal Offender Record Information (‘CORI), as defined in G.L. c. 6, § 167.”

Exemption (a)

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

CORI

The current definition of criminal offender record information (CORI) is as follows:

“Criminal offender record information,” records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

G. L. c. 6, § 167.

Additionally, G. L. c. 6, § 172(m) provides in pertinent part:

Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

G. L. c. 6, § 172(m).

In its January 31st response, the Office explained, “where this Office made a redaction, the material disclosed a criminal charge initiated against an individual and, in some cases, the ultimate disposition of the case. As such, the redacted materials fall squarely within the definition of CORI, i.e., records ‘which concern an identifiable individual’ and which ‘relate to the nature or disposition of a criminal charge.’ G.L. c. 6, § 167; Contrast Boston Globe Media Partners, LLC v. Dep’t of Criminal Justice Information Services, 484 Mass. 279, 288-89 (2020) (booking photographs and accident reports do not meet the definition of CORI, as neither disclose the nature of a criminal charge or arrest . . . or its disposition).”

Based on the Office’s response, it is not clear how the docket numbers of either the police officers or troopers fall within the definition of CORI. In Globe Newspaper Co. v. Dist. Att’y for the Middle Dist., 439 Mass. 374 (2003) (Middle Dist.), the Supreme Judicial Court concluded that “[d]ocket numbers of criminal cases prosecuted in public judicial proceedings, correlated with information that is also available from court or other public records, but not correlated with defendant-specific information, are public records under G.L. c. 4, § 7, Twenty-sixth, subject to mandatory disclosure under G.L. c. 66, § 10, and their disclosure is not prohibited by the CORI statute.” See Middle Dist., 439 Mass. at 385. Consequently, it is unclear how the narrow scope of this request would allow docket numbers to be withheld under Exemption (a) and CORI under Middle Dist.

With regard to the names and docket numbers of the police officers or troopers, it is not clear how the “Law Enforcement Officials Prosecuted (Master List)” constitutes “information recorded in criminal proceedings,” where the spreadsheet was created after the criminal proceedings in which the police officers or troopers were involved. See G. L. c. 6, § 167. Additionally, it is not clear how the spreadsheet would constitute “information recorded in criminal proceedings.” The Office must clarify these matters.

Conclusion

Accordingly, the Office is ordered to provide Mr. Quemere with a response to his request, provided 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 the response to this office at pre@sec.state.ma.us.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Andrew Quemere