



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

Rebecca S. Murray  
*Supervisor of Records*

February 17, 2022  
**SPR22/0285**

Tara L. Miltimore, Esq.  
Assistant District Attorney  
Records Access Officer  
Cape & Islands District Attorney's Office  
3231 Main Street  
Barnstable, MA 02630

Dear Attorney Miltimore:

I have received the petition of Andrew Quemere appealing the response of the Cape & Islands 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 records:

- [1.] 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
- [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
- [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
- [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.

The Office responded on February 2, 2022. Unsatisfied with the Office's response, Mr. Quemere petitioned this office and this appeal, SPR22/0285, 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 Response***

In its February 2, 2022 response, the Office provided a sample of a letter it sends to “police departments requesting any possible exculpatory material relating to potential police witnesses.” The Office advised that it, “does not have a ‘list’ so to speak.”

It is unclear whether the Office has records responsive to this request. The Office must clarify this.

### ***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](mailto:pre@sec.state.ma.us).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Andrew Quemere