



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

Rebecca S. Murray
Supervisor of Records

March 15, 2022
SPR22/0499

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 County 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:

- [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.

Previous appeal

This request was the subject of a previous appeal. See SPR22/0211 Determination of the Supervisor of Records (February 14, 2022). In my February 14th determination, I found the Office had not met its burden to withhold the names of police officers and troopers, as well as docket numbers under the Criminal Offender Record Information (CORI) statute, as it operates through Exemption (a) of the Public Records Law. G. L. c. 4, § 7(26)(a). The Office provided a further response on February 28, 2022. Unsatisfied with the Office's response, Mr. Quemere petitioned this office and this appeal, SPR22/0499, was opened as a result. This appeal pertains

to the names of the police officers and troopers only.

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. Attorney 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 February 28th response

In its February 28, 2022 response, the Office asserts that “. . . it must redact the names of the individuals in these records, as the ‘nature or disposition of a criminal charge’ is disclosed in the same. See G.L. c. 6, §167. The names are easily distinguishable from the docket numbers, which the Appeals Court in Middle District categorized as ‘chronologically maintained court records of public judicial . . . proceedings.’ See id. at 382, quoting G.L. c. 6, § 172, par. 8. The name of an individual is certainly not a ‘chronically maintained court record[.]’ Furthermore, the Court in Middle District explicitly distinguished its holding from situations in which a request is ‘framed with reference to a[] named defendant.’ Id. at 384. . . . For these reasons and those advanced in prior correspondence, this Office redacts the individual names appearing in the attached records.”

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 Att'y 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.

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.

Based on the Office's response, I find it has not met its burden of specificity to withhold the names of police officers and troopers under Exemption (a). Specifically, it remains unclear how the names are not available from court and would constitute CORI. See Middle Dist., 439 Mass. at 385 ("Docket 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...").

It is additionally uncertain how the names of the police officers and troopers do not qualify as "chronologically maintained court records of public judicial . . . proceedings." Middle Dist., 439 Mass. at 382. Consequently, I find the Office has not met its burden to withhold the names of police officers and troopers under Exemption (a) of the Public Records Law.

Conclusion

Accordingly, the Office is ordered to review the record, redact where necessary, and provide Mr. Quemere with the responsive record, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray
Supervisor of Records

cc: Andrew Quemere