



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

Manza Arthur  
Supervisor of Records

December 12, 2022  
**SPR22/2721**

Lieutenant Alfreda Cromwell  
Shirley Police Department  
11 Keady Way  
Shirley, MA 01464

Dear Lieutenant Cromwell:

I have received the petition of Andrew Quemere appealing the response of the Shirley Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 21, 2022, Mr. Quemere requested videos for a named investigation.

***Prior Appeals***

The requested records were the subject of prior appeals. See SPR22/1319 Determination of the Supervisor of Records (June 21, 2022); SPR22/1784 Determination of the Supervisor of Records (August 16, 2022) and SPR22/2019 Determination of the Supervisor of Records (September 19, 2022). In my September 19<sup>th</sup> determination, I found it unclear how the requested records could be withheld under Exemption (a) and Exemption (c), and ordered the Department to provide a further response. On November 17, 2022, the Department provided a response. Unsatisfied with the Department's response, Mr. Quemere petitioned this office and this appeal, SPR22/2721, 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) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends

to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based...”); 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).

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 Department’s November 17<sup>th</sup> response***

In its November 17, 2022 response, the Department restated its position about withholding the requested videos. The Department claims Exemption (a) and Exemption (c) apply to withhold the records from disclosure. The Department further explained that a technical issue prevents them from redacting the requested 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.

*Criminal Offender Record Information*

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.

In the Department’s response, it stated the following:

Video recordings created by the Shirley Police Department, a Massachusetts criminal justice agency, all of which concern and depict the arrest and incarceration of an identifiable individual over the age of 18 who was being detained for offenses punishable by incarceration, clearly fall within the definition of CORI that the statute and regulations protect from disclosure. 803 CMR 2.03(1). Moreover, the recordings in question are not specifically excluded from the definition of CORI. 803 CMR 2.03(2).

The Department has not met its burden of specificity to explain how this information falls within the definition of CORI. Specifically, it is unclear how the records are “information recorded in criminal proceedings that are not dismissed before arraignment,” as described above. The Department must address this matter.

*Exemption (c)*

Exemption (c) applies to:

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(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Att'y Gen., 391 Mass. 1, 9 (1984); Att'y Gen. v. Assistant Comm'r of Real Prop. Dep't, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

Medical information that is of a personal nature and relates to a specifically named individual is exempt from disclosure. Brogan v. Sch. Comm. of Westport, 401 Mass. 306, 308 (1987); Globe Newspaper Co. v. Boston Ret. Bd., 388 Mass. 427, 438 (1983). Generally, medical information is sufficiently personal to warrant exemption. Id. at 432-34. There is a strong public policy in Massachusetts that favors confidentiality as to medical data about a person's body. Globe Newspaper Co. v. Chief Med. Exam'r, 404 Mass. 132, 135 (1987).

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

This exemption requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law abiding and efficient manner. Id. at 292.

Under Exemption (c), the Department stated, "...a discussion of a detainee's mental state and medical condition clearly constitutes 'intimate details of a highly personal nature' that may be withheld."

The Department further explained why it could not segregate the records stating, "... the Department purchased software that it believed would allow it to effectively redact and/or edit video recordings such as the three responsive to Mr. Quemere's request." The Department further stated "[i]n these circumstances, the Department does not have the technical means to

pixelate the moving images that depict the detained individual or redact the portions of the audio recording in which the detained individual discusses their own medical information.”

Based on the Department’s response, to the extent that the records contain medical information of a specifically named individual, I find the Department may permissibly withhold those portions from disclosure. However, it is unclear how medical information cannot be segregated from the responsive records and non-exempt portions provided. See Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are narrowly construed and are not blanket in nature). The Department must produce any non-exempt, segregable portions of public records. G. L. c. 66, § 10 (a).

***Conclusion***

Accordingly, the Department is ordered to provide Mr. Quemere with a response to the request, provided 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](mailto:pre@sec.state.ma.us).

Sincerely,



Manza Arthur  
Supervisor of Records

cc: Andrew Quemere  
Timothy D. Zessin, Esq.



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

Manza Arthur  
Supervisor of Records

September 19, 2022  
**SPR22/2019**

Lieutenant Alfreda Cromwell  
Shirley Police Department  
11 Keady Way  
Shirley, MA 01464

Dear Lieutenant Cromwell:

I have received the petition of Andrew Quemere appealing the response of the Shirley Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 21, 2022, Mr. Quemere requested videos for a named investigation.

***Prior Appeals***

The requested records were the subject of prior appeals. See SPR22/1319 Determination of the Supervisor of Records (June 21, 2022); SPR22/1784 Determination of the Supervisor of Records (August 16, 2022). In my August 16<sup>th</sup> determination, I found that the Department intended on providing a further response. On August 25, 2022, the Department provided a response. Unsatisfied with the Department's response, Mr. Quemere petitioned this office and this appeal, SPR22/2019, was opened as a result.

***The Department's August 25<sup>th</sup> response***

In its August 25, 2022 response, the Department restated its position about withholding the requested videos. The Department claims Exemption (a) and Exemption (c) apply to withhold the records from disclosure.

***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.

#### *Criminal Offender Record Information*

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.

In the Department's response, it stated, "...the records were being withheld because a non-segregable portion of each video contained visual depiction of an arrest of an identifiable individual for incarcerable[sic] offenses..."

The Department has not met its burden of specificity to explain how this information falls within the definition of CORI. Specifically, it is unclear how the records are "information recorded in criminal proceedings that are not dismissed before arraignment," as described above. The Department must address this matter.

*Exemption (c)*

Exemption (c) applies to:

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(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Att'y Gen., 391 Mass. 1, 9 (1984); Att'y Gen. v. Assistant Comm'r of Real Prop. Dep't, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

This exemption requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law abiding and efficient manner. Id. at 292.

Under Exemption (c), the Department stated, "...significant portions of the video contain discussions of the detainee's mental state, the release of which would cause severe embarrassment."

Based on the Department's response, it is unclear how medical information cannot be segregated from the responsive records and non-exempt portions provided. See *Reinstein v. Police Comm'r of Boston*, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are narrowly construed and are not blanket in nature). The Department must produce any non-exempt, segregable portions of public records. G. L. c. 66, § 10 (a).

***Conclusion***

Accordingly, the Department is ordered to provide Mr. Quemere with a response to the request, provided 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](mailto:pre@sec.state.ma.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is written in a cursive, flowing style.

Manza Arthur  
Supervisor of Records

cc: Andrew Quemere  
Timothy D. Zessin, Esq.



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

Manza Arthur  
Supervisor of Records

August 16, 2022  
**SPR22/1784**

Lieutenant Alfreda Cromwell  
Shirley Police Department  
11 Keady Way  
Shirley, MA 01464

Dear Lieutenant Cromwell:

I have received the petition of Andrew Quemere appealing the response of the Shirley Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 21, 2022, Mr. Quemere requested videos for a named investigation.

***Prior Appeal***

The requested records were the subject of a prior appeal. See SPR22/1319 Determination of the Supervisor of Records (June 21, 2022). In my June 21<sup>st</sup> determination, I found that the Department did not meet its burden under Exemptions (a) and (c), and ordered the Department to provide a further response. On July 29, 2022, the Department provided a response. Unsatisfied with the Department's response, Mr. Quemere petitioned this office and this appeal, SPR22/1784, was opened as a result.

Based upon a conversation between a Public Records Division staff attorney and a Department representative, it is my understanding that the Department intends on providing a subsequent response to Mr. Quemere.

Accordingly, the Department is ordered to provide Mr. Quemere with a response to his request in a manner consistent with the Public Records Law and its Regulations within 10 business days. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us). Mr. Quemere may appeal the substantive nature of the Department's response within ninety days. See 950 C.M.R. 32.08(1).

Alfreda Cromwell  
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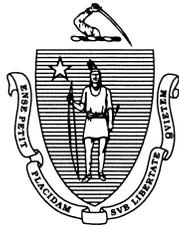
SPR22/1784

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is written in a cursive style with a large, prominent initial "M".

Manza Arthur  
Supervisor of Records

cc: Andrew Quemere



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

Rebecca S. Murray  
*Supervisor of Records*

June 21, 2022  
**SPR22/1319**

Lieutenant Alfreda Cromwell  
Shirley Police Department  
11 Keady Way  
Shirley, MA 01464

Dear Lieutenant Cromwell:

I have received the petition of Andrew Quemere appealing the response of the Shirley Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 21, 2022, Mr. Quemere requested videos for a named investigation. On June 6, 2022, the Department responded. Unsatisfied with the Department's response, Mr. Quemere petitioned this office and this appeal, SPR22/1319, 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 town 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 Department's June 6<sup>th</sup> response***

In its June 6, 2022, response, the Department enclosed responsive records in redacted form. The Department claims Exemption (a) and Exemption (c) apply to withhold the redacted portions from disclosure.

***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.

*Exemption (c)*

Exemption (c) applies to:

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(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Att'y Gen. v. Assistant Comm'r of Real Property Dep't, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

This exemption requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law abiding and efficient manner. Id. at 292.

***Burden of specificity; segregable portions***

Pursuant to the Public Records Law, the burden shall be upon the records custodian to establish the applicability of an exemption. G. L. c. 66, § 10(b)(iv) (written response must “identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based . . .”); see also Globe Newspaper Co. v. Police Comm’r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511.

Based on the Department’s response, I find it has not met its burden of specificity in claiming the CORI Act, operating through Exemption (a), and Exemption (c) to redact the requested records. The Department merely cites the CORI Act and Exemption (c) without any further explanation as to their applicability to the responsive records. The Department is advised that a records custodian is required to not only cite an exemption, but to specifically explain the applicability of the exemption to the requested records. G. L. c. 66, § 10(b)(iv). Any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a).

***Conclusion***

Accordingly, the Department is ordered to provide Mr. Quemere with a response to the request, provided 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](mailto:pre@sec.state.ma.us).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Andrew Quemere