

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

ANDREW QUEMERE,

Plaintiff,

v.

**NORTHWESTERN DISTRICT
ATTORNEY'S OFFICE,**

Defendant.

Civil Action No. 2384CV01341

**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND PUNITIVE DAMAGES**

1. This action is brought by Mr. Andrew Quemere under the Massachusetts Public Records Law, G.L. c. 66 § 10A, to compel disclosure of unredacted versions of records held by the Northwestern District Attorney's Office ("NWDAO").
2. The records Mr. Quemere seeks are related to *Brady* disclosures made by the NWDAO regarding alleged misconduct by individual police officers. These records concern exculpatory or impeaching evidence that the NWDAO is legally and ethically obligated to disclose to criminal defendants to ensure their constitutional right to a fair trial. The release of such records would serve the public interest by shedding light on the workings of the criminal legal process in Hampshire and Franklin counties and the town of Athol.
3. Although the NWDAO produced records responsive to Mr. Quemere's request, it did so with the docket numbers and names of individual police officers redacted.
4. In support of these redactions, the NWDAO cited two exemptions to the Public Records Law: Exemption (a), which applies to records "exempted from disclosure by statute," for

which the NWDAO cites the Criminal Offender Record Information Law; and Exemption (c), which applies to private information about specifically named individuals—but expressly states that it “shall not apply to records related to a law enforcement misconduct investigation.”

5. Mr. Quemere appealed the NWDAO’s response to the Secretary of the Commonwealth’s Public Records Divisions. After three rounds of appeals, the NWDAO was unable to show how either Exemption (a) or Exemption (c) applied to the records at issue. Accordingly, the Supervisor of Records ordered the NWDAO to produce unredacted versions of the records at issue.
6. Despite the clear language of the Public Records Law, and in defiance of multiple decisions from the Massachusetts Supervisor of Records, the NWDAO has refused to provide unredacted versions of the records at issue.
7. Moreover, Northwestern District Attorney David Sullivan has made public statements suggesting, among other things, that the NWDAO withheld additional records that were never identified to Mr. Quemere.
8. Accordingly, Mr. Quemere brings this action under G.L. c. 66, § 10A, seeking declaratory judgment; injunctive relief; punitive damages; and attorneys’ fees and costs.

PARTIES

9. Andrew Quemere is a Massachusetts resident. Mr. Quemere operates *The Mass Dump*, an online news publication, and he investigates and writes about police misconduct and other legal issues in the Commonwealth, often using the public records law to do so.
10. The Northwestern District Attorney’s Office is an agency of the Commonwealth of Massachusetts in possession of the records at issue in this complaint.

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to G.L. c. 66, § 10A(c-d), which permits a requester of public records to bring an action in the Superior Court to enforce the requirements of the Public Records Law.
12. Venue is proper pursuant to G.L. c. 66, § 10A(b), which provides that any suit to enforce the Public Records Act against a state agency shall be brought in the Suffolk Superior Court.

FACTS

13. On January 10, 2022, Mr. Quemere emailed a request for public records to Cynthia Von Flatern, an Assistant District Attorney and the Records Access Officer at the NWDAO. Mr. Quemere requested the following records:
 - a. 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;
 - b. 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;
 - c. All communications with criminal defendants and/or defense counsel advising them of the existence of *Brady* information or officer's placement on a *Brady* list; and
 - d. All communications with police departments or individual officers regarding the existence or disclosure of *Brady* information or officer's placement, or potential placement, on a *Brady* list.
14. On January 24, 2022, the NWDAO released two sets of records consisting of several *Brady* letters and *Brady* letter templates. From each letter or template, the NWDAO

redacted the name of the officer subject to the letter and, where applicable, the docket number of the officer's offense. For the *Brady* letters, the NWDAO also redacted the name of the defendant and the docket number of the case in which the officer was set to testify.

15. The NWDAO stated that the records were redacted under the Criminal Offender Record Information ("CORI") Law, G.L. c. 6, § 167, as applied through Exemption (a) to the Massachusetts Public Records Law, G.L. c. 4, § 7, cl. 26(a), and Exemption (c) to the Massachusetts Public Records Law, G.L. c. 4, § 7, cl. 26(c).
16. On January 26, 2022, Mr. Quemere appealed the NWDAO's redactions to the Supervisor of Records. Mr. Quemere argued that neither Exemption (a) nor Exemption (c) applied.
17. On February 3, 2022, Supervisor of Records Rebecca S. Murray issued her initial determination in this matter, designated **SPR22/0176**. *See* Attachment A. With regard to Exemption (a), the Supervisor found that "it is not clear how the docket numbers of either the criminal defendants or the police officers" names fell within the definition of CORI. *Id.* 4. The Supervisor further found that, with regard to police officer names and docket numbers, it was not clear how the letters even met the definition of "information recorded in criminal proceedings." *Id.* at 5. Finally, the Supervisor further found that the NWDAO had not met its burden to redact officer names under Exemption (c) because the NWDAO did not show that the records are not related to a law enforcement misconduct investigation. *Id.* at 6.
18. On February 16, 2022, the NWDAO responded to the Supervisor's initial determination. It reiterated its claims under Exemptions (a) and (c). The NWDAO concluded by stating that it would not provide the *Brady* letters and templates in unredacted form.

19. On February 16, 2022, Mr. Quemere again appealed to the Supervisor of Records.
20. On February 25, 2022, the NWDAO issued a request to the Peace Officer Standards and Training (“POST”) Commission asking for guidance on the application of Exemptions (a) and (c) to disciplinary records of police officers. The NWDAO did not cite any source granting the POST Commission authority to make binding interpretations of the Public Records Law or override a determination by the Supervisor of Records.
21. On March 1, 2022, the Supervisor of Records issued her second determination in this matter, designated **SPR22/0392**. *See* Attachment B. The Supervisor found that the NWDAO did not show that criminal defendant names and docket numbers “do[] not constitute ‘chronologically maintained court records of public judicial proceedings’ or ‘published records of public court or administrative proceedings.’” *Id.* at 4. Similarly, with regard to officer names and docket numbers, the NWDAO did not show how the records fit within the definition of CORI. *Id.* Accordingly, the Supervisor found that the NWDAO had not met its burden to redact officer or non-officer names or docket numbers under Exemption (a). *Id.* The Supervisor also reiterated her finding that the NWDAO had not met its burden to redact officer names under Exemption (c). *Id.* at 5.
22. On March 14, 2022, the NWDAO responded to the Supervisor’s second determination. The NWDAO restated that it was withholding docket numbers under Exemption (a) and CORI and withholding the names of police officers under Exemption (c). It again declined to release unredacted versions of the responsive documents.
23. On March 23, 2022, Mr. Quemere appealed to the Supervisor of Records for a third time.
24. On April 6, 2022, the Supervisor of Records issued her third determination in this matter, designated **SPR22/0696**. *See* Attachment C. The Supervisor found, for the third time, that

CORI did not create an exemption by necessary implication and that the NWDAO did not meet its burden to justify the redactions under Exemption (a). *Id.* at 4. The Supervisor also reiterated its prior finding that the NWDAO had not met its burden to redact the names of police officers pursuant to Exemption (c). *Id.* at 5. The Supervisor ordered the NWDAO “to review the records, redact where necessary and provide the responsive records to Mr. Quemere, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days.” *Id.* at 6.

25. Contrary to the Supervisor’s order, the NWDAO did not provide a response to Mr. Quemere within ten business days of the third determination.
26. On May 27, 2022, and again on June 2, 2022, Angela M. Puccini, a senior attorney and compliance supervisor at the Office of the Secretary of the Commonwealth’s Public Records Division, emailed the NWDAO inquiring about the status of the NWDAO’s response to the April 6, 2022, appeal determination.
27. On June 3, 2022, 40 business days after the April 6, 2022, determination, the NWDAO sent a letter to Ms. Puccini stating that it would not provide unredacted copies of the *Brady* letters and templates released to Mr. Quemere. The NWDAO again invoked CORI, Exemption (a), and Exemption (c) to justify the redactions. *See* Attachment D.
28. On June 3, 2022, in response to the NWDAO’s refusal to comply with the order in SPR22/0696, Mr. Quemere requested that the Supervisor of Records refer the matter to the Attorney General’s Office for review. To date, Mr. Quemere has not received a response from the Supervisor of Records or the Attorney General’s Office.
29. On May 26, 2023, Mr. Quemere, through counsel, sent a letter to the NWDAO summarizing the outstanding issues with the redactions to his requests and advising that he

would bring suit if those issues could not be resolved. *See* Attachment E.

30. On June 9, 2023, the NWDAO sent a letter to Mr. Quemere restating its intention to disregard the Supervisor of Records' order. *See* Attachment F. The NWDAO requested that Mr. Quemere attempt to resolve the outstanding issues with the Supervisor of Records and the Attorney General's Office. *Id.* at 2. The NWDAO noted that another individual seeking similar records had requested enforcement from the Attorney General's Office on April 25, 2023. *Id.* On information and belief, the individual referred to in the NWDAO's letter has not received a response from the Supervisor of Records or the Attorney General's Office.
31. On June 12, 2023, Mr. Quemere filed a complaint in the above captioned action. The complaint was duly served on the NWDAO.
32. On July 5, 2023, Northwestern District Attorney David E. Sullivan appeared as a guest on the WHMP radio station to discuss the June 12, 2023, complaint.¹ During the segment, District Attorney Sullivan stated the following:
- a. That Mr. Quemere had requested "the criminal records of any police officers, whether it was minor [or] major," including records "before they were police officers," records "going back to where [a police officer was] a teenager," and records that "were not even relevant to [an officer's] police work";
 - b. That the NWDAO had advised Mr. Quemere to seek records through the "judicial process" rather than a public records request;
 - c. That the records were held by police departments and that the NWDAO had advised

¹ As of the time of filing of this complaint, the interview is available at <https://whmp.com/podcasts/come-dance-with-us/>.

- Mr. Quemere to contact the police departments;
- d. That the NWDAO did not have the requested records;
 - e. That the NWDAO withheld records because they were irrelevant or from “the very distant past;” and
 - f. That the NWDAO attempted to negotiate with Mr. Quemere over his records request.
33. Contrary to District Attorney Sullivan’s statements, Mr. Quemere only sought records that rose, or potentially rose, to the level of *Brady* material, not all criminal records of all police officers. Moreover, Mr. Quemere never specifically requested juvenile records.
34. Moreover, contrary to District Attorney Sullivan’s statements, the NWDAO never communicated to Mr. Quemere or the Supervisor of Records that:
- a. Mr. Quemere’s public records request should have been directed to the judiciary;
 - b. Mr. Quemere’s request should have been directed to local police departments;
 - c. The NWDAO does not have the requested records;
 - d. The NWDAO redacted or withheld records because they were irrelevant;
 - e. The NWDAO redacted or withheld records because they were old;
 - f. The NWDAO redacted or withheld records because they were related to juvenile offenses; or
 - g. The NWDAO was open to negotiation over the release of the records.
35. To date, the NWDAO has not produced unredacted copies of the *Brady* letters and templates previously released to Mr. Quemere.
36. Having confirmed the NWDAO’s intent to disregard the Supervisor of Records’ orders and continue withhold information to which he is entitled, and having no indication that

the Attorney General's Office intends to take up the issue, Mr. Quemere now brings this action against the NWDAO to enforce his rights under G.L. c. 66, § 10A.

COUNT I

Violation of Public Records Law

(G.L. c. 66, § 10)

37. Plaintiff realleges and incorporates by reference the allegations above.
38. Under the Public Records Law, G.L. c. 66, § 10(a), public entities of the Commonwealth must "at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record."
39. Under the Public Records Law, G.L. c. 66, § 10(b)(ii-iii), a public entity "must identify any public records or categories of public records sought that are not within [its] possession, custody, or control" and "identify the agency or municipality that may be in possession, custody or control of the public record sought."
40. Under the Public Records Law, G.L. c. 66, § 10(b)(iv), a public entity 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."
41. The NWDAO is a public entity subject to the Public Records Law.
42. The NWDAO has refused to furnish unredacted copies of the requested public records to Mr. Quemere, citing Exemptions (a) and (c). As repeatedly found by the Supervisor of Records, Exemptions (a) and (c) to the Public Records Law do not provide a lawful basis for the NWDAO to redact the requested records.
43. Moreover, as shown by District Attorney Sullivan's public statements on July 5, 2023, the NWDAO:
 - a. Did not identify the requested records or categories of records that were not within

- its possession and nor did it identify the agency or agencies that possessed these records;
- b. Did not specify that it was redacting or withholding records, categories of records, or portions of records on the basis that the records were irrelevant, old, or related to juvenile offenses, nor did it identify these records; and
 - c. Misconstrued Mr. Quemere's request and, therefore, did not conduct a legally adequate search for responsive records.

44. The NWDAO is, therefore, in violation of the Public Records Law.

45. Pursuant to G.L. c. 66, § 10A(c), a person who requests a public record "may initiate a civil action to enforce the requirements of this chapter" in the Superior Court, which has "all remedies at law or in equity" to remedy a violation.

46. Pursuant to G.L. c. 66, § 10A(d)(2), Mr. Quemere is entitled to reasonable attorney fees and costs in this action.

47. Pursuant to G.L. c. 66, § 10A(d)(3), the court may order the NWDAO to waive any fees associated with the production of the requested records.

48. Pursuant to G.L. c. 66, § 10A(d)(4), if the court finds the NWDAO did not act in good faith, it may assess punitive damages against the NWDAO in an amount not less than \$1,000 nor more than \$5,000, to be deposited into the Public Records Assistance Fund.

RELIEF REQUESTED

49. WHEREFORE, Plaintiff Andrew Quemere respectfully requests that the Court:

- a. Issue a declaratory judgment that:
 - i. The CORI statute, operating through Exemption (a), is not a legal basis to redact docket numbers or names of police officers from public records;
 - ii. Exemption (c) is not a legal basis to redact the names of police officers accused of

- misconduct or crimes from public records; and
- iii. The NWDAO has therefore violated the Public Records Law, G.L. c. 66, § 10, by redacting information from a public record without a legal basis for doing so;
- b. Issue an injunction ordering the NWDAO to conduct a new search for the requested records, to provide a response that complies with Public Records Law, G.L. c. 66, § 10, and to waive all fees associated with the production of the requested records;
- c. Award Mr. Quemere reasonable attorney's fees and costs;
- d. Award punitive damages against the NWDAO in an amount not less than \$1,000 nor more than \$5,000 per violation, to be deposited into the Public Records Assistance Fund; and
- e. Grant such other and further relief as the Court may deem just and proper.

Dated: July 26, 2023

RESPECTFULLY SUBMITTED
BY THE PLAINTIFF



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Attachment A



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

Rebecca S. Murray
Supervisor of Records

February 3, 2022
SPR22/0176

Cynthia M. Von Flatern, Esq.
Assistant District Attorney
Records Access Officer
Northwestern District Attorney's office
One Gleason Plaza
Northampton, MA 01060

Dear Attorney Von Flatern:

I have received the petition of Andrew Quemere appealing the response of the Northwestern District Attorney's Office (Office/NWDAO) 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.

The Office responded on January 24, 2022, providing numerous records in redacted form. Unsatisfied with the Office's response, Mr. Quemere appealed, and this case was opened as a result.

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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.

Current Appeal

In his appeal petition, Mr. Quemere contends that:

It is clear from reviewing the records that the names of many of the police officers that were redacted are not subject to the CORI statute. Many of these names are used in reference to departmental policy violations, not criminal charges; such policy violations are not covered by the CORI statute.

He also argues that “the office has not explained with specificity how the privacy exemption applies to the requested records.”

In an email to this office and the District Attorney’s Office subsequent to the opening of this appeal, Mr. Quemere further contends that:

The DAO withheld the names of police officers charged with crimes under the CORI law. The DAO has not provided enough information to demonstrate that the CORI law applies to these records. The records are likely public per the Boston Globe Media Partners, LLC v. Department of Criminal Justice Information Services decision.

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The Office's Response

In its January 24, 2022 response, the Office provides copies of “all of the letters sent to satisfy the Northwestern District Attorney’s obligations under *Brady v. Maryland*, 373 U.S. 83, 87 (1963)” and cites Exemption (a), CORI, and Exemption (c) of the Public Records Law for redacting the responsive 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 *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

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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 24, 2022 response, the Office states that “names of defendants and officers as well as docket numbers of individual cases have been redacted to protect persons’ criminal offender record information (CORI).” In a letter to Mr. Quemere and this office on January 31, 2022, the Office clarifies that “only one officer, an officer in the town of Erving, had a criminal case dismissed prior to arraignment. For that officer, the statutory exemption for CORI would not apply.” The Office argues that its Exemption (c) claim would still apply for that record.

Based on the Office’s response, it is not clear how the docket numbers of either the criminal defendants or the police officers 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

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how the narrow scope of this request would allow docket numbers to be withheld under Exemption (a) and CORI under Middle Dist. The Office must clarify these matters.

With regard to the names and docket numbers of the police officers, it is not clear how the responsive letters constitute “information recorded in criminal proceedings,” where the letters were created after the criminal proceedings in which the police officers were involved. See G. L. c. 6, § 167. The Office must clarify this.

Exemption (c)

Exemption (c) permits the withholding of:

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.

Massachusetts courts have found that “core categories of personnel information that are ‘useful in making employment decisions regarding an employee’” may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, “employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee,” may be withheld pursuant to Exemption (c). Wakefield Teachers Ass’n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under Exemption (c). See Globe Newspaper Co. v. Exec. Office of Admin. and Finance, Suffolk Sup. No. 11-01184-A (June 14, 2013).

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).

The types of personal information which this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 292 n.13; see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988)

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(holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).

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.

In its January 24th response, under Exemption (c), the Office states that “names of defendants and officers as well as docket numbers of individual cases have been redacted . . . to protect persons’ privacy interests.” In its January 31st letter, the Office elaborates that “the police officers in question have information on file with their individual police departments that concern ‘officer misconduct’ or ‘officer dishonesty.’” The Office goes on to explain that it “must disclose to defense counsel in active criminal cases in which a police officer is a witness the police officer’s identity and a brief statement summarizing misconduct or dishonesty.” Further, the Office argues that “with respect to other types of documents within a police officer’s personnel file including those memorialized in the Brady letters at issue here, many will not be the result of a public investigation at all but will amount only to documentation by a supervisor of misconduct known to the supervisor.”

Based on the Office’s response, where the responsive records concern misconduct by police officers, I find the Office has not shown how the redacted records are not “records related to a law enforcement misconduct investigation.” See G. L. c. 4, § 7(26)(c). Consequently, the Office has not met its burden to redact the names of police officers pursuant to Exemption (c).

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

Attachment B



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

Rebecca S. Murray
Supervisor of Records

March 1, 2022
SPR22/0392

Cynthia M. Von Flatern, Esq.
Assistant District Attorney
Records Access Officer
Northwestern District Attorney's office
One Gleason Plaza
Northampton, MA 01060

Dear Attorney Von Flatern:

I have received the petition of Andrew Quemere appealing the response of the Northwestern District Attorney's Office (Office/NWDAO) 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:

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- [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 SPR21/0176 Supervisor of Records Determination (February 3, 2022). In my February 3rd determination, I ordered the Office to clarify its claims for redacting the responsive records. Subsequently, the Office responded on February 16, 2022. Unsatisfied with the Office's response, Mr. Quemere appealed, and this case was opened as a result.

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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 February 16th Response

In its February 16, 2022 response, the Office reiterates its claims for redacting the responsive records pursuant to Exemption (a), the CORI statute, and Exemption (c). See G. L. c. 4 § 7(26)(a), (c); 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 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

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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.

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G. L. c. 6, § 172(m).

Under Exemption (a) and CORI, the Office argues that “docket numbers for each individual defendant constitute criminal offender record information or CORI” and further argues the following:

The Brady letters were sent to individual defense counsel in discovery. They are not part of the court file for each defendant and not part of any court records. Defense counsel who receive notification that a Brady letter exists for a specific officer may investigate that fact further, including summoning records of investigations under Mass. R Crim. P. 17. Without some steps, the information will never come to light at court and there would be no reason for anyone to know about the person’s criminal case. The information is information that is ‘not in the court’s records or any other public record.’

...

Similarly, with respect to police officers who have had a criminal case that has led to release of a Brady letter, that fact is not part of a publicly available criminal record. A person cannot make a search of a court list and determine which criminal cases relate to police officers. Although docket numbers that relate to a specific type of case, for example, assault and battery or trafficking cases, should be disclosed under the public records law, a defendant’s employment is not categorized in a court record. The names the police officers who are the subject of the Brady letter and the docket number for their court case, if any, should remain redacted.

With regard to the names and docket numbers of the non-police-officer criminal defendants, I find the Office has not demonstrated how this information does not constitute “chronologically maintained court records of public judicial proceedings” or “published records of public court or administrative proceedings.” With regard to the names and docket numbers of the police officers, where these letters were created as templates after the criminal proceedings in which the police officers were involved, the Office has not demonstrated how this information fits within the definition of CORI. Accordingly, the Office has not met its burden to redact the letters under Exemption (a) and the CORI statute.

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).

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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 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).

When analyzing a privacy claim, there is 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 Office argues the following:

With respect to the second ground supporting redaction, NWDAO maintains that the names of officers who are the subjects of a Brady letter are protected under the personnel/privacy exemption to the Public Records Law. G.L. c. 4, §7, cl. 26 (c). NWDAO is unwilling to release any letter that could invade the privacy of an individual when this Office is not the employer of the individual and not privy to details of any misconduct investigation. NWDAO joins the Plymouth County District Attorney in requesting that the newly established Peace Officer Standards and Training (POST) Commission within the Commonwealth further define what records related to police officer misconduct investigations constitute public records.

In spite of the Office's February 16th response, as with the previous January 24th response, I find the Office has not shown how the redacted records are not "records related to a law enforcement misconduct investigation." See G. L. c. 4, § 7(26)(c). Consequently, the Office has not met its burden to redact the names of police officers pursuant to Exemption (c).

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.

Cynthia M. Von Flatern, Esq.
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Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looping "R" and "M".

Rebecca S. Murray
Supervisor of Records

cc: Andrew Quemere

Attachment C



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

Rebecca S. Murray
Supervisor of Records

April 6, 2022
SPR22/0696

Cynthia M. Von Flatern, Esq.
Assistant District Attorney
Records Access Officer
Northwestern District Attorney's office
One Gleason Plaza
Northampton, MA 01060

Dear Attorney Von Flatern:

I have received the petition of Andrew Quemere appealing the response of the Northwestern District Attorney's Office (Office/NWDAO) 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 Appeals

This request was the subject of previous appeals. See SPR21/0176 Supervisor of Records Determination (February 3, 2022); SPR22/0392 Supervisor of Records Determination (March 1, 2022). In my March 1st determination, I ordered the Office to clarify its Exemption (a) and (c) claims for redacting the responsive records. Subsequently, the Office responded on March 14, 2022. Unsatisfied with the Office's response, Mr. Quemere appealed, and this case was opened

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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 March 14th Response

In its March 14, 2022 response, the Office states that it is withholding docket numbers under Exemption (a), and withholding the names of police officers who are the subjects of Brady letters under Exemption (c) of the Public Records Law.

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

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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.

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G. L. c. 6, § 172(m).

Under Exemption (a) and CORI, the Office argues that “once the requestor has the criminal docket number, he would know the identities of each of the criminal defendants who happen to have or have had a case in which a police officer with a Brady letter on file with NWDAO was a witness in the criminal case.” The Office goes on to argue that “NWDAO continues to believe that this amounts to a release of CORI under Globe Newspaper v. District Attorney for the Middle Dist., 439 Mass. 374, 384 (1995) and that the information is therefore exempt from the definition of public records under G.L. c. 4, § 7, cl. 26 (a).”

The Office also argues the following:

As with the cases of criminal defendants who have received Brady letters, correlation of the docket number with specific officers is information known only by NWDAO. It is not a court record. Contrast Globe Newspaper Co. v. District Attorney for the Middle Dist. ... (docket numbers for public corruption crimes can be determined by search of court records).

Based on the Office’s March 14th response, as with the Office’s previous responses, I find the Office has not met its burden to demonstrate how the requested docket numbers may be redacted pursuant to Exemption (a) and CORI. See G. L. c. 6, § 172(m); see also Globe Newspaper Co. v. Dist. Att’y for the Middle Dist., 439 Mass. 374, 385 (2003) (“docket numbers are assigned chronologically and maintained by courts as part of their court records, criminal proceedings against adult defendants are public proceedings, and docket number information thus falls squarely within the second listed exception to the CORI statute”); see also Att’y Gen. v. Dist. Att’y for the Plymouth Dist., 484 Mass. 260 (2020).

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 Property Dep’t., 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

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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).

When analyzing a privacy claim, there is 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 Office argues the following:

NWDAO must continue to withhold disclosure of the names of police officers who are the subjects of Brady letters in NWDAO's custody. It is well-settled that disciplinary documentation constitutes a personnel record under G.L. c. 4, § 7, cl. 26 (c). Wakefield Teachers Ass'n v. School Comm., 431 Mass. 792, 798 (2000). There is a policy reason for this: The encouragement of people, including the employee, to speak freely with those investigating the misconduct. Id. at 802.

The Office goes on to argue that "the Legislature has not defined police officer misconduct investigation" and provides the following information concerning the PETA balancing test:

The reputation and livelihood of a police officer, as for any employee, is critically important to that employee. Release of information that should remain private will jeopardize an employee's reputation, privacy, career, and life. In exercising the balancing required under Exception (c) of a person's privacy interest and the public's right to know, NWDAO believes that the privacy interest outweighs the public's right to know. This is particularly true in this case where 191 letters have been provided and, more importantly, the substance of the misconduct is contained within the letter.

Finally, the Office argues that "after the 2020 amendment, the statute's specific language is that 'this subclause shall not apply to records related to a law enforcement misconduct investigation.' G.L. c. 4, § 7, cl. 26 (c). It may be that this phrase does not refer to personnel or medical files which have long been held exempt from the definition of public records but only applies to the second "subclause" within exemption (c)."

Please note that the updated language of Exemption (c) indicates that Exemption (c) "shall not apply to records related to a law enforcement misconduct investigation." G. L. c. 4, § 7(26)(c). As with the Office's previous responses, I find the Office has not met its burden to redact the names of police officers subject to Brady letters pursuant to Exemption (c).

Cynthia M. Von Flatern, Esq.
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Conclusion

Accordingly, the Office is ordered to review the records, redact where necessary and provide the responsive records to Mr. Quemere, 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 the response to this office at pre@sec.state.ma.us.

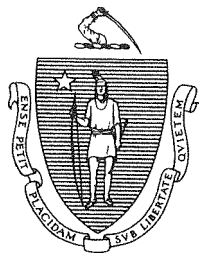
Sincerely,

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

Attachment D



The Commonwealth of Massachusetts

DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN
DISTRICT ATTORNEY

ONE GLEASON PLAZA
NORTHAMPTON, MASSACHUSETTS 01060
TEL (413) 586-9225 FAX (413) 584-3635
www.NorthwesternDA.org

June 3, 2022

Angela M. Puccini, Esq.
Compliance Supervisor, Senior Attorney
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108

Re: Determination SPR22/0696

Dear Attorney Puccini:

Thank you for your inquiry regarding Determination SPR22/0696. Please be advised that, respectfully, NWDAO must decline to provide unredacted copies of the 191 letters previously provided to Mr. Quemere in response to his public records request. For the reasons previously stated to the Supervisor of Public Records, it is my belief that redaction to the letters was necessary to protect CORI information of the criminal defendants who had pending cases in which the letters were sent. Redaction of the police officers' names and their court cases, if any, was necessary to protect the privacy and personnel records of the police officers, G.L. c. 4, §7, cl. 26(c) as well as information considered private under CORI. G.L. c. 6, § 167 et. seq.; G.L. c. 4, § 7, cl. 26(a).

Sincerely yours,

A handwritten signature in cursive script that reads "Cynthia Von Flatern".

Cynthia Von Flatern
Assistant District Attorney
Records Access Officer

Attachment E



MASON A. KORTZ
CLINICAL INSTRUCTOR, CYBERLAW CLINIC
LECTURER ON LAW, HARVARD LAW SCHOOL

DIRECT DIAL: 858-922-1990
EMAIL: MKORTZ@LAW.HARVARD.EDU

ADMITTED TO PRACTICE: MA, NY

BY EMAIL (cynthia.von.flatern@state.ma.us)

Mason A. Kortz
Reginald F. Lewis Law Center
1557 Massachusetts Ave, 4th Fl
Cambridge, MAa 02138

May 26, 2023

Cynthia Von Flatern
Records Access Officer
One Gleason Plaza
Northampton, MA 01060

Re: Andrew Quemere Public Records Request

Dear Ms. Von Flatern,

I write on behalf of my client, Andrew Quemere, to request the production of unredacted versions of the public records Mr. Quemere requested on January 10, 2022. If your office fails to produce the unredacted records, or to set to a mutually acceptable timeframe for production, by June 9, 2023, Mr. Quemere will be forced to file suit so that production can be conducted under the supervision of the court.

I. Background

On January 10, 2022, Mr. Quemere submitted a request to the Northwestern District Attorney's Office ("NWDAO"). Pursuant to the Massachusetts Public Records Law ("MPRL"),¹ Mr. Quemere requested a fee waiver and 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;

¹ M.G.L. c.66, § 10.

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; and
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.

On January 24, 2022, the NWDAO provided responsive records but with docket numbers and officers' names redacted. The NWDAO argued that the docket numbers were exempt under MPRL Exemption (a)² and the of the Criminal Offender Record Information ("CORI") Law. It further argued that the officers' names were exempt under MPRL exemption (c).³

On January 26, 2022, Mr. Quemere appealed these redactions. On February 3, 2022, the Supervisor of Records for the Commonwealth determined that neither of the exemptions claimed by NWDAO applied to the records at issue.⁴ She found that Exemption (a) was not applicable because, under Massachusetts law, docket numbers are public records subject to disclosure as they are not correlated with defendant-specific information.⁵ She further found that exemption (c) was not applicable because the NWDAO failed to show that the requested records were not "records related to a law enforcement misconduct investigation," which do not fall under Exemption (c).⁶ She ordered the Office to provide Mr. Quemere with a new response within ten business days.⁷

Despite the Supervisor's finding, the NWDAO declined to provide the unredacted records, leading Mr. Quemere to appeal again. On March 11, 2022, the Supervisor of Records issued another determination finding that neither exemption was applicable.⁸ Finally, on April 6, 2022, the Supervisor of Records ordered the NWDAO to "review the records, redact where necessary and provide the responsive records to Mr. Quemere, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days."⁹ The Northwestern District Attorney's Office ignored this deadline

² G. L. c. 4, § 7(26)(a).

³ G. L. c. 4, § 7(26)(c).

⁴ See Attachment 1 (First Appeal Determination).

⁵ *Id.* at 3-5.

⁶ *Id.* at 5-6.

⁷ *Id.* at 6.

⁸ See Attachment 2 (Second Appeal Determination).

⁹ See Attachment 3 (Third Appeal Determination).

until June 3, 2022, at which point the NWDAO informed Mr. Quemere of its intention not to comply with the Supervisor of Records' order.

II. Demand

Democracy requires an informed public. Through his written work, Mr. Quemere brings information to the public that will enable citizens to better understand consequential outcomes from law enforcement. Delaying the disclosure of this information for over a year denies Mr. Quemere and his audience timely access to information that should be available for their consideration. Accordingly, Mr. Quemere hereby requests that the NWDAO provide unredacted versions—specifically, with unredacted docket numbers and officers' names—of the documents it has already provided. Mr. Quemere asks that your office respond with the unredacted documents, or a plan to produce such documents in a timely manner, by June 9, 2023.

Mr. Quemere's request is supported by the plain text of Massachusetts Public Records Law, as repeatedly interpreted by the Supervisor of Records. He would prefer to resolve this matter out of court and spare the taxpayers of Hampshire and Franklin counties the expense of defending an unnecessary lawsuit. However, in the event that the NWDAO fails to produce the unredacted documents, or to propose a reasonable timeframe for production, Mr. Quemere is prepared to file suit to compel your office to respond to their request. Any such suit would be filed in the Superior Court for Suffolk County.

III. Conclusion

Thank you for your attention in this matter. You may deliver the unredacted records to the mailing address above or via email at mkortz@law.harvard.edu. Please feel free to contact me with any questions.

Nothing herein shall be deemed an admission or waiver of any rights, remedies, defenses, or positions, all of which are expressly reserved.

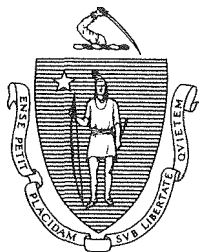
Sincerely,



Mason A. Kortz
Clinical Instructor, Cyberlaw Clinic
Lecturer On Law, Harvard Law School

Reginald F. Lewis Law Center
1557 Massachusetts Ave, 4th Fl
Cambridge, MA 02138

Attachment F



The Commonwealth of Massachusetts

DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN
DISTRICT ATTORNEY

ONE GLEASON PLAZA
NORTHAMPTON, MASSACHUSETTS 01060
TEL (413) 586-9225 FAX (413) 584-3635
www.NorthwesternDA.org

June 9, 2023

Attorney Mason A. Kortz
Cyberlaw Clinic
Reginald F. Lewis Law Center
1557 Massachusetts Ave, 4th Fl.
Cambridge, MA 02138

Sent Via Email to mkortz@law.harvard.edu and aquemere0@gmail.com

Dear Attorney Kortz:

Thank you for your letter received on May 26, 2023. Since 2018, Northwestern District Attorney David E. Sullivan has designated a committee to review its obligations and stay in conformance with the tenets of Brady v. Maryland, 373 U.S. 83 (1963). Pursuant to discovery obligations under Mass. R. Crim. P. 14, dissemination of Brady information to defense counsel in a criminal case secures a criminal defendant's right to potential exculpatory information, information potentially favorable to him, and information that can be used for impeachment. Commonwealth v. Mcfarlane, 102 Mass. App. Ct. 264, 275 (2023); Matter of a Grand Jury Investigation, 485 Mass. 641, 649 (2020).

NWDAO has also disclosed Brady information in response to public records requests by providing the discovery letters detailing what specific conduct any and all police officers in a given department have committed. The letter detail misconduct involving dishonesty, evidence tending to show a bias or motive to lie, and, for expert witnesses, a pattern of confirmed performance errors that could compromise the expert's conclusion. Provision of this information allows the public to see the nature of any police officer misconduct throughout communities in the Northwestern District. What NWDAO has not provided to Mr. Quemere and other requestors at this juncture are the names of specific officers in a given department and docket numbers of cases that they might have. The reasons for that information being withheld has been laid out for Mr. Quemere; it is the preservation of individual privacy rights, including confidentiality of personnel records, and the protection of an individual's criminal offender record information or CORI. G. L. c. 6, § 167 et seq.

For Mr. Quemere's request, the Public Records Division did find on March 1, 2022 that NWDAO did not meet its burden to show why the information needed to be redacted. On March 14, 2022, we again wrote to the Public Records Division and Mr. Quemere and explained why our letters would need to remain redacted. Another order from the Supervisor followed on April 1, 2022. On June 3, 2022 we wrote and advised Attorney Angela Puccini, Compliance Supervisor and Senior Attorney for the Public Records Division, that, respectfully, we would continue to decline to provide unredacted letters. The Public Records Division did not request enforcement from the Attorney General's Office. G. L. c. 66, § 10 A(b).

In a case similar to this one, the Boston University Department of Computational Journalism requested NWDAO's Brady letters. On January 23, 2023, NWDAO provided them, redacted of police officers' names and docket numbers, if any. The Public Records Division found that NWDAO failed to sustain its burden to show why redaction was necessary. NWDAO followed up with two additional letters, on March 8, and April 3, 2023, explaining why we were constrained to provide redacted copies of the letters to the public in response to a Public Records request. See SPR23/0280. On April 25, 2023, Professor Mulvihill from the Department of Computational Journalism requested enforcement from the Attorney General's Office.

The parties in SPR23/0280 have not heard back from the Public Records Division regarding this request nor have we heard from the Attorney General's Office. NWDAO requests that the parties pursue a resolution of this matter with the Attorney General's Office and the Public Records Division to see if a mutual understanding regarding the public's right to know and concern for individual privacy rights can be made. To this end, I have provided this letter to Professor Mulvihill, to Attorney Gottfredsen in the Public Records Division, and to the Attorney General's Office. We suggest that, at this juncture, Mr. Quemere pursue a joint resolution with NWDAO and the BU Department of Computational Journalism along with the Public Records Division and the Attorney General's Office. We look forward to your response.

Sincerely yours,



Cynthia M. Von Flatern
Assistant District Attorney
Records Access Officer

cc:

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