



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

Manza Arthur
Supervisor of Records

November 29, 2023
SPR23/2748

Shawn A. Williams, Esq.
Director of Public Records
Records Access Officer
City of Boston
One City Hall Square
Boston, MA 02201

Dear Attorney Williams:

I have received the petition of Catherine Allen, of *NBC News Digital*, appealing the response of Boston Police Department (Department) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On October 31, 2023, Ms. Allen requested the following records:

- [1.] Incident reports of sexual assault, rape and other sex crimes filed through the Boston Police Department from Jan. 1, 2013 to Oct. 31, 2023 provided in an .xls file[;]
- [2.] Log of all arrests for sexual assault, rape and other sex crimes from Jan. 1, 2013 to Oct. 31, 2023 provided in an .xls file[.]

On November 9, 2023, Ms. Allen modified her request to include the following records:

- [1.] All reports of rape, sexual assault, and any other sex crimes filed through the Boston Police Department from Jan. 1, 2013 to Dec. 31, 2022 provided in an .xls file including incident numbers, date of report, perpetrator identifiers and offense category[;]
- [2.] Log of all arrests for sexual assault, rape and other sex crimes from Jan. 1, 2013 to Dec. 31, 2022 provided in an .xls file including incident number, perpetrator identifiers, date of arrest and charge description.

The Department responded on November 3, 2023. Unsatisfied with the Department's response, Ms. Allen petitioned this office and this appeal, SPR23/2748, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. 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.

The Department’s November 3rd response

In its November 3, 2023 response, the Department produced “a spreadsheet of arrests for sexual assaults, rapes and other sex crimes from January 1, 2013 to October 31, 2023.” The Department cited Exemption (a) of the Public Records Law in support of withholding certain records that fall under G. L. c. 41, § 97D; G. L. c. 41, § 98F; and G. L. c. 209A.

Current appeal

In the appeal filed by *NBC News Digital (NBC)*, on behalf of Ms. Allen, NBC states, “... we’re not seeking any reports and we don’t want to identify any victims. We are merely seeking the database entry that records the criminal complaint. Not the criminal complaint itself.” NBC further asserts in its appeal, “... we are not requesting the police log at all, we are seeking the list of criminal complaints. A police log that reads ‘Police cruiser sent to 123 main street to respond to a domestic violence call’ would be covered under the plain reading of the statute. And clearly that could give away the exact location of domestic abuse. But if that same person went to the police station to file a complaint, the existence of that complaint is not secret under the statute.” NBC concluded its appeal by stating, “...we would like to respectfully request the database extract we originally requested. This information is not prohibited by a plain reading of the statute, and was not intended to be withheld by the Massachusetts legislature.”

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, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-546 (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.

In its response, the Department cited G. L. c. 41, § 97D, G. L. c. 41, § 98F, and G. L. c. 209A, § 8, and indicated that the records are exempt from disclosure.

G. L. c. 41, § 97D provides in pertinent part:

All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality...

G. L. c. 41, § 97D.

G. L. c. 41, § 98F provides in pertinent part:

Each police department and each college or university to which officers have been appointed pursuant to section 63 of chapter 22C shall make, keep and maintain a daily log, written in a form that can be easily understood, recording, in chronological order, all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested. All entries in said daily logs shall, unless otherwise provided in law, be public records available without charge to the public during regular business hours and at all other reasonable times; provided, however, that the following entries shall be kept in a separate log and shall not be a public record nor shall such entry be disclosed to the public, or any individual not specified in section 97D: (i) any entry in a log which pertains to a handicapped individual who is physically or mentally incapacitated to the degree that said person is confined to a

wheelchair or is bedridden or requires the use of a device designed to provide said person with mobility, (ii) any information concerning responses to reports of domestic violence, rape or sexual assault, (iii) any entry concerning the arrest of a person for assault, assault and battery or violation of a protective order where the victim is a family or household member, as defined in section 1 of chapter 209A, or (iv) any entry concerning the arrest of a person who has not yet reached 18 years of age.

G. L. c. 41, § 98F;

G. L. c. 209A, § 8 provides in relevant part:

The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.

The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, contained within the court records of cases arising out of an action brought by a plaintiff under the provisions of this chapter, shall be confidential and withheld from public inspection, except by order of the court, except that the plaintiff's residential address and workplace address shall appear on the court order and accessible to the defendant and the defendant's attorney unless the plaintiff specifically requests that this information be withheld from the order. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the plaintiff to obtain such information, and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, domestic violence victim's counselors as defined in section 20K of chapter 233, sexual assault counselors as defined in section 20J of chapter 233, and law enforcement officers, if such access is necessary in the performance of their duties. The provisions of this paragraph shall apply to any protection order issued by another jurisdiction, as defined in section 1, that is filed with a court of the commonwealth pursuant to section 5A. Such confidential portions of the court records shall not be deemed to be public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

In its response, the City stated, "[a]ll records associated with sexual assault reports are being withheld under the so-called statutory exemption to the public records law. The records, which include incident reports are being withheld in their entirety because said records involve officers responding to an alleged incident of sexual assault and as such, the Department is prohibited from releasing them by statute. The statute prohibits public disclosure of all records containing allegations of sexual assault or domestic violence. G. L. c. 41, § 97D; G. L. c. 41, § 98F; G. L. c. 209A, § 8; G. L. c. 4 §7(26)(a)."

All reports and logs of any information concerning responses to reports of domestic violence, rape or sexual assault are statutorily restricted from disclosure under G. L. c. 41, § 97D and G. L. c. 41, § 98F. However, it is unclear if the City has any additional records beyond these reports and logs that may be responsive to the request. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). In accordance with the Public Records Law, custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5). The City must clarify this matter.

Conclusion

Accordingly, the City is ordered to provide Ms. Allen 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 the response to this office at pre@sec.state.ma.us. Ms. Allen may appeal the substantive nature of the City's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

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

Manza Arthur
Supervisor of Records

cc: Catherine Allen