



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

Rebecca S. Murray
Supervisor of Records

November 2, 2021
SPR21/2726

Janice E. Thompson, Esq.
Assistant City Solicitor
City of Worcester Law Department
455 Main Street, Room 301
Worcester, MA 01608

Dear Attorney Thompson:

I have received the petition of Maya Shaffer appealing the response of the City of Worcester Law Department (Department) to a request for public records. G. L. c. 66 § 10A; see also 950 C.M.R. 32.08(1). On August 2, 2021, Ms. Shaffer requested the following:

All communications in any format with any representative of St. Vincent Hospital.

...

All records related to cameras installed near the areas where strike activities have occurred including but not limited to all expenses paid related to the cameras and their installation, all permissions sought for placing the cameras, and all communications internal and external to the department about the cameras.

...

All policies related to the recordings made of striking including but not limited to who will have access to the recordings, what they will be used for, and what the retention plan for the recordings are.

...

Meeting minutes, or any other records, related to the decision to put up the cameras.

The Department provided a response on September 8, 2021. Unsatisfied with the Department's response, Ms. Shaffer petitioned this office and this appeal, SPR21/2726, 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 September 8th Response

In its September 8, 2021 response, the Department stated, “[t]he City has located records responsive to the portion of [Ms. Shaffer’s] request seeking communications in any format with any representative of St. Vincent Hospital. The responsive records have been uploaded.”

The Department further explained, “[a]ll email attachments have been uploaded as well. This includes one video attachment relative to the email on page 89 of the PDF, dated 3/15/2021; and 14 documents; these have all been uploaded to your request. Please note the process to locate these records involved a technical services search for all City communications with representatives of St. Vincent Hospital, as the City’s email system cannot limit technical searches to specific City Departments. Therefore the results of the initial technical services search included City-wide communications, including but not limited to Health and Human Services communications. [Ms. Shaffer] specified that [her] request pertained only to the Police Department. A manual review of the technical search results was necessary in order to identify records pertaining to the Police Department.”

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.

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) (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 September 8th response, the Department stated, “[p]ersonal email addresses have been redacted pursuant to exemption c, the privacy exemption.”

Also, the Department asserted that, “[t]he Worcester Police Department has confirmed it possesses no records responsive to [Ms. Shaffer’s] request for: All records related to cameras installed near the areas where strike activities have occurred including but not limited to all expenses paid related to the cameras and their installation, all permissions sought for placing the cameras, and all communications internal and external to the department about the cameras” and the Department “confirmed it possesses no records responsive to [Ms. Shaffer’s] request for: All internal policies, training, memos, or communications related to policing the strike, this should include but should not be limited to any specific directives for officers about policing the strike.”

Lastly, the Department did provided a link to policy and procedures responsive to Ms. Shaffer’s request for “All policies related to the recordings made of striking including but not limited to who will have access to the recordings, what they will be used for, and what the retention plan for the recordings are.”

Based on the September 8th response, the Department has met its burden in responding to this request for records.

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Page 4
November 2, 2021

SPR21/2726

Conclusion

Accordingly, I will consider this administrative appeal closed. If Ms. Shaffer is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, § 10(b).

Sincerely,

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

Rebecca S. Murray
Supervisor of Records

cc: Maya Shaffer
Mike Vigneux, RAO