



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

Rebecca S. Murray
Supervisor of Records

August 11, 2021
SPR21/1863

Joanne Senos
Records Access Officer
City of Gloucester
9 Dale Ave
Gloucester, MA 01930

Dear Ms. Senos:

I have received the petition of David Olson of *The Gloucester Daily Times* appealing the response of the City of Gloucester (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On June 30, 2021, Ms. Taylor Bradford requested “a copy of the full investigation report done by identified individual of Discrimination and Harassment Solutions, LLC, on behalf of the city, of complaints filed against [the] Mayor.” The City provided a response on July 19, 2021. Unsatisfied with the City’s response, Mr. Olson petitioned this office and this appeal, SPR21/1863, 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. G. L. c. 66, § 10(b)(iv).

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.

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The City's July 19th Response

In its July 19, 2021 response, the City cited Exemption (c) for withholding the requested report. The City explained, “[t]he reports [Mr. Olson] requested cannot be produced pursuant to the Public Records Law because they are clearly ‘disciplinary reports’ and as such fall into the category of ‘personnel ... files or information.’ They do not fall into the exception set forth in subclause (c) for ‘records related to a law enforcement misconduct investigation’ because the Mayor is not a law enforcement official.” The City further explained “[t]he documents [Mr. Olson] seeks constitute disciplinary reports compiled in the course of an investigation into alleged employee misconduct not related to law enforcement. As such, they are exempt from mandatory disclosure under the Public Records Law.”

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 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).

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

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in a law-abiding and efficient manner. *Id.* at 292.

Based on the July 19th response, I find the City has not met its burden to withhold the report under Exemption (c). Particularly, while portions of the record may fall within an exemption, it is uncertain how the report, in its entirety, constitute intimate details of a highly personal nature or how disclosure would result in personal embarrassment to an individual of normal sensibilities. Further, upon review of the balancing test, it is unclear how a privacy interest of a government official conducting public business outweighs the public interest in this situation. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law abiding and efficient manner. Also, any non-exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). 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 City must clarify this matter.

Conclusion

Accordingly, the City is ordered to provide Mr. Olson with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

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

Rebecca S. Murray
Supervisor of Records

cc: David Olson, *The Gloucester Daily Times*
Thomas A. Mullen, Esq.