



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

Alan N. Cote
Supervisor of Records

September 26, 2007
SPR07/178

Mr. James M. Conley
192 Mason Terrace
Brookline, MA 02446

Dear Mr. Conley:

I have received your petition appealing the response of the Town of Brookline (Town) to your June 2, 2007 request for public records. G. L. c. 66 § 10(b) (2006 ed.) (Supervisor of Public Records has authority to resolve public records appeals); see also 950 C.M.R. 32.08(2) (appeal process). Specifically, you requested certain records, including an incident report resulting from a 911 call made by Ms. Polly Selkoe to the Brookline Police Department (Department) on May 27, 2007.

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10(c) (2006 ed.); 950 C.M.R. 32.08(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) (2006 ed.).

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(c) (2006 ed.); see also District Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

Exemption (f)

In a letter dated September 20, 2007, Mr. George F. Driscoll, Jr., Associate Town Counsel stated that the Town would withhold the incident report pursuant to exemption (f) of the Public Records Law. Exemption (f), the so-called investigatory exemption, permits investigatory officials to withhold:

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investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

G. L. c. 4, §7 (26) (2006 ed.)

This exemption permits investigative officials to withhold materials that could compromise investigative efforts if disclosed. There is no blanket exemption, however, for records created or maintained by investigative officials. District Attorney for the Norfolk District v. Flatley, 419 Mass. 507, 512 (1995); WBZ-TV4 v. District Attorney for the Suffolk District, 408 Mass. 595, 603 (1990). Therefore, a records custodian generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. In addition, confidential investigative techniques may be withheld indefinitely if prejudicial to future law enforcement. Bougas v. Chief of Police of Lexington, 371 Mass 59, 62 (1976). An investigative agency is not required to demonstrate prejudice to withhold the identities of voluntary witnesses, informants or complainants. Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 290 n.18 (1979).

In his September 20th letter, Attorney Driscoll stated that the responsive incident report consists of information that is part of an ongoing internal affairs investigation being conducted by the Department. Attorney Driscoll also stated that records related to the internal affairs investigation would be available upon request at the conclusion of the investigation. See Worcester Telegram & Gazette v. Chief of Police of Worcester, 58 Mass. App. Ct. 1 (2003).

Attorney Driscoll further stated that the incident report would be reviewed at that time to determine whether any portions of it are subject to redaction or withholding pursuant to a claimed exemption to the Public Records Law. It is, therefore, the finding of this office that the Department may withhold the requested incident report from disclosure pursuant to exemption (f) of the Public Records Law.

Very truly yours,


Alan N. Cote
Supervisor of Records

cc: Mr. George F. Driscoll, Jr., Esq.