



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

Rebecca S. Murray  
*Supervisor of Records*

March 4, 2021  
**SPR21/0423**

Shawn A. Williams, Esq.  
Director of Public Records/Records Access Officer  
City of Boston  
1 City Hall Square, Room 615  
Boston, MA 02201

Dear Attorney Williams:

I have received the petition of Allison Jarmanning of *WBUR* appealing the response of the City of Boston Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Jarmanning requested internal affairs investigation records relating to an identified individual.

In a February 16, 2021 response, the Department denied Ms. Jarmanning's request, in its entirety, under Exemption (f) of the Public Records Law. As a result, on February 19<sup>th</sup>, Ms. Jarmanning petitioned the Supervisor of Records (Supervisor), and this appeal was opened.

***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) (written response 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, including the specific exemption or exemptions upon which the withholding is based..."); 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).

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.

***Exemption (f)***

Exemption (f) permits the withholding of:

investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which material 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)(f).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an on-going investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bogas v. Chief of Police of Lexington, 371 Mass 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281,290 n.18 (1979). Exemption (f) invites a “case-by-case Consideration” of whether disclosure “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” See Reinstein, 378 Mass. at 289-90.

Although the Department claims that the requested records pertain to an active and on-going investigation, and that disclosure of any responsive records would harm the investigative efforts of the Department, I find the Department did not demonstrate how disclosure of the records "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" as required to withhold records under Exemption (f).

In her February 19<sup>th</sup> petition, Ms. Jarmanning asserts, “[t]hese internal affairs records are years, and in some cases decades old. The most recent, as I understand from my reporting, is from 2013. The internal affairs complaints are no longer being actively investigated by the [D]epartment and are closed.”

I find the Department did not provide supporting information to demonstrate how disclosure would compromise or negatively impact the on-going investigation. Neither did the Department meet its burden of explaining with specificity how the records, in their entirety, are exempt from disclosure. 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). Any non-

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exempt, segregable portion of a public record is subject to mandatory disclosure. G. L. c. 66, § 10(a). The Department must explain why segregable portions of the responsive records cannot be provided.

***Conclusion***

Accordingly, the Department is ordered to provide Ms. Jarmanning with a response to the request, 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](mailto:pre@sec.state.ma.us). Ms. Jarmanning may appeal the substantive nature of the Department's response within 90 calendar days. See 950 C.M.R. 32.08(1).

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: Allison Jarmanning, *WBUR*