

Carolyn Smart

From: James Kreidler <jkreidler@townsend.ma.us>
Sent: Tuesday, September 05, 2017 2:06 PM
To: Kellymkelly@comcast.net
Cc: pre@sec.state.ma.us; 'Rastellini, Patricia (SEC)'; 'David C. Jenkins'; rao@townsend.ma.us
Subject: Sgt. Girard Report

Ms. Kelly:

In each of your prior writings on this matter I have read the request to mean report(s) associated with or tied to former Chief Eaton's report that he apparently submitted to CJIS. Now that I understand more clearly what it is that you are seeking, please be advised that there is a document that is responsive to your request. However, due to the nature of the information contained within former Sgt. Randy Girard's written report it is exempt from disclosure in its entirety, as detailed below.

A portion of the record involves matters that are exempt from disclosure under exemption (c), the so-called "privacy exemption".

"The privacy exemption is made up of two separate clauses, the first of which exempts personnel and medical files. As a general rule, medical information will always be of a sufficiently personal nature to warrant exemption. The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Its application is limited to "intimate details of a highly personal nature." Examples of "intimate details of a highly personal nature" include marital status, paternity, substance abuse, government assistance, family disputes and reputation.

When applying the second clause of the exemption to requested records it is necessary to perform a *two-step analysis*: first, determine whether the information constitutes an "intimate detail" and second, determine whether the public interest in disclosure outweighs the privacy interest associated with disclosure."

<https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

When applying the second clause of the exemption to requested record it is clear that the record contains intimate details of a highly personal nature. Further, I judge that the public interest in disclosure does not outweigh the privacy interest associated with disclosure due to the extremely personal and intimate details contained within the report. Consequently, the application of the second clause of the exemption is appropriate in this instant matter.

Additionally, a portion of the report involves discussions of ongoing investigatory matters that either involve the Police Department or investigations performed by the Police Department. Exemption (f) of the Public Records Law applies to:

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.

One purpose of this exemption is to avoid premature disclosure of investigatory information prior to trial or other process for resolving the matters being investigated, and the prevention of disclosure of confidential investigative

techniques, procedures or sources of information. WBZ-TV4 v. District Attorney for the Suffolk District, 408 Mass. 595, 601 (1990); Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). In addition, exemption (f) allows the names and identifying details of any voluntary witness and complainant to be redacted and withheld from disclosure. The purpose of such exemption is to allow investigative officials to provide an assurance of confidentiality to persons so that they will speak openly about matters under investigation. Bougas, 371 Mass. at 62; Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 290 (1979). Because portions of the report involve details of ongoing investigations by police and other officials, and disclosure at this time would prejudice the investigations, exemption (f) applies to those portions.

When the two exemptions cited above are applied to the requested record, virtually the entire record is exempt and redaction would not result in any intelligible record. As such, I am asserting that the requested record is exempt in its entirety and will not be produced.

Pursuant to 950 CMR 32.08, you may appeal this response to the Supervisor of Public Records within 90 calendar days.

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