



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

Manza Arthur
Supervisor of Records

November 1, 2023
SPR23/2498

Carrie Burnett
Primary Records Access Officer
City of North Adams
10 Main Street
North Adams, MA 01247

Dear Ms. Burnett:

I have received the petition of Joshua (“requestor”) appealing the response of the City of North Adams (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On September 7, 2023, the requestor sought the following:

[1] Any and all records, whether in electronic, hard copy, or any other format, that are in the possession of the City of North Adams and the North Adams Police Department (NAPD) regarding any internal affairs investigation (I.A.) reports concerning NAPD . . . from August 1, 2023, and the time of response to this request. These records include but are not limited to written I.A. reports, memoranda, emails (and email attachments), notes, text messages, and telephone records.

[2] Any and all records, whether in electronic, hard copy, or any other format, that are in the possession of the City of North Adams and the North Adams Police Department (NAPD) regarding any disciplinary records concerning NAPD . . . from August 1, 2023, and the time of response to this request. These records include but are not limited to written disciplinary reports, memoranda, emails (and email attachments), notes, text messages, and telephone records.

[3] Any and all records, whether in electronic, hard copy, or any other format, that are in the possession of the City of North Adams and the North Adams Police Department (NAPD) regarding any materials sent the Massachusetts Peace Officer Standards and Training Commission regarding NAPD . . . from August 1, 2023, and the time of response to this request. These records include but are not limited to written disciplinary reports, memoranda, emails (and email attachments), notes, text messages, and telephone records[.]

Prior Appeals

The requested records were the subject of prior appeals. See SPR23/2278 Determination of the Supervisor of Records (September 26, 2023) and SPR23/2300 Determination of the Supervisor of Records (October 10, 2023). In my October 10th determination, I found that the City did not meet its burden to withhold and redact responsive records pursuant to Exemption (c) of the Public Records Law. G. L. c. 4, § 7(26)(c). On October 18, 2023, the City provided a further explanation for withholding and redacting responsive records pursuant to Exemption (c). Unsatisfied with the City's response, the requestor petitioned this office and this appeal, SPR23/2498, 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 agency or municipality 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. Att'y 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.

The City's October 18th response

In its October 18, 2023 response, the City stated the following:

Three (3) documents were excluded in their entirety, and one email dated September 2, 2023, was redacted as they relate directly to personnel information which the City contends is exempted from release pursuant to G. L. c. 4, § 7(26)(c), as their release would constitute an unwarranted invasion of employee privacy.

The investigative report was provided pursuant to the request, with redactions. The City contends the redactions were appropriate as the materials involved specifically identified individuals and their protected personal information, which is exempted from release pursuant to G. L. c. 4, § 7(26)(c), as the release of this information would constitute an unwarranted invasion of privacy. Specifically, the names and addresses of named witnesses, participants, and suspect were redacted under this exemption, as well as phone numbers, dates of birth, license numbers, social security numbers, and any references to actions which may

constitute confidential personnel action against an employee[.]

In camera inspection

In order to facilitate a determination as to the applicability of the Exemption (c) claim made by the City to redact responsive records, the City must provide this office with un-redacted copies of the responsive records for *in camera* inspection. See 950 C.M.R. 32.08(4). After I complete my review of the records, I will return the records to the City's custody and issue an opinion on the public or exempt nature of the records.

The authority to require the submission of records for an *in camera* inspection emanates from the Code of Massachusetts Regulations. 950 C.M.R. 32.08(4); see also G. L. c. 66, § 1. This office interprets the *in camera* inspection process to be analogous to that utilized by the judicial system. See Rock v. Mass. Comm'n Against Discrimination, 384 Mass. 198, 206 (1981) (administrative agency entitled deference in the interpretation of its own regulations). Records are not voluntarily submitted, but rather are submitted pursuant to an order by this office that an *in camera* inspection is necessary to make a proper finding.

Records are submitted for the limited purpose of review. This office is not the custodian of records examined *in camera*, therefore, any request made to this office for records being reviewed *in camera* will be denied. See 950 C.M.R. 32.08(4)(c).

This office has a long history of cooperation with governmental agencies with respect to *in camera* inspection. Custodians submit copies of the relevant records to this office upon a promise of confidentiality. This office does not release records reviewed *in camera* to anyone under any circumstances. Upon a determination of the public record status, records reviewed *in camera* are promptly returned to the custodian. To operate in any other fashion would seriously impede our ability to function and would certainly affect our credibility within the legal community. Please be aware, any cover letter submitted to accompany the relevant records may be subject to disclosure.

Order

Accordingly, the City is ordered to provide this office with un-redacted copies of the responsive records for *in camera* inspection without delay.

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur", written in a cursive style.

Manza Arthur
Supervisor of Records

cc: Joshua