



The Commonwealth of Massachusetts
Department of State Police



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October 17, 2023

William Marshall
Judicial Watch

By email: bmarshall@judicialwatch.org

RE: SPR23/1719 Supplemental Response

Dear William Marshall:

The Massachusetts Department of State Police ("Department") received your public records request on July 25, 2023, seeking the following information: "All audio/visual recordings (including dispatch calls, police and EMS communications, body-worn and dashcam footage), electronic messages, incident reports, witness statements, investigative reports, medical records and reports, and all other records related to the death of Tafari Campbell on July 23-24, 2023 in the Edgartown Great Pond."

On July 25, 2023, the Department denied your request pursuant to G.L. c. 4, §7, cl. 26 (f), stating that "according to information provided to this office, this incident remains the subject of an ongoing investigation. In light of the pending investigation, the record(s) you seek are not subject to public disclosure at this time pursuant to G.L. c. 4, §7, cl. 26 (f)."

The Department reviewed the Supervisor of Records decision in SPR23/1719. In response to the decision the Department is providing you with the following supplemental response:

Please be advised that at the time of the Department's response, according to information provided to this office, this incident remained the subject of an ongoing investigation by the Cape and Island District Attorney's Office and State Police Detectives Unit. In light of the pending investigation, the record(s) you seek were not subject to public disclosure at the time of the response pursuant to G.L. c. 4, §7, cl. 26 (f), which specifically exempts from public disclosure 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. See Bougas v. Chief of Police, 371 Mass. 59, 62 (1976). See also, Supervisor of Public Records No.: SPR15/203 (upholding the Department's withholding of records related to an ongoing investigation).

Releasing information and records regarding an on-going investigation, at the time of the response, would detract from effective law enforcement and could prejudice investigative efforts. The

Department was compelled to conduct a thorough and objective investigation of the events into this incident. There was an interest in preserving the integrity of the investigation and any potential subsequent prosecution if the investigation resulted in criminal charges. It was not in the public's interest to release the information at the time of the response, as such release could potentially taint any potential jury pool if the investigation resulted in a criminal prosecution and dissuade witnesses from speaking freely with police concerning matters under investigation. Therefore, the records you seek were not available at the time of the Department's response pursuant to G.L. c. 4, §7, cl. 26 (f).

The investigation is now complete, and the records are available subject to the public records law. The Department conducted a diligent search of its records and is unable to locate any body worn and cruiser mounted video recordings. The Department is in the process of reviewing responsive records and will supplement this response. At this time, the Department is providing you with Case Report 2023-102-251.

As you will see, the Department has redacted dates of birth, addresses, social security numbers, medical information, and phone number of involved parties pursuant to G. L. c. 4, §7, cl. 26 (c), the privacy exemption. As you know, G.L. c. 4, §7, cl. 26 (c) exempts from public disclosure "personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." Analysis under the second, privacy clause is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. *Attorney General v. Assistant Commissioner of the Real Prop. Dept.*, 380 Mass. at 625; *Torres v. Attorney General*, 391 Mass. 1, 9 (1984).

In addition, the Department has also made redactions to information that may be used to directly or indirectly identify potential witnesses pursuant to G.L. c. 4, §7, cl. 26 (f), which exempts from public disclosure 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. The policy considerations underlying the exemption are well settled. *See Bougas v. Chief of Police*, 371 Mass. 59, 62 (1976)(among them "avoidance of premature disclosure of the Commonwealth's case prior to trial, the prevention of the disclosure of confidential investigative techniques, procedures, or sources of information, the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions"). Here, the Department asserts that the these redactions help encourage individuals to come forward and speak freely with police concerning matters under investigation.

Finally, the Department has also redacted the names of Secret Service Agents pursuant to G.L. c. 4, §7, cl. 26 (n) which exempts records "including but not limited to blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety." When analyzing the applicability of Exemption (n), the SJC determined that the first prong of this exemption examines "whether, and to what degree, the record sought resembles the records listed as examples in the statute;" specifically, the "inquiry is whether, and to what degree, the record is one a terrorist 'would find useful to maximize damage.'" The second prong of Exemption (n) examines "the factual and contextual support for the proposition that disclosure of the record is 'likely to jeopardize public safety.'" Here,

the Department asserts that the release of this information could be used to determine the Secret Service staffing levels, which directly relates to security measures undertaken to protect people and locations used by individuals under State Police Protection. By using this information to determine staffing levels, an individual aiming to do harm could “maximize damage” by tailoring their plans to account for the number of agents assigned to a particular person or location under Secret Service Protection.

If you wish to challenge any aspect of this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 C.M.R. 32.08, a copy of which is available at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/>. You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Sincerely,

Massachusetts Department of State Police
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CC: pre@sec.state.ma.us