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October 23, 2020

Via electronic mail

Supervisor of Public Records
Secretary of the Commonwealth
Public Records Division
McCormack Building
One Ashburton Place, Room 1719
Boston, MA 02108

Re: September 16 Public Records Request to the Southborough Police Department

Dear Supervisor:

I am writing to appeal the September 29, 2020, response to a public records request submitted to the Southborough Police Department on September 16, 2020. The Request is attached hereto as Exhibit A and the response is attached as Exhibit B.

The genesis of the request is as follows. In the Spring of 2019, Southborough residents became aware that a Town employee who worked in the Recreation Department had allegedly been stealing Town funds. When residents asked for more information, Town officials responded with stonewalling. The response served only to raise further concerns, given the recent theft of almost \$400,000 of public funds by a Southborough School District employee. Due to the Town's lack of transparency, residents filed public records requests seeking more information. The documents the Town produced in response were almost entirely redacted, but they did establish that a Recreation Department employee left the Town's employ in April or May of 2019 and later remitted a personal check to the Town in the approximate amount of \$800.

On behalf of Town residents, I filed a further public records request with the Town. The records the Town provided in response were again excessively redacted. The records did however establish that the police were called regarding the alleged theft. The records also make clear that at least a portion of the alleged theft was accomplished by an employee's use of a Town credit card. The redactions however, made it impossible for Town residents to determine: (1) how much money, in total, was stolen or misappropriated; (2) whether the \$800 that the former employee remitted to the Town was a full reimbursement of the allegedly stolen funds; and (3) whether the employee was discharged for deliberate misconduct, or was simply asked to

leave the Town's employ with no further repercussions, leaving the employee eligible to claim unemployment benefits under G.L. c. 151A.

I also requested that the Police Department provide "all Police Department records regarding an April 2019 investigation into the Recreation Department, including witness statements and all police reports." Exh. A. In response, the Town produced a single "Incident Report" that is redacted to the point that it provides essentially no information whatsoever. Thus, on behalf of Southborough residents, I am appealing the Town's response.

The Town asserts that the report is exempt from disclosure for two reasons. First, the Town asserts that information redacted is "information pertaining to a Department investigation that is exempt from disclosure" under the CORI act and 803 CMR 7, and is thus exempt from disclosure pursuant to G.L. c. c. 4, § 7(26)(a). That claim, however, must be rejected.

The purpose of the CORI act was to centralize both the collection and the dissemination of criminal offender record information. See St. 1972, c. 805, § 1; Boston Globe Media Partners LLC v. Department of Criminal Justice Info. Servs., 484 Mass. 279, 282 (2020). Criminal offender record information is defined, however, as "records and data" compiled by any Massachusetts criminal justice agency, that (a) concerns an identifiable individual; and (b) relates to the nature or disposition of a criminal charge such as an arrest or pre- and posttrial proceedings. G. L. c. 6, § 167. In this case, there was no criminal charge and no arrest. Therefore, the information in the report falls outside of the statutory definition of CORI and is therefore not properly withheld under the CORI act.

The Town's second argument for the near total redaction of the report is that the so-called "privacy exemption" set forth in G.L. c. c. 4, § 7(26)(c), is applicable. That claim must also be rejected. In Boston Globe Media Partners, the SJC underscored both the public's right to know how and why public officials made decisions, and also the diminished right to privacy that public employees have with respect to actions they take during their public employment. In its decision, the Court weighed a privacy claim against the public's right to access public records and held that police records are not protected by exemption (c) where the subject of the requested records is a public official, and the public interest in disclosure substantially outweighs the privacy interests in rehabilitation and reintegration furthered by the CORI act. Again, since in this instance there was no arrest or criminal charge, there are no rehabilitative or reintegration interests to consider.

In evaluating the weight of a privacy interest, the Court noted three factors:

1. "whether disclosure would result in personal embarrassment to an individual of normal sensibilities;"
2. "whether the materials sought contain intimate details of a highly personal nature;" and
3. "whether the same information is available from other sources."

In this case, there is no objection to the redaction of the former employee's name. Additionally, while the disclosure of how a Town employee was able to allegedly steal town

funds might result in some embarrassment, the request for a largely unredacted police report does not seek details of a “highly personal nature.” And finally, the information is not available from any other known source. Thus, the privacy interest at stake in this case is minimal.

That minimal privacy interest must be balanced against the public’s recognized “interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner.” Boston Globe Media Partners. Southborough residents are entitled to know not only whether Town funds were stolen or misappropriated, but also how. The Town’s provision of an almost entirely redacted incident report makes it impossible for residents to know what transpired in their own Town Hall.

In responding to a public records request, officials must “balance the interests of transparency, accountability, and public confidence that might be served by making the requested records public against the risk that disclosure would unfairly result in adverse collateral consequences to the accused.” Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court, 483 Mass. 80, 102 (2019). Again, here there was no “accused,” and yet there has been zero transparency or accountability.

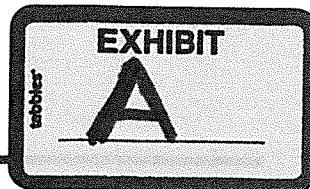
Finally, please recognize that the public’s interest in transparency, accountability, and public confidence is “at their apex” here, as the conduct at issue “bears on [a public] official’s ability to perform those duties honestly or capably.” Globe v. DCJI, citing Boston Globe Media Partners, LLC, 483 Mass. at 102. As a result, a “public official has a significantly diminished privacy interest with respect to information relevant to the conduct of his [or her] office.” Globe v. DCJI, citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 (1974) (“An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. [S]He runs the risk of closer public scrutiny than might otherwise be the case”).

In closing, I ask that you review my request, the Town’s response, and issue a written ruling that recognizes the public’s right to know what happened at Southborough Town Hall.

Very truly yours,


Ginny S. Kremer, Esq.

CC: Southborough Town Clerk
Antoine Fares, Esq.



Ginny Kremer

From: Ginny Kremer
Sent: Wednesday, September 16, 2020 1:21 PM
To: rnewell@southboroughma.com
Subject: Public Records Request

Good afternoon Lt. Newell:

I am requesting all Police Department records regarding an April 2019 investigation into the Recreation Department., including witness statements and all police reports. I believe that the incident # is 19SOH-315-OF, but I am not sure if all public records would have that identifying number. Please let me know if you have any questions.

Thank you for your help and for your service to the community.
Ginny

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Of Counsel

September 29, 2020

Via Email

Blatman, Bobrowski & Havety LLC
9 Damonmill Sq. Ste. 4A4
Concord, MA 01742

Re: September 16 Public Records Request

Dear Attorney Kremer:

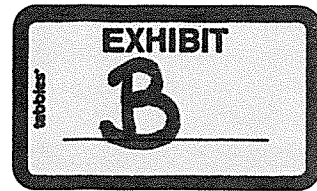
I am writing on behalf of the Southborough Police Department (“Department”) in response to your September 16, 2020 public records request. Your request states, in pertinent part:

I am requesting all Police Department records regarding an April 2019 investigation into the Recreation Department., including witness statements and all police reports. I believe that the incident # is 19SOH-315-OF, but I am not sure if all public records would have that identifying number.

Attached is copy of the requested Incident Report #19SOH-315-OF (“Incident Report”) that has been redacted for the reasons set forth below.

The requested records contain information pertaining to a Department investigation that is exempt from disclosure under the Criminal Offender Records Information (“CORI”) Act as it operates through Exemption (a) of the Massachusetts Public Records Law. M.G. L. c. 4, § 7(26)(a); 803 C.M.R. 7. Therefore, the Department has redacted any and all information exempt from disclosure by the CORI Act.

The requested records also contain information exempt from disclosure for privacy reasons. M.G.L. c. 4, §7(26)(c). This exemption applies to all “personnel and medical files of information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an invasion of privacy.” Id. Massachusetts courts consider the



following factors when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017). This exemption applies to withhold information that would be harmful to the reputation of an individual. Id. at 292, n.13. The Department's disclosure of certain details in the requested Incident Report would result in personal embarrassment to the individual who is the subject of the investigation. Such disclosure would also harm their reputation. For those reasons, the Department has redacted this information to protect the individual's privacy.

In accordance with the Massachusetts Public Records Law, you may file an appeal with the Supervisor of Public Records.

Sincerely,
Antoine Fares
Antoine Fares

AF/aro
Enclosures

cc: Mark J. Purple, Town Administrator *(via email)*
Kenneth M. Paulhus, Police Chief *(via email)*



Southborough Police Department
Incident Report

Page: 1
04/30/2019

Incident #: 19SOH-315-OF

Date/Time Reported: 04/26/2019 0800
Report Date/Time: 04/26/2019 0856
Occurred On: 04/01/2019 1200
Status: Incident Open

Reporting Officer: Detective Keith Nichols

Signature: _____

1	SUSPECT	SEX	RACE	AGE	SSN	PHONE
1	[REDACTED]	F	A	55	[REDACTED]	[REDACTED]

Military Active Duty: N
BODY: NOT AVAIL.
DOB: [REDACTED]
LICENSE NUMBER: [REDACTED]
PCF #: N/A

COMPLEXION: NOT AVAIL.
PLACE OF BIRTH: NOT AVAIL.
ETHNICITY: NOT HISPANIC
LOCAL ID: 18317

[CONTACT INFORMATION]

Home Phone (Primary) [REDACTED]

1	OFFENSE	APPLICABLE	TYPE
1	LOCATION TYPE: [REDACTED] SOUTHBOROUGH MA 01772	Zone: Geo Code 80	

1 [REDACTED] N [REDACTED]
OCCURRED: 04/01/2019 1200

1	VICTIM	SEX	RACE	AGE	SSN	PHONE
1	[REDACTED] SOUTHBOROUGH MA 01772					

VICTIM CONNECTED TO OFFENSE NUMBER(S): 1

Southborough Police Department
Incident Report

Page: 2
04/30/2019

Incident #: 19SOH-315-OF

PERSON INFORMATION

DOB: 01772

F W 55 NOT AVAIL

CONTACT INFORMATION:

Home Phone (Primary)
Work Phone (Primary)
CallBack Number (Primary)

PROPERTY INFORMATION

1
SERIAL #: NOT AVAIL
DATE: 04/26/2019
OWNER:

Attachments for 19SOH-315-OF

Description	Type
Attachment#: 2CC9FF349B4AE0BAC5F7D954EBAC8E	PDF
Attachment#: 83695202DF3D49D685186A4675308A2D	XLS

Southborough Police Department

Page: 1

PERSONNEL NARRATIVE FOR DETECTIVE KEITH A NICHOLS

Ref: 1960H-315-OF

Entered: 04/26/2019 E 0908

Entry ID: 84

Modified: 04/29/2019 E 1143

Modified ID: 84

On April 26, 2019 at approximately 0800 hours, I traveled to the [REDACTED]

regarding [REDACTED]

According to [REDACTED]

During this conversation, [REDACTED]

At approximately 1020 hours, [REDACTED]

[REDACTED] that approximately three (3) weeks ago, she had received communication [REDACTED]

According [REDACTED]

[REDACTED] stated that after speaking with [REDACTED] regarding the allegations [REDACTED]

Upon doing so, she stated that she was able to confirm [REDACTED]

Upon doing [REDACTED]

According [REDACTED]

The statement is a summary of the aforementioned facts [REDACTED]

[REDACTED] was able to confer with Worcester County Assistant District Attorney Michael Luzzo regarding the matter. [REDACTED]

the case [REDACTED] ADA Luzzo confirmed that the case would have to be [REDACTED]

BOSTON POLICE DEPARTMENT
PERSONNEL NARRATIVE FOR DETECTIVE KEITH A. NICHOLS
Ref: 19SOR-315-OF

Page: 2

Entered: 04/26/2019 8 0908 Entry ID: 84
Modified: 04/30/2019 8 0855 Modified ID: 84

On April 29, 2019 I spoke with [REDACTED]

[REDACTED] requested [REDACTED]

Respectfully Submitted,

Detective Keith A. Nichols #84



SOUTHBOROUGH POLICE DEPARTMENT
STATEMENT FORM

CASE NUMBER: 195044315-0F OFFICER: Al Nichols
DATE: 4/29/19 TIME: 0759 LOCATION WRITTEN: [REDACTED]
STATEMENT OF: [REDACTED] ADDRESS: [REDACTED]
DOB: [REDACTED] SS#: [REDACTED] PHONE: [REDACTED]

During the week of April 8, 2019 I received a call [REDACTED]
I spoke with [REDACTED] and [REDACTED]
who then asked I look into [REDACTED]
I sat with [REDACTED] and went through [REDACTED]
[REDACTED]
These approximately [REDACTED] During the
following week I went through [REDACTED]
[REDACTED] and determined these [REDACTED]
that didn't [REDACTED]
[REDACTED]
[REDACTED]

SIGNATURE: [REDACTED] DATE & TIME: 7:59 am 4/29/19
WITNESS: [REDACTED] DATE & TIME: 4/29/19 1212

Redacted

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