



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

Rebecca S. Murray  
*Supervisor of Records*

December 17, 2020  
**SPR20/2409**

Antoine Fares, Esq.  
Norris, Murray & Peloquin, LLC  
Southborough Town Administrator  
Town of Southborough  
17 Common Street  
Southborough, MA 01772

Dear Attorney Fares:

I have received the petition of Attorney Ginny Kremer appealing the response of the Town of Southborough (Town) to request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on September 16, 2020, Attorney Kremer requested three categories of records:

- “1. A copy of any document sent by any member of the Recreation Commission to the Board of Selectman after April 24, 2019, seeking information concerning alleged misconduct in the recreation department, and all response from the Board, and any of its members, and/or any staff including the Town Administrator’s office.
2. All payment requests submitted by any member of the Recreation Department in FY18 and FY19.
3. All FY18 and FY19 credit card statements for the ‘department credit card’ referenced on page 2 of the July 8, 2019 Melanson/Health Audit report to the Town, and FY18 and FY19 statements for any other credit card used to purchase supplies and/or services...”

The Town provided redacted responsive documents on November 4, 2020. Unsatisfied with the Town’s response, Attorney Kremer petitioned this office, and SPR20/2409 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 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); 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). 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.

### ***Current Appeal***

In its initial September 29, 2020 response, the Town indicates “the requested statements include personnel information exempt from disclosure pursuant to Exemption (c)...and for privacy reasons.”

### ***Exemption (c)***

Exemption (c) applies to:

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

G. L. c. 4, § 7(26)(c).

### ***First clause of Exemption (c) – personnel***

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). The first clause creates a categorical exemption for personnel information that relates to an identifiable individual and is of a “personal nature.” Id. at 434. Massachusetts courts have found that “core categories of personnel information that are ‘useful in making employment decisions regarding an employee’” may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, “employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee,” may be withheld pursuant to the first clause of Exemption (c). Wakefield Teachers Ass’n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under the first clause. See Globe Newspaper Co. v. Exec. Office of Admin. and Finance, Suffolk Sup. No. 11-01184-A (June 14, 2013).

Nevertheless, there is a strong public interest in monitoring public expenditures and public employees have a diminished expectation of privacy with respect to public employment matters. See George W. Prescott Publishing Co. v. Register of Probate for Norfolk County, 395 Mass. 274, 278 (1985); Globe Newspaper Co., 388 Mass. at 436 n.15. Further, the public has an interest in knowing whether public employees are

“carrying out their duties in an efficient and law-abiding manner.” Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 158 (1979). As a result, certain information that is considered personal in the ordinary sense of the word may be considered part of a public record if relating to an individual’s official responsibilities. See Brogan v. School Comm. of Westport, 401 Mass. 306, 309 (1987).

*Second clause of Exemption (c) – privacy*

This clause does not protect all data relating to specifically named individuals. Rather, there are factors to consider 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).

The types of personal information which the second clause of this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 292 n.13; see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988).

This clause requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. Id. at 292.

***Burden of specificity in claiming exemptions***

Under the Public Records Law, the burden is on the records custodian to prove with specificity the exemption which applies. 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 ...”) see also Globe Newspaper Co. v. Police Comm’r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511; Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemption are narrowly construed and are not blanket in nature).

The Town did not meet its burden of demonstrating how the redacted information is exempt from disclosure under Exemption (c). The Town’s response merely cites the statute without any further explanation as to the statute’s applicability to the responsive records. A records custodian is required to not only cite an exemption but to specifically explain the applicability of the exemption to the requested records for compliance with the Public Records Law. G. L. c. 66, § 10(b)(iv). Consequently, I find the Town did not meet its burden of specificity in redacting the records. See G. L. c. 66, § 10(d)(iv); 950 C.M.R. 32.06(3)(c)(4).

Antoine Fares, Esq.  
Page 4  
December 17, 2020

SPR20/2409

***Conclusion***

Accordingly the Town is ordered to provide Attorney Kremer with a response to her 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).

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: Ginny Kremer, Esq.  
Mark J. Purple