



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

Rebecca S. Murray
Supervisor of Records

March 08, 2019
SPR19/462

Chief Bruce Spiewakowski
Warren Police Department
1 Milton O. Fountain Way
Warren, MA 0183

Dear Chief Spiewakowski:

I have received the petition of Dario Nardi appealing the response of the Warren Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Nardi requested “dates of evaluations performed in 2016, 2017, and 2018.” Mr. Nardi also stated, “I am not requesting the actual document itself.”

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 a letter dated February 22, 2019, Mr. Dario expressed to this office that he did not receive the records he requested. In the February 22nd letter he states, “[t]he (Police Chief) only responded with the email below from the RAO. In his response you will see he did not supply the dates... I asked for the dates they were completed and I clarified my response for the RAO regarding 2018 request.”

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Rebecca Accera, Town of Warren Administrative Secretary/RAO, stated in a letter dated February 28, 2019, "I am in receipt of SPR19-462. As you can see by reading the email chain, I've requested the information several times from Chief Spiewakowski. I will make one last attempt." In a follow up letter dated March 5, 2019, Ms. Accera writes, "[p]lease be advised that the Chief's position, which I agree is that the law does not require for a document to be created to satisfy a request. In my opinion, this is an internal matter between the Chief and his appointing authority."

Please be advised, although Ms. Warren writes, "the Chief's position, which I agree is that the law does not require for a document to be created to satisfy a request," it remains unclear if the Department possesses records responsive to Mr. Nardi's request.

Conclusion

Accordingly, the Department is ordered to provide a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations without delay. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Dario Nardi
Rebecca Accera