



The Commonwealth of Massachusetts

MIDDLESEX DISTRICT ATTORNEY
15 Commonwealth Avenue Woburn, MA 01801
www.middlesexda.com



Gerard T. Leone, Jr.
District Attorney

April 11, 2013

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EXECUTIVE

- ADMINISTRATION
- COMMUNICATIONS
- INTERVENTION & PREVENTION PROGRAMS
- PUBLIC POLICY
- LEGISLATION
- VICTIM WITNESS BUREAU

TRIAL TEAMS

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- MALDEN REGION SUPERIOR COURT
- WOBURN DISTRICT COURT

SPECIALTY UNITS

- APPEALS & TRAINING BUREAU
- CYBER PROTECTION PROGRAM
- FAMILY PROTECTION BUREAU
- CHILD ABUSE UNIT
- DOMESTIC VIOLENCE UNIT
- ELDER/DISABLED UNIT
- PUBLIC PROTECTION, ANTI-TERRORISM, CORRUPTION & TECHNOLOGY (PACT)

STATE POLICE DETECTIVES

- COMPUTER FORENSICS
- HOMICIDE
- PACT

REGIONAL OFFICES

- CAMBRIDGE
- FRAMINGHAM
- LOWELL

DISTRICT COURT OFFICES

- AYER
- CAMBRIDGE
- CONCORD
- FRAMINGHAM
- LOWELL
- MALDEN
- MARLBOROUGH
- NATICK
- NEWTON
- SOMERVILLE
- WALTHAM
- WOBURN



Kade Crockford
ACLU of Massachusetts
211 Congress Street, 3rd Floor
Boston, Massachusetts 02110

Re: Public Records Request 13-40

Dear Mr. Crockford:

This Office received your April 4, 2013 public records request for copies of records pertaining to administrative subpoenas. Specifically, you request “a sample of the form of a § 17B administrative subpoena” used by this Office (#2). Enclosed please find copies of records responsive to this portion of your request.

Please be advised that this Office does not have any records which are responsive to your request for “any written description of the procedure for approval of the issuance” of an administrative subpoena (#1) and “records showing whether notice of any § 17B administrative subpoena was provided to the person or entity who is the subject of the records” (#6). Under the Public Records statute, a record holder’s duty to comply with requests for information extends only to those records that exist and are in its custody. G. L. c. 4, § 7(26) (defining “public records” as those non-exempt materials made or received by a public employee); see also 950 C.M.R. 32.03 (defining “custodian” as the public employee with routine access to or control of public records). This Office is not obligated to create a record that would be responsive to your request and declines to do so.

In response to your request for records showing whether “the recipient of a § 17B administrative subpoena was requested not to disclose” that a subpoena had been received (#5), I note that our standard administrative subpoena asks that the recipient of an administrative subpoena not disclose its receipt “as disclosure could impede the ongoing criminal investigation.”

You further request “records showing the number of § 17B administrative subpoenas issued” (#3), “records showing the particular offenses or category of offenses which were the subject of ‘ongoing criminal investigations’ justifying the issuance of a § 17B administrative subpoena” (#4), “records showing the names of the common carriers or service providers to whom a § 17B administrative subpoena was issued” (#7), and “any motions to quash a § 17B subpoena which

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have been filed” (#8). This information may be withheld pursuant to exemption (f) of the public records law, G. L. c. 4, § 7(26), as release of the information may prematurely disclose the Commonwealth’s case prior to trial and disclose confidential techniques, procedures or sources of information. WBZ-TV4 v. District Attorney for the Suffolk Dist., 408 Mass. 595, 603 (1990); Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976).

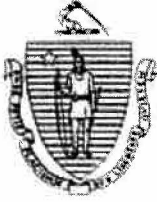
Finally, you have requested “records showing the name and docket number of any case in which a motion to suppress evidence obtained as a result of a § 17B subpoena has been filed” (#9). Please be advised that no one record currently exists that is responsive to this request and this Office is not obligated to create such a record. In order to provide you with records that would be responsive to your request, a search of every file would be necessary. Please be advised that the lowest paid employee capable of performing this search has an hourly fee of \$18.00, and photocopies of records will be charged at 20¢ a page. See G. L. c. 66, § 10(a); 950 C.M.R. 32.06 (custodian of record is permitted to charge a reasonable fee for the search of records; search is based on the hourly rate of the lowest paid employee capable of performing the task). Regardless of the costs associated with searching for responsive records and any payment you may make, the information contained within these files will be Criminal Offender Record Information (CORI), which is not available to the public, and would be withheld from disclosure under G. L. c. 6, §§ 167-172 as it operates through exemption (a) of the public records law.

The law requires that this Office advise you that you may appeal this Office’s decision within ninety days by writing to the Supervisor of Records, Office of the Secretary of the Commonwealth, One Ashburton Place, Room 1719, Boston, Massachusetts, 02108. In your appeal, you should include copies of all correspondence related to your request.

Sincerely,



KerryAnne Kilcoyne
Assistant District Attorney
(781) 897-6839



GERARD T. LEONE JR.
DISTRICT ATTORNEY

THE COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX DISTRICT ATTORNEY
CYBER ENFORCEMENT UNIT OF THE
CYBER PROTECTION PROGRAM
15 COMMONWEALTH AVENUE
WOBURN, MA 01801

TEL: 781-897-6700
FAX: 781-897-6701

ADMINISTRATIVE SUBPOENA FOR RECORDS

January 20, 2011

By Fax: (000) 000-0000
Internet Service Provider
Attention: Custodian of Records
Address
City, State, Zip Code

ref: 2011-00

This administrative subpoena is issued pursuant to Massachusetts General Laws Chapter 271, Section 17 B, in connection with a criminal investigation being conducted by the **Middlesex County District Attorney's Office**.

Please provide all available subscriber information and IP Login information for the following e-mail address:

Email address@internetserviceprovider.com

“SUBSCRIBER INFORMATION” IS DEFINED BY 18 U.S.C. § 2703 AS “THE NAME; ADDRESS; LOCAL AND LONG DISTANCE TELEPHONE CONNECTION RECORDS [ANI OR RADIUS LOGS], OR RECORDS OF SESSION TIMES AND DURATIONS; LENGTH OF SERVICE (INCLUDING START DATE) AND TYPES OF SERVICE UTILIZED; TELEPHONE OR INSTRUMENT NUMBER OR OTHER SUBSCRIBER NUMBER OR IDENTITY, INCLUDING ANY TEMPORARILY ASSIGNED NETWORK ADDRESS; AND MEANS AND SOURCE OF PAYMENT FOR SUCH SERVICE (INCLUDING ANY CREDIT CARD OR BANK ACCOUNT NUMBER)” OF A SUBSCRIBER. THIS SHALL INCLUDE ANY HISTORICAL OR CURRENT CUSTOMER INFORMATION RELATING TO ANY HARDWARE ADDRESS IDENTIFIED.

In order to protect the confidentiality and integrity of the ongoing criminal investigation, this office asks that you not disclose the existence of this request to the subscriber, as disclosure could impede the ongoing criminal investigation. Per Massachusetts General Laws Chapter 271, Section 17 B, no common carrier, or service provider, or employee thereof, shall be civilly or criminally responsible for furnishing any records or information in compliance with this request. Please provide the requested information to the undersigned, **c/o Name, via e-mail at emailaddress@agency.com**
If these records are too voluminous to e-mail, please mail the records to:

Name
Agency
Address
City, State, Zip Code

Sincerely yours,

Assistant District Attorney

**2011-2012 ADMINISTRATIVE SUBPOENA (Phones) REQUEST FORM
MIDDLESEX DISTRICT ATTORNEY'S OFFICE**

Please fax completed form & police report to (781) 897-6701

Date:	Requestor:	Badge #:
	<i>Last</i>	<i>First</i>
Police Department:	Unit/Bureau:	
Telephone Number:	Fax Number:	
E-Mail Address:		
Address:		

Complete This Section If You Are Seeking Information About a Telephone Number

Telephone Number: (if known)	Subscriber's Name: (if known)
Location of Telephone: (if known)	Name of Telephone Company: (if known)

Check Applicable Boxes: ***Cannot obtain Text Message Content with an administrative subpoena***

Seeking: ___ Subscriber Information for the time period of ___/___/20___ to ___/___/20___
 ___ Incoming and Outgoing Call Detail Records for the time period of ___/___/20___ to ___/___/20___

Under Chapter 271, §17B, whenever a DA has reasonable grounds to believe that records in the possession of a telephone company are **relevant and material to an ongoing criminal investigation**, the DA may issue an administrative subpoena demanding all such records in the possession of that telephone company, excluding content.

Summarize below the basis of your belief that the telephone or beeper is being used to commit a crime.
 This section must be completed.

****Upon completion of summary please attach police report - Please indicate if there is no police report at this time****

For use by District Attorney's Office:		
Case Type/Crime Type		
Approved:	ADA:	Date:
Denied:		
Notes:		

ADMINISTRATIVE SUBPOENA REQUEST FORM FOR INTERNET RECORDS
MIDDLESEX COUNTY DISTRICT ATTORNEY'S OFFICE
CYBER PROTECTION PROGRAM

Please fax completed form and police report to ADA David Solet at (781) 897-6701 or email scanned request to
 Kristina.Dambra@state.ma.us

Date: / /20	Requestor:	Badge #:
Police Department:		Unit/Bureau:
Office Phone:		Fax:
Cell Phone:		Email:
Address:		

Seeking: <input type="checkbox"/> Subscriber Information <input type="checkbox"/> WHOIS Information (applies to websites only)
For the: <input type="checkbox"/> IP Address <input type="checkbox"/> Email Address <input type="checkbox"/> Screen Name <input type="checkbox"/> Website
Of:
Date & Time (or range of dates & times) and TIME ZONE:
ISP (if known): Fax: ISP Contact:

<input type="checkbox"/>	IF THIS IS AN EMERGENCY SITUATION, PLEASE CHECK BOX AT LEFT AND INDICATE NATURE OF EMERGENCY BELOW:
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Please indicate the nature of the offense and the link between the requested records and the offense.	
Case charged in District Court? If so, list court, docket # and charges.	
ADA Assigned to the case?	

PLEASE ATTACH ALL RELEVANT POLICE REPORTS!

If this is a **financial crime**, please indicate the **approximate dollar loss suffered by victim:**

(Below Area For Use by District Attorney's Office)

Approved Denied ADA: Date:

Case Type: Crime Type: