



ANTHONY D. GULLUNI
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE DISTRICT ATTORNEY
HAMPDEN DISTRICT

HALL OF JUSTICE
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SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT
TEL: 413-747-1000
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SPRINGFIELD DISTRICT COURT
TEL: 413-747-1001
FAX: 413-747-5628

February 15, 2017

Kade Crockford
Director, Technology for Liberty Program
ACLU of Massachusetts

Via e-mail: kcrockford@aclum.org

Dear Ms. Crockford:

The purpose of this letter is to respond to your public records request, which was received via e-mail on February 8, 2017.

“Public records are broadly defined and include all documentary materials made or received by an officer or employee of any corporation or public entity of the Commonwealth, unless one of [the] statutory exemptions is applicable.” *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 414 Mass. 609, 614 (1993). The Hampden County District Attorney aims to be as helpful and expansive as possible in answering all public records requests. But he is not permitted by law to release some of the information you seek. The Legislature has categorized Criminal Offender Record Information (“CORI”), G. L. c. 6, §§167, 168-172, as not public records. The District Attorney is also charged with maintaining victims’ privacy. In addition, some answers to your requests would mean revelation of investigative techniques, and related matters. Policy disfavors revealing to criminals those techniques used or not used in particular circumstances to investigate criminal activity. G. L. c. 4, §7, cl. Twenty-sixth (a) (c) & (f). *Bougas v. Police Chief of Lexington*, 371 Mass. 59 (1976).

In response to your request for documents pursuant to the Massachusetts Public Records Law, G. L. c. 66, §10, the undersigned offers the following response. Your original request is highlighted in bold.

- 1. Any written description of the procedure for approval of the issuance of an administrative subpoena by the district attorney pursuant to the provisions of §17B;**

We have no records responsive to this request. A sample request form, which must be submitted to the district attorney from any police department seeking permission to use an administrative subpoena, is being provided for your information.

2. A sample of the form of a § 17B administrative subpoena used by your office;

I have attached a sample of a blank Administrative Subpoena utilized by this office.

3. Records showing the number of § 17B administrative subpoenas issued by your office in each year for the years 2014, 2015 and 2016;

There are no documents responsive to this request. This office does not track this information. As Section 17B allows requests for records that “are relevant and material to an ongoing criminal investigation”, these records, if they existed, would not be public records by definition, and such information is protected and therefore exempt by the investigatory exception to the definition of public records. G. L. c. 4, § 7, Twenty-sixth (f).

4. 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 in each year for the years 2014, 2015 and 2016 and the number of such subpoenas issued for each offense or category of offense;

There are no documents responsive to this request. This office does not track this information. Please note that a "particular offense or category of offenses" standing alone can never justify the issuance of an administrative subpoena. Section 17B imposes substantive legal requirements which must be met. As Section 17B allows requests for records that “are relevant and material to an ongoing criminal investigation”, these records would not be public records by definition, and such information is protected and therefore exempt by the investigatory exception to the definition of public records. G. L. c. 4, § 7, Twenty-sixth (f).

5. Records showing whether in any case the recipient of a § 17B administrative subpoena was requested not to disclose, whether to the subject of the records or to anyone else, that a subpoena for his records had been received;

There are no documents responsive to this request. This office does not track this information. The attached sample administrative subpoenas, (responsive to question 2), illustrate that recipients of a § 17B administrative subpoena are requested to “not disclose this request to any third party so as not to jeopardize the ongoing investigation.”

6. Records showing the names of the common carriers or service providers to whom a § 17B administrative subpoena was issued by your office and the number of such subpoenas issued to each in each year for the years 2014, 2015 and 2016;

There are no documents responsive to this request. This information is not tracked by this office. Moreover, such information is protected by the investigatory exception to the definition of public records. G. L. c. 4, § 7, Twenty-sixth (f).

7. Any motions to quash a § 17B subpoena which have been filed since January 2014;

While such motions may have been filed in a given case, the undersigned is not aware of the existence of any documents responsive to this request. This information is not tracked by this office. Moreover, such documentation is protected by CORI and does not constitute a public record. G.L. c. 4, § 7, Twenty-sixth (a); G. L. c. 6, §167 et seq., *Globe Newspaper Co. v. District Atty. for the Middle District*, 439 Mass. 374, 385 (2003).

8. Records showing the name and court docket number of any case in which a motion to suppress evidence obtained as a result of a § 17B subpoena has been filed.

While such motions may have been filed in a given case, the undersigned is not aware of the existence of any documents responsive to this request. Moreover, such documentation is protected by CORI and does not constitute a public record. G.L. c. 4, § 7, Twenty-sixth (a); G. L. c. 6, §167 et seq., *Globe Newspaper Co. v. District Atty. for the Middle District*, 439 Mass. 374, 385 (2003).

If you would like to challenge this response, you should contact the Supervisor of Records:

Supervisor of Records
Office of the Secretary of the Commonwealth
McCormack Building, Room 1719
One Ashburton Place
Boston, Massachusetts 02108
617-727-2832

I hope that you find this information helpful. If you have any questions, or require additional information, please do not hesitate to contact me at the above address.

Very truly yours,



Maida H. Wassermann
Assistant District Attorney

Enclosures

Commonwealth of Massachusetts – Hampden District
Office of the District Attorney
50 State Street
Springfield, Massachusetts 01103
Tel: (413) 505-5601 Fax: (413) 781-4745

ADMINISTRATIVE SUBPOENA REQUEST FORM

Date of Request: _____

Name of Investigator: _____ Department: _____

Office #: _____ FAX#: _____ Cell#: _____

E-Mail Address: _____ Case# _____

Type of Investigation: _____

Company/Service Provider in Custody of Records: _____

Date Range for Records Requested: _____

Records Requested (check all that apply)

____ Subscriber Name and Address

____ Billing Information

____ Call Detail Records

____ Internet Protocol Records

____ Other:

Account (or number) that is the subject of this demand: (Please provide any known information about the account(s) or subscriber(s) e.g. name, e-mail address, screen name, phone number, IP address, user identification, service address):

Facts and circumstances supporting a belief that the records sought are relevant and material to an ongoing criminal investigation:

Signature of Requesting Officer

Approved by District Attorney's Office

ADMINISTRATIVE SUBPOENA

FAX: /
Phone:

Dear _____ :

Under the provisions of Chapter 271, Section 17B of the General Laws of the Commonwealth of Massachusetts and Section 2703I of Title 18 of the United States Code, I hereby make demand on

_____ to produce the subscriber(s) name and address along with billing information for the period of: _____
for the cell phone number listed : _____

In compliance with the above listed statutes, I hereby certify that there are reasonable grounds to believe that the above information is relevant and material to an ongoing criminal investigation.

While Section 17B requires production of the records within fourteen (14) days, we appreciate any effort to produce them as immediately as possible. Please do not disclose this request to any third party so as not to jeopardize the ongoing investigation.

Thank you in advance for your cooperation.

Very truly yours,

Jennifer N. Fitzgerald
First Assistant District Attorney