



The Commonwealth of Massachusetts  
 MIDDLESEX DISTRICT ATTORNEY  
 15 COMMONWEALTH AVENUE, WOBURN, MA 01801  
 WWW.MIDDLESEXDA.COM



TEL: 781-897-8300  
 FAX: 781-897-8301

MARIAN T. RYAN  
 DISTRICT ATTORNEY

February 23, 2017

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- MALDEN
- MARLBOROUGH
- NEWTON
- SOMERVILLE
- WALTHAM
- WOBURN

Kade Crockford  
 Technology for Liberty Program  
 ACLU of Massachusetts  
 211 Congress Street  
 Boston, MA 02110  
[kcrockford@aclum.org](mailto:kcrockford@aclum.org) (reply by e-mail)

RE: Public Records Request 17-013

Dear Ms. Crockford:

On February 8, 2017, this Office received your letter, in which you requested the following records:

1. Any written description of the procedure for approval of the issuance of an administrative subpoena;
2. A sample form of a § 17B administrative subpoena used by this Office;
3. Records showing the number of § 17B administrative subpoenas issued by this Office in each year for the years 2014, 2015, and 2016;
4. Records showing the particular offenses or category of offenses which were the subject of ongoing criminal investigations justifying the issuance of a § 17B 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;
5. Records showing whether in any case the recipient of a § 17B administrative subpoena was requested not to disclose to the subject of the records that a subpoena for his records had been received;
6. Records showing the names of the common carriers or services providers to whom a § 17B administrative subpoena was issued by this Office and the number of such subpoenas issued to each in each year for the 2014, 2015, and 2016.
7. Any motions to quash a § 17B subpoena which have been filed since January 2014; and



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.

Attached please find records responsive to items 1-6 of your request.

With respect to item 1 of your request, this Office is providing you with a document titled "MDAO Protocol for the Issuance of Administrative Subpoenas" (dated August 26, 2013) and a document titled "Administrative Subpoena Protocol." In addition, this Office is providing you with "Administrative Subpoena Phone Request Form" and "Administrative Subpoena Request Form for Internet Records."

With respect to item 2 of your request, this Office is providing you with a sample § 17B administrative subpoena. The subject telephone number has been redacted pursuant to G. L. c. 6, §§ 167-168, which bars disclosure of Criminal Offender Records Information (CORI).

With respect to items 3 and 6 of your request, this Office is providing you with two Excel Spreadsheet files that are responsive to your request:

- "Internet Carrier 2014-2016.xlsx" pertains to § 17B administrative subpoenas issued to internet carriers/providers during the years 2014, 2015, and 2016; and
- "Mobile Carrier 2014-2016 2014.xlsx" pertains to administrative subpoena issued to mobile service providers during the years 2014, 2015, and 2016.

These files each contain a column listing the names of the phone or internet carriers/providers to whom a § 17B subpoena was issued.

With respect to item 4 of your request, this Office does not maintain a list of the type of offense for ALL administrative subpoenas issued between 2014 and 2016. To the extent that we were able to locate records that are responsive to your request, we are providing the following two Excel Spreadsheet files:

- "Invest (Internet Carrier) 2014-2016.xlsx" lists the type of underlying offense "which were the subject of 'ongoing criminal investigations' justifying the issuance of a § 17B administrative subpoena" to an internet carrier in the years 2014, 2015, and 2016; and
- "Invest (Mobile Carrier) 2014-2016.xlsx" lists the type of underlying offense "which were the subject of 'ongoing criminal investigations' justifying the issuance of a § 17B administrative subpoena" to phone service carrier in the years 2014, 2015, and 2016

This Office does not track the number of subpoenas issued by category of offense. However, the type of offense appears on the spreadsheet files each time a corresponding subpoena was issued.

Please be advised that all identifying information of the subjects of each and all § 17B subpoenas, including, but not limited to, phone number and email/IP address, has been removed to prevent disclosure of CORI.

With respect to item 5 of your request, please be advised that this Office uses a standard form that allows a box to be checked off regarding disclosure. Please refer to "Administrative Subpoena Request Form" provided in response to item 1 of your request. This Office does not track the number of administrative subpoena requests where such box is checked off.

With respect to items 7 and 8 of your request, after a diligent search, this Office was unable to locate any records aggregating the filing of motions to quash or suppress § 17B subpoenas in individual cases. 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. 32.02 (defining "custodian" as "the governmental entity that makes or receives public records"). This Office is not obligated to create a record that would be responsive to your request and decline to do so.

In accordance with the Public Records Access Regulations, any governmental entity complying with a public records request is permitted to charge a reasonable fee to cover the costs of complying with the request. G. L. c. 66, § 10(a); 950 C.M.R. 32.06. However, providing access to public records is an important function of our Office and we are therefore waiving the search, segregation, and reproduction fees for this request.

Please note that you may appeal this Office's decision within ninety days by writing to the Supervisor of Records, Office of the State Secretary, One Ashburton Place, Room 1719, Boston, Massachusetts, 02108. In your appeal, you should include copies of all correspondence related to your request. Please be advised that you may also seek judicial review of this office's decision in the superior court pursuant to G.L. c. 66, § 10A(c).

If you have further questions regarding your public records request and this Office's response, please do not hesitate to contact me at the below number.

Sincerely,

A handwritten signature in black ink, appearing to read "Asher Kim". The signature is fluid and cursive, with a horizontal line extending to the right.

Asher Kim  
Assistant District Attorney  
Middlesex District Attorney's Office  
781-897-6825