



## DENNIS POLICE DEPARTMENT

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December 19, 2012

Laura Rotolo, Staff Attorney  
ACLU of Massachusetts  
211 Congress Street  
Boston, MA 02110

Re: Public Records Request dated July 27, 2012 and received July 30, 2012

Dear Ms. Rotolo:

This letter is a follow-up to my earlier letter, dated August 5, 2012. It is my understanding that Attorney Jack Collins has been discussing your request with you over the last several months. Based on my latest discussion with Attorney Collins I am forwarding this response to you.

You have requested copies of a number of different types of records related to the Cape Cod Regional Law Enforcement Council SWAT team. The Council's response to your July 27<sup>th</sup> request is as follows.

The Council is a private non-profit organization and, as such, is not required to respond to public records requests under the Massachusetts Public Information Laws. While we believe we are not required to respond to your request, we expect that there are documents responsive to your request and we will provide copies of such documents that are not subject to applicable exemptions and subject to the payment of applicable fees under the Public Records Access Regulations.. To the extent that responsive documents, or material contained therein, may be withheld under any of the exemptions to the Public Records Law, such documents will be withheld and/or material redacted, as appropriate. G.L. c.4, §7(26).

Although several exemptions to the Public Records Law have been cited below, such exemptions are not meant to be exhaustive. The Council expressly reserves its right to assert other exemptions as the actual process of searching for and reviewing responsive records proceeds.

First, under exemption (a) documents may be withheld to the extent they are exempted by other statutes. SWAT records that fall under CORI exemptions will not be released or they will be redacted to meet CORI requirements. Other statutes related to medical information or other public records may also be redacted or withheld.

Exemption (b) allows documents to be withheld from disclosure to the extent that the disclosure would prove detrimental to the workings of the team. Training records that outline specific tactics

and strategies meet the meaning and spirit of this exemption and such records will be withheld or redacted in order to assure the safety of team members and confidentiality of specific tactics and security measures employed by the Team during the course of their work.

Under exemption (c), “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”, may be withheld from disclosure. To the extent that records specifically name individuals or contain “personal information” those records will be redacted or withheld.

Under exemption (f) to the Public Records Law, “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest,” may be withheld from disclosure. As your request seeks reports prepared during, or in response to, sensitive police operations it may be possible that some documents responsive to your request may be connected to an ongoing criminal investigation or prosecution, and disclosure of those documents at this time may jeopardize such investigation or prosecution. Even if any criminal investigation is concluded, “[t]he fact that an investigation has concluded does not necessarily destroy the investigatory exemption. ‘[I]f an agency's investigatory files were obtainable without limitation after the investigation was concluded, future law enforcement efforts by the agency could be seriously hindered.

Finally, under exemption (n) to the Public Records Law, “. . . records relating to the security or safety of persons, buildings, structures” may be exempted to the extent that such documents may jeopardize public safety. It is expected that there will be documents that meet this exemption and, therefore, such documents will be withheld or redacted to meet this exemption.

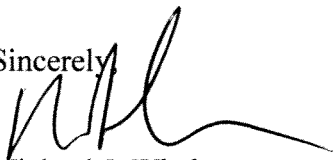
Whenever it is estimated that the cost for complying with a public records request will exceed ten dollars, a custodian must provide the requester with a good-faith written estimate prior to complying with the request. 950 CMR 32.06(2). It is estimated that in this case it will take 20-25 hours to locate the requested records, and that the average hourly rate of the lowest paid employee capable of performing such in each office is \$68.00. 950 CMR 32.06(1)(c); 950 CMR 32.03 (definitions of search and segregation time). However, because significant redactions may also be required, and because some of the information sought potentially involves sensitive police operations, and/or involve the exercise of independent judgment as to the information to be redacted, the lowest paid employee who can complete any necessary redactions is Chief Michael Whalen, Control Chief for the CCRLEC SWAT Team at an hourly rate of \$ 68.00 per hour. In addition, it is estimated at this time that 250 pages of reports, policies or contracts will be copied at a fee of \$.20 per page, for a total of \$ 50.00. 950 CMR 32.06(1)(a).

Based on a conservative estimate of the research time involved, and the potential need for necessary redaction based on my understanding of your request, the reasonable fee in order to meet your request is estimated at \$ 1,750.00 CMR 32.06(2). Please forward a check made payable to the Town of Dennis, to me. Upon receipt, I will direct that such work be performed. You should know that current staffing levels, projects under way and balancing the requirements every day business may delay our ability to meet your request. Should the cost of complying with your request exceed the estimated amount, the Council will provide you with an additional estimate of the cost to complete its response to your request.

In an attempt to clarify available documents and information I am providing a summary response to each of your requests to give you some idea of the documents in our possession that may be responsive to your request.

1. The CCRLEC SWAT Team does not produce a written report documenting each time the team is deployed or a written after action report of the incident. Incidents are verbally reviewed by participating team members directly after an incident. We do keep a worksheet of call outs listing the day, date and time of the callout, location of the callout and general description of arrests made or property seized.
2. Currently, CCRLEC SWAT Team policies and procedures are under review and in "Draft" form.
3. There is an application package and qualification criteria for new members as well as continuing standards for incumbent members.
4. We do not typically train with military units. We have, on several occasions, trained with Coast Guard personnel. Training lesson plans are completed for each training session. Such information would be heavily redacted to assure compliance with the exemptions stated above.
5. General lists of equipment, gear and weapons would be provided, however specific ballistic references or uses for such equipment that would divulge security or tactical information would be redacted.
6. There is no specific mutual aid agreement for SWAT operations. The 15 member towns of the Cape Cod Regional Law Enforcement Council are signatories to a general Mutual Aid Agreement.
7. The CCRLEC general budget breaks down costs associated with team operations and training.
8. There have been no external or internal audits performed specific to the Team. Financial records and reports required by law are prepared on a regular basis by an accounting firm hired by the LEC.

I would be happy to meet with you to further review your request and review records that may be available. Pursuant to 950 CMR 32.08, you may appeal this response to the Supervisor of Public Records within 90 days.

Sincerely,  


Michael J. Whalen  
Chief of Police  
Control Chief, CCRLEC SWAT Team