



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

June 27, 2013

(617) 727-2200  
www.mass.gov/ago

Kade Crockford  
ACLU of Massachusetts  
211 Congress Street, 3<sup>rd</sup> Floor  
Boston, MA 02110

**Re: Your Public Records Request**

Dear Ms. Crockford:

This letter is in further response to your April 4, 2013 public records request made pursuant to the Massachusetts Public Records Law, G.L. c. 66, § 10. You requested copies of records held by the Office of the Attorney General (AGO), specifically nine (9) categories of records related to our Office's issuance of G.L. c. 271, § 17B administrative subpoenas.

After a comprehensive search of AGO records, we respond to each part of your request as follows:

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

*The AGO has no records responsive to your request.*

2. A sample of the form of a § 17B administrative subpoena used by the [O]ffice of the [A]ttorney [G]eneral;

*Enclosed please find 2 pages of records that may be responsive to your request and subject to disclosure under the public records law, G.L. c. 66, § 10 and G.L. c. 4, § 7, cl. 26.*

3. Records showing the number of § 17B administrative subpoenas issued by the [A]ttorney [G]eneral in each year for the years 2011, 2012 and 2013;

*To the extent that the AGO possesses records responsive to your request, they would fall within an exemption from the definition of public records under G.L. c. 4, § 7, cl. 26(f), and therefore they would not be subject to disclosure, as they are investigative materials and/or investigatory techniques that are necessarily compiled out of the public's view, the disclosure of which would compromise effective law enforcement.*



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 2011, 2012 and 2013 and the number of such subpoenas issued for each offense or category of offense;

*To the extent that the AGO possesses records responsive to your request, they would fall within an exemption from the definition of public records under G.L. c. 4, § 7, cl. 26(f), and therefore they would not be subject to disclosure, as they are investigative materials and/or investigatory techniques that are necessarily compiled out of the public’s view, the disclosure of which would compromise effective law enforcement.*

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;

*To the extent that the AGO possesses records responsive to your request, they would fall within an exemption from the definition of public records under G.L. c. 4, § 7, cl. 26(f), and therefore they would not be subject to disclosure, as they are investigative materials and/or investigatory techniques that are necessarily compiled out of the public’s view, the disclosure of which would compromise effective law enforcement.*

*Additional Note: See document provided in response to Request #2.*

6. Records showing whether notice of any § 17B administrative subpoena was provided to the person or entity who is the subject of the records;

*To the extent that the AGO possesses records responsive to your request, they would fall within an exemption from the definition of public records under G.L. c. 4, § 7, cl. 26(f), and therefore they would not be subject to disclosure, as they are investigative materials and/or investigatory techniques that are necessarily compiled out of the public’s view, the disclosure of which would compromise effective law enforcement.*

7. Records showing the names of the common carriers or service providers to whom a § 17B administrative subpoena was issued by the [O]ffice of the [A]ttorney [G]eneral and the number of such subpoenas issued to each in each year for the years 2011, 2012 and 2013;

*To the extent that the AGO possesses records responsive to your request, they would fall within an exemption from the definition of public records under G.L. c. 4, § 7, cl. 26(f), and therefore they would not be subject to disclosure, as they are investigative materials and/or investigatory techniques that are necessarily compiled out of the public's view, the disclosure of which would compromise effective law enforcement.*

8. Any motions to quash a § 17B subpoena which have been filed since January 2011;

*The AGO has no records responsive to your request.*

9. 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.

*The AGO has no records responsive to your request.*

The public records law permits a custodian of public records to charge a requester for the expense of searching for, retrieving, and segregating responsive records, in addition to charges for photocopying. See G.L. c. 66, § 10; 950 CMR 32.06 (1)(c) and (4). As the costs for providing you with this response are nominal, we are waiving the fees in this instance.

If you wish to challenge this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 CMR 32.08, a copy of which is enclosed.

Very truly yours,



Lorraine A. G. Tarrow  
Assistant Attorney General  
General Counsel's Office

enclosures

June 20, 2013

**ADMINISTRATIVE SUBPOENA**

*POC*  
*ISP Provider*  
*Address*

*via fax to xxx-xxx-xxxx*  
*via email to:*

*Re: Demand for Records Pursuant to M.G.L. ch. 271 § 17B*  
*Case Number ASI3-XXXX*

Dear Sir or Madam:

This office, the Massachusetts Attorney General's Office, in conjunction with the Massachusetts State Police is conducting an official criminal investigation into violation(s) of the Massachusetts General Laws. The records described below, which are believed to be in your possession, are material and relevant to that investigation. Consequently, demand is hereby made under authority of M.G.L. ch. 271 § 17B that you furnish this Office with certified copies of the records described below within 14 days of the date of issue.

***RECORDS TO BE PROVIDED***

1. Subscriber information;
2. Name, address, personal information;
3. Connection records or records of session times and durations;
4. Length of service (including start date) and types of service utilized;
5. Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network/Internet Protocol address;
6. Means and source of payment for such service (including any credit card or bank account number) if applicable.

*for the subscriber or account holder(s):*

*User(s) of IP address: **XX.XXX.XXX.XXX @ (Time)***

Disclosure of the existence of this subpoena to the subscriber, or any other person, may hinder the investigation and cause the target and/or witnesses to conceal evidence. Therefore request is specifically made, under authority of 18 U.S.C. § 2705, to not disclose the existence of this demand.

Certified records responsive to this demand should be sent to my direction by facsimile followed by mail service. Detailed contact information is below. When returning records in response to this demand, please make reference on the cover sheet to the case number above.

I thank you in advance for your cooperation in this matter. Should you have any questions in relation to this request, please do not hesitate to contact (POC).

Sincerely yours,

MARTHA COAKLEY  
ATTORNEY GENERAL

By:

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Assistant Attorney General  
Cyber Crime Division,

Code of Massachusetts Regulations

Title 950: Office of the Secretary of the Commonwealth

Chapter 32.00: Public Records Access (Refs & Annos)

950 CMR 32.08

32.08: Appeals

(1) Denial by Custodian. Where a custodian's response to a record request made pursuant to 950 CMR 32.05(3) is that any record or portion of it is not public, the custodian, within ten days of the request for access, shall in writing set forth the reasons for such denial. The denial shall specifically include the exemption or exemptions in the definition of public records upon which the denial is based. When exemption (a) of M.G.L. c. 4, § 7, clause Twenty-sixth is relied upon the custodian shall cite the operational statute(s). Failure to make a written response within ten days to any request for access shall be deemed a denial of the request. The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and M.G.L. c. 66, § 10(b).

(2) Appeal to the Supervisor. In the event that a person requesting any record in the custody of a governmental entity is denied access, or in the event that there has not been compliance with any provision of 950 CMR 32.00, the requester may appeal to the Supervisor within 90 days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. An oral request, while valid as a public record request pursuant to 950 CMR 32.05(3), may not be the basis of an appeal under 950 CMR 32.08.

It shall be within the discretion of the Supervisor whether to open an appeal concerning a request for public records.

The Supervisor may decline to accept an appeal from a requester where the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the request is designed or intended to harass, intimidate or assist in the commission of a crime.

The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the public records request is made solely for a commercial purpose.

Appeals in which there has been no communication from the requester for six months may be closed at the discretion of the Supervisor.

(3) Disposition of Appeals. The Supervisor shall, within a reasonable time, investigate the circumstances giving rise to an appeal and render a written decision to the parties stating therein the reason or reasons for such decision.

(4) Presumption. In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.

(5) Hearings. The Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00. Said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08. Nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.

(6) In-camera Inspections and Submissions of Data. The Supervisor may require an inspection of the requested record(s) *in camera* during any investigation or any proceeding initiated pursuant to 950 CMR 32.08. The Supervisor may require the custodian to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.

The Supervisor does not maintain custody of documents received from a custodian pursuant to an order by this office to submit records for an *in-camera* review. The documents submitted for an *in-camera* review do not fall within the definition of public records. *See* M.G.L. c. 66, § 10(a) (2002 ed.).

Any public record request made to this office for records being reviewed *in-camera* would necessarily be denied as the office would not be the custodian of those records. *See* 950 CMR 32.03 (defining “custodian” as the government employee who in the normal course of his duties has access to or control over records).

Upon a determination of the public record status of the documents, they are promptly returned to the custodian.

(7) Custodial Indexing of Records. The Supervisor may require a custodian to compile an index of the requested records where numerous records or a lengthy record have been requested. Said index shall meet the following requirements:

- (a) the index shall be contained in one document, complete in itself;
- (b) the index must adequately describe each withheld record or deletion from a released record;
- (c) the index must state the exemption or exemptions claimed for each withheld record or each deletion of a record; and,
- (d) the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt. Nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

(8) Conferences. At any time during the course of any investigation or any proceeding, to the extent practicable, where time, the nature of the investigation or proceeding and the public interest permit, the Supervisor, may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding.

The Supervisor does not maintain custody of documents received from a custodian pursuant to an order by this office to submit records for an *in-camera* review. The documents submitted for an *in-camera* review do not fall within the definition of public records. *See* M.G.L. c. 66, § 10(a) (2002 ed.).

Any public record request made to this office for records being reviewed *in-camera* would necessarily be denied as the office would not be the custodian of those records. *See* 950 CMR 32.03 (defining “custodian” as the government employee who in the normal course of his duties has access to or control over records).

Upon a determination of the public record status of the documents, they are promptly returned to the custodian

Current through March 16, 2012, Register #1204  
Mass. Regs. Code tit. 950, § 32.08, 950 MA ADC 32.08