



The Commonwealth of Massachusetts

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GERARD T. LEONE, JR.
DISTRICT ATTORNEY

March 10, 2011

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EXECUTIVE

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

John Reinstein
Legal Director
ACLU of Massachusetts
211 Congress Street
Boston, Massachusetts 02110

Re: Public Records Request 11-12

TRIAL TEAMS

- CAMBRIDGE REGION SUPERIOR COURT
- MALDEN REGION SUPERIOR COURT
- WOBURN DISTRICT COURT

Dear Mr. Reinstein:

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)

This Office received your January 13, 2011 public records requests for copies of records pertaining to administrative subpoenas. Specifically, you request “any written description of the procedure for approval of the issuance” of an administrative subpoena (#1) and “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.

STATE POLICE DETECTIVES

- COMPUTER FORENSICS
- HOMICIDE
- PACT

Please be advised that this Office does not have any records which are responsive to your request for “records showing the number of § 17B administrative subpoenas issued” (#3) 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.

REGIONAL OFFICES

- CAMBRIDGE
- FRAMINGHAM
- LOWELL

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.”

DISTRICT COURT OFFICES

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

You further request “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 subpoenas was issued” (#7), and “any motions to quash a § 17B



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subpoena which 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 \$15.00, 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 Public 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

Enclosures