

The Commonwealth of Massachusetts

DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

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February 8, 2011

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

Dear Attorney Reinstein:

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 by the District Attorney for the Northwestern District of an administrative subpoena pursuant to the provisions of §17B;**

There is no document responsive to this request.

- 2. A sample of the form of a § 17B administrative subpoena used by the office of the District Attorney for the Northwestern District;**

A sample form is attached.

- 3. Records showing the number of § 17B administrative subpoenas issued by the District Attorney for the Northwestern District in each year for the years 2008, 2009 and 2010;**

There are no documents responsive to this request.

- 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 2008, 2009 and 2010 and the number of such subpoenas issued for each offense or category of offense;**

There are no documents responsive to this request.

- 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;**

There are no documents responsive to this request. The sample administrative subpoena, (responsive to question 2) , illustrates that recipients of a § 17B administrative subpoena are requested "not to disclose the existence of [the] request , as any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law."

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

Please see the answer to question 5 above. In the event that criminal charges resulted from information obtained as the result of an administrative subpoena, a criminal defendant would normally receive this information in discovery pursuant to the discovery rules of criminal procedure.

7. Records showing the names of the common carriers or service providers to whom a § 17B administrative subpoena was issued by the District Attorney for the Northwestern District and the number of such subpoenas issued to each in each year for the years 2008, 2009 and 2010.

There are no documents responsive to this request. Moreover, such information is protected by the investigatory exception to the definition of public records. G. L. c. 4, § 7, Twenty-sixth (f).

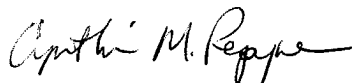
8. Any motions to quash a § 17B subpoena which have been filed since October 2008;

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 Office handled approximately 13,669 cases in 2008, 13,391 cases in 2009 and 11,878 cases in 2010 for a total of 38,938 cases. Providing a definite answer would require a review of all files for all cases for the years in question. Assuming that review of each file takes an average of fifteen minutes, it would take an assistant district attorney 9734 hours to review these files. The lowest paid assistant district attorney has an hourly rate of \$19.24. Thus, the total cost of a search would be \$187,282. Even if such a search were not cost-prohibitive, information on a given defendant is 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).

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.

See the answer to question 5 above.

Sincerely yours,



Cynthia M. Pepyne
Assistant District Attorney

Enc.