

**CITY OF SPRINGFIELD
LAW DEPARTMENT**

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Monday, December 15, 2003

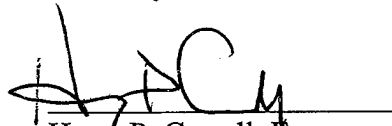
Alan Cote, Esq.
Supervisor of Records
Public Records Division - Room 1719
1 Ashburton, Place
Boston, MA 02108

RE: Case Number: SPR03\657

Dear Supervisor Cote:

In further reviewing the denial of the public records request dated October 31, 2003 which is the subject of the referenced appeal, it appears that the requested documents are also exempt under MASS. GEN. LAWS ANN. ch. 4 § 7 (26) (n). Accordingly, the City of Springfield denies the public records request because the documents are property of the Federal Bureau of Investigation ("FBI") which has objected to their release; the requested documents are specifically or by necessary implication exempted from disclosure by federal law; the disclosure of the documents could detract from effective law enforcement to such a degree as to be detrimental to the public interest; and they are exempt from the Massachusetts public records law under MASS. GEN. LAWS ANN. ch. 4 § 7 (26) (a), (f), (n). Thank you for your anticipated cooperation in this matter.

Sincerely,



Harry P. Carroll, Esq.
Deputy City Solicitor

cc/ John Reinstein
Legal Director
American Civil Liberties Union
Foundation of Massachusetts
99 Chauncy Street, Suite 310
Boston, MA 02111

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Friday, January 16, 2004

COPY

Alan Cote, Esq.
Supervisor of Records
Public Records Division - Room 1719
1 Ashburton, Place
Boston, MA 02108

RE: Case Number: SPR03\657

Dear Supervisor Cote:

This responds to the letter to you dated January 8, 2004 from John Reinstein of the American Civil Liberties Union Foundation of Massachusetts ("ACLU"). In his letter Mr. Reinstein disagrees with the City's supplemental position that clause 26(n) of MASS. GEN. LAWS ANN. ch. 4 § 7 justifies denial of the ACLU's records request.

Mr. Reinstein asserts that "the information sought is not the type of information which this provision was intended to exempt from disclosure." That assertion is belied by the plain meaning of the language contained in exemption (n) which clearly covers "plans", "policies", and "procedures" relating to "security measures." By way of background, it is important to recognize that exemption (n) was adopted by Acting Governor Swift and the Massachusetts Legislature in response to the tragic events of September 11, 2001. Exemption (n) was designed to secure public safety "by restricting access to records which may have been previously open to public inspection." SPR-Bulletin No. 04-03, April 1, 2003 ("Bulletin").

Mr. Reinstein's reliance upon his interpretation of the Bulletin is also misplaced. The idea that exemption (n) was limited to "specific structural and operational plans" is inconsistent with the plain meaning of the words "policies", and "procedures" and the phrase "security measures." Moreover, such a strained and unrealistic reading of exemption (n) tends to defeat, not further, its fundamental purpose which is to protect the safety of the public from terrorists. This purpose is implicit in the very first finding in the Bulletin:

In this post-9/11 world, awareness of the threat posed by enemies of the government both foreign and domestic has been heightened. The possibility of future attacks against persons and public places located in the Commonwealth has been elevated.

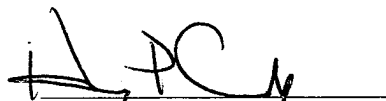
Moreover, exemption (n) includes "any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located

within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian” “is likely to jeopardize public safety.” The ACLU’s narrow reading of exemption (n) tends to undermine what the Bulletin describes as “the best interest of the Commonwealth that controls be placed on access to the types of records which may facilitate an attack on persons and places.”

The ACLU’s final contention rests upon the alleged lack of specificity for denying the ACLU’s request and the factors surrounding the reasonable judgment of the City that release may jeopardize the public’s safety. The City’s supplemental response specifically stated the additional reason for denying the ACLU’s request “the requested documents are . . . exempt under MASS. GEN. LAWS ANN. ch. 4 § 7 (26) (n).” This satisfies the specificity requirement. Similarly, the factors surrounding the City’s denial of the request were clearly stated: the documents are property of the Federal Bureau of Investigation (“FBI”) which has objected to their release; the requested documents are specifically or by necessary implication exempted from disclosure by federal law; the disclosure of the documents could detract from effective law enforcement to such a degree as to be detrimental to the public interest; and they are exempt from the Massachusetts public records law under MASS. GEN. LAWS ANN. ch. 4 § 7 (26) (a), (f), (n). The City does not have any obligation to reveal the details of exempt documents. The factors surrounding the “reasonable judgment” utilized by the City in denying the ACLU’s request and the reason the City believes that access to the requested records is “likely to be used” to jeopardize public safety are: (1) the identification of potential terrorists and preventing them from committing another 9/11 type terrorist attack is part of an ongoing fight against terrorism; (2) in this battle for the safety of the American people, the Federal Bureau of Investigation (FBI) is the lead law enforcement agency primarily responsible for preventing future attacks and acts of terrorism in America; (3) the FBI has stated that the Joint Terrorism Task Force (“JTTF”) “is under FBI direction and control and is a federal agency”. In light of these factors the judgement of the FBI that JTTF information should not be released by the City but only in accord with laws and procedures controlling the manner in which such requests are handled by the FBI makes sense. It must be honored by the City because the war on terrorism requires federal, state and local law enforcement personnel to share critical information across jurisdictional borders in order to help stop terrorists from making another catastrophic attack on the American homeland.

Thank you for your anticipated cooperation in this matter.

Sincerely,



Harry P. Carroll, Esq.
Deputy City Solicitor

cc/ John Reinstein, Legal Director
American Civil Liberties Union
Foundation of Massachusetts
99 Chauncy Street, Suite 310
Boston, MA 02111

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Wednesday, November 12, 2003

John Reinstein
Legal Director
American Civil Liberties Union
Foundation of Massachusetts
99 Chauncy Street, Suite 310
Boston, MA 02111

RE: Public Records Response

Dear Director Reinstein:

Your public records request dated October 31, 2003 to Chief Meara of the Springfield Police Department has been referred to the Springfield Law Department for response.

The records you requested are property of the Federal Bureau of Investigation ("FBI") which has objected to their release. See attached letter. Moreover, it appears that the requested documents are specifically or by necessary implication exempted from disclosure by federal law and that the disclosure of the documents could detract from effective law enforcement to such a degree as to be detrimental to the public interest so that they are exempt from the Massachusetts public records law under MASS. GEN. LAWS ANN. ch. 4 § 7 (26) (a), (f). Since the requested documents are FBI property and exempt from the Massachusetts public records statute, your request must be and hereby is denied.

Sincerely,



Harry P. Carroll, Esq.
Deputy City Solicitor

cc/fax: Chief Meara
SSA Katz, ADC
AUSA O'Regan
File



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

One Center Plaza
Boston, MA 02108
617-742-5533
November 12, 2003

Mr. Harry P. Carroll
Deputy City Solicitor
36 Court Street
Springfield, MA 01103

via fax to (413) 787-6173

RE: ACLU request for JTTF records

Mr. Carroll,

The purpose of this letter is to elucidate the position of the Federal Bureau of Investigation, Boston Division, (FBI Boston) regarding release of documents pertaining to the Joint Terrorism Task Force (JTTF) pursuant to a request made under the laws of the Commonwealth of Massachusetts.

All documents, records, materials or other information developed by or for the JTTF is the property of the Federal Bureau of Investigation (FBI). The JTTF is under FBI direction and control and is a federal entity. Neither the Springfield Police Department nor any local or state department or agency has the authority to release such records. In brief, such records are FBI property and you may not release them.

The proper method for a request pertaining to any such records is a Freedom of Information Act request directed to the FBI. Any such request made to FBI Boston will be handled in accordance with established law and procedures.

Sincerely,

Kenneth W. Kaiser
Special Agent in Charge

By: *Damon A. Katz*
Damon A. Katz
Associate Division Counsel