

The Commonwealth of Massachusetts

DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN
DISTRICT ATTORNEY

ONE GLEASON PLAZA
NORTHAMPTON, MASSACHUSETTS 01060
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WWW.NORTHWESTERNDISTRICTATTORNEY.ORG

April 12, 2013

Kade Crockford
ACLU of Massachusetts
211 Congress Street, 3rd floor
Boston, MA 02110

Dear Ms. Crockford:

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 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 District Attorney for the Northwestern District;**

Sample forms are attached. Sample Form A is of the type which would be sent to an internet provider. Sample B is of the type that would be sent to a telephone company.

- 3. Records showing the number of § 17B administrative subpoenas issued by the District Attorney for the Northwestern District in each year for the years 2011, 2012 and 2013;**

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 2011, 2012 and 2013 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, whether to the subject of the records or to anyone else, that a subpoena for his records had been received;**

There are no documents responsive to this request. The sample administrative subpoenas, (responsive to question 2) , illustrate 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 2011, 2012 and 2013.

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 January 2011;

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 12,876 cases in 2011, 18,250 cases in 2012 and 6,692 cases thus far in 2013 for a total of 37,818 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 9456 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 \$181,933. 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.

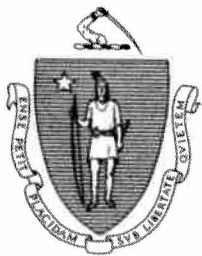
See the answer to question 8 above.

Sincerely yours,



Cynthia M. Pepyne
Assistant District Attorney

Enc.



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April 12, 2013

Administrative Subpoena

Dear Records:

Pursuant to an official criminal investigation being conducted by the District Attorney's office for Hampshire and Franklin Counties and relative to Chapter 271, section 17B of the General Laws, it is requested that your company provide the following information:

All complete account contents to include, but not be limited to, registration information, subscriber information, billing information, and connection log for the following IP addresses (*IP address*) on 4-1-2013 at 15:30:19 UTC.

You are not to disclose the existence of this request, as any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

You are hereby authorized to provide this information to (*Law Enforcement Official making request*) to fax number ##### or to the secured email address of (*email address*). It is further requested that any correspondence be marked "**confidential**".

Thank you for your prompt attention in this matter.

Very truly yours,

David E. Sullivan
District Attorney
Northwestern District

DES/mr



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April 12, 2013

Administrative Subpoena

Dear Records:

Pursuant to an official criminal investigation being conducted by the District Attorney's office for Hampshire and Franklin Counties and relative to Chapter 271, section 17B of the General Laws, it is requested that your company provide the following information:

Any and all subscriber and registration information as well all incoming and outgoing call and text message logs for phone number ##### on April 1, 2013.

You are not to disclose the existence of this request, as any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

You are hereby authorized to provide this information to (*Law Enforcement Official making request*) to fax number ##### or to the secured email address of (*email address*). It is further requested that any correspondence be marked "**confidential**".

Thank you for your prompt attention in this matter.

Very truly yours,

David E. Sullivan
District Attorney
Northwestern District

DES/mr