



February 8, 2017

District Attorney David F. Capeless

7 North Street  
P.O. Box 1969  
Pittsfield, MA 01202-1969

District Attorney Capeless,

In 2008, the provisions of G.L. c. 271, § 17B were amended to expand the power of Massachusetts prosecutors to obtain information about private communications and associations. As amended, the law allows the attorney general or a district attorney to issue an administrative subpoena to service providers for records concerning private communications if the prosecutor has “reasonable grounds to believe that [such records] are relevant and material to an ongoing criminal investigation.” The recipient of such a subpoena is required to deliver the records to the attorney general or the district attorney within 14 days. Although the statute expressly prohibits the disclosure of the *content* of electronic communications, information prosecutors may obtain under the statute can reveal substantial, sensitive information about the activities, communications, and associations of Massachusetts persons.

In order to permit the public to understand how this authority has been used, the American Civil Liberties Union of Massachusetts (“ACLUM”) is making this request under the Massachusetts public records law, G.L. c. 66, § 10, for the following records:

1. Any written description of the procedure for approval of the issuance of an administrative subpoena by the district attorney pursuant to the provisions of § 17B;
2. A sample form of a § 17B administrative subpoena used by your office;
3. Records showing the number of § 17B administrative subpoenas issued by your office in each year for the years 2014, 2015, and 2016;
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 2014, 2015, and 2016, and the number of such subpoenas issued for each offense or category of offense;
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;

6. Records showing the names of the common carriers or services providers to whom a § 17B administrative subpoenas was issued by your office and the number of such subpoenas issued to each in each year for the 2014, 2015, and 2016;
7. Any motions to quash a § 17B subpoena which have been filed since January 2014; and
8. 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 purpose of this request is to obtain information about how extensively and under what circumstances your office has used the authority conferred by the 2008 amendment. As information about the scope of use of § 17B is not currently available to the public, we have no means of knowing whether compliance with this request requires review and disclosure of a substantial number of records. If that is the case, we would certainly be willing to discuss an appropriate modification of the request consistent with disclosure of the information we are seeking.

Because this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any fees. ACLUM is a nonprofit §501(c)(3) organization dedicated to the protection of civil rights and liberties for all persons in the Commonwealth of Massachusetts. As the state's affiliate of the American Civil Liberties Union, ACLUM is part of a nationwide network of advocates dedicated to defending and expanding the civil liberties of all.

If you decide not to waive fees, we request that you permit us to examine, at our election, the responsive documents before deciding which portions to copy. We would prefer the documents in electronic format.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

If you have questions about this request, please contact me at (617) 482-3170 x346 or [kcrockford@aclum.org](mailto:kcrockford@aclum.org).

Thank you for your assistance. We look forward to your response.

Sincerely,

Kade Crockford

Director

Technology for Liberty Program

ACLU of Massachusetts