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Kade Crockford
American Civil Liberties Union of Massachusetts
211 Congress Street, 3d Floor
Boston, MA 02110

Re: Public Records Request -- G. L. c. 271, § 17B subpoenas

Dear Ms. Crockford:

I am writing in response to your recent inquiry.

Turning to your specific requests:

1. Any written description of the procedure for approval of the issuance by the District Attorney for the Eastern District of an administrative subpoena pursuant to the provisions of § 17B:

We have no records responsive to this request. I hope the following information is helpful: In Essex County, any such requests must be submitted to the undersigned along with a police report and such additional information as I may require demonstrating the relevance of the particular device to the investigation.

2. A sample of the form of a § 17B administrative subpoena used by this Office:

A sample form has previously been provided to you. It has not changed since your last request.

3. Records showing the number of § 17B administrative subpoenas issued by this Office in each year for the years 2014, 2015, and 2016;

Even if this information is available, this Office invokes the investigatory materials exemption to the public records law, G.L. c. 4, § 7 ¶ (26) (f), and any other prohibitions or exemptions that may be applicable.

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:

Please note that a "particular offense or category of offenses," standing alone, can never justify the issuance of an administrative subpoena. Section 17B imposes substantive legal requirements which must be met. Even if this information is available, this Office invokes the investigatory materials exemption to the public records law, G.L. c. 4, § 7 ¶ (26) (f), and any other prohibitions or exemptions that may be applicable.

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:

Our standard form directs that recipients of subpoenas not disclose its receipt “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 response to #5. It should be noted that any such information is provided to the defense when the Commonwealth’s discovery obligation has been triggered.

7. Records showing the names of the common carriers or service providers to whom a § 17B administrative subpoenas was issued by the District Attorney for Essex County and the number of such subpoenas issued to each in each year for the years 2014, 2015 and 2016:

Even if this information is available, this Office invokes the investigatory materials exemption to the public records law, G.L. c. 4, § 7 ¶ (26) (f), and any other prohibitions or exemptions that may be applicable.

8. Any motions to quash a § 17B subpoena which have been filed since January 2014;

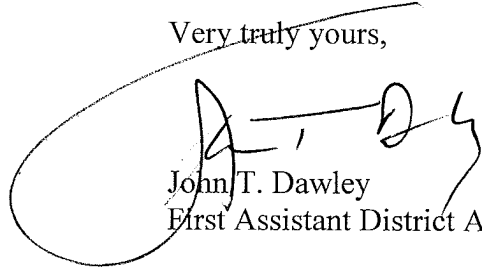
Such motions are not centrally tracked. I am not aware of any motions to quash § 17B subpoenas.

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.

I am aware of one such motion to suppress filed in Salem Superior Court no. ESCR2011-00923.

I hope this information is helpful to you. Please feel free to contact me if I can be of any further assistance.

Very truly yours,



John T. Dawley
First Assistant District Attorney

JTD:DFO