

The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY
DISTRICT ATTORNEY

45 SHAWMUT ROAD
CANTON, MA 02021
(781) 830-4800
FAX (781) 830-4801

February 14, 2017

Kade Crockford, Director
American Civil Liberties Union of Massachusetts
211 Congress Street
Boston, MA 02110

VIA Email: kcrockford@aclum.org

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

Dear Ms. Crockford:

I am writing in response to your February 8, 2017 letter to Norfolk District Attorney Michael W. Morrissey concerning subpoenas issued under G.L. c. 271, §17B. Under the public records statute, you seek information regarding this Office's use of G.L. c. 271, § 17B. Below I list each of your eight questions and our response to each. Please note that our answer is directed to G. L. c. 271, § 17B, and does not include any additional federal and state laws protecting electronic communications that may apply. Additionally, the Norfolk District Attorney's Office is waiving all fees associated with your request.

We aim to be helpful in answering all public records requests; we are not permitted by law, however, to release much of the information you seek. The Legislature has categorized the following as not being public record: information concerning a victim's identity and related statements in a sexual assault prosecution, G. L. c. 265, § 24C and G. L. c. 41, § 97D; and Criminal Offender Record Information (CORI), G. L. c. 6, §§ 167, 172. We are also charged with maintaining victim privacy. Some specific answers to your requests would mean releasing information that could directly endanger the safety of individuals and the general public in both ongoing and other investigations, and revealing investigative techniques and related matter. Public policy disfavors revealing to criminals those techniques used or not used in particular circumstances to investigate criminal activity. G. L. c. 4, § 7 ¶ (26) (a) (c) & (f). Bougas v. Police Chief of Lexington, 371 Mass. 59 (1976). In addition, grand jury materials

are secret and are protected from disclosure by both the Massachusetts constitution and the common law. We presume you are not seeking any items to which the deliberative process privilege and work product privilege apply. See District Attorney for the Norfolk District, 419 Mass. 507 (1995), and Commonwealth v. Liang, 434 Mass. 131 (2001). Please be advised that you have a right to appeal any decision to the supervisor of records. See G.L. c. 66, § 10A.

Turning to your specific requests:

- 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;**

We have no records responsive to this request. A sample request form, which police must submit when requesting the district attorney issue an administrative subpoena, is included for your information.

- 2. A sample of the form of a § 17B administrative subpoena used by your office;**

Sample form is attached.

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

Please be advised that, even if this information was available, release of it is not public record. See above.

- 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.

Please also be advised that even if this information was available, release of it is not public record. See above.

- 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;**

Please note that our standard form directs that recipients of subpoenas not disclose its receipt as "any such disclosure may impede the investigation and interfere with the enforcement of the law."

- 6. Records showing the names of the common carriers or service providers to whom a § 17B administrative subpoena was issued by your office and the number of such subpoenas issued to each in each year for the years 2014, 2015 and 2016;**

Please be advised that even if this information was available, it is not public record. See above.

- 7. Any motions to quash a § 17B subpoena which have been filed since January 2014; and**

I have performed an informal survey on your behalf, and have not found any information confirming that motions to quash G.L. c. 271, §17B subpoenas have been filed.

- 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.**

I have performed an informal survey on your behalf, and have not found any information confirming that motions to suppress evidence obtained as a result of a G.L. c. 271, §17B subpoena have been filed.

I hope this information is helpful and satisfies your request.

Kindest Regards,



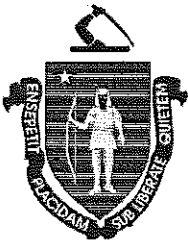
Laura A. McLaughlin

Assistant District Attorney

Records Access Officer

Norfolk County District Attorney's Office

NDAO.PublicRecords@state.ma.us



**NORFOLK DISTRICT ATTORNEY
ADMINISTRATIVE SUBPOENA REQUEST FORM**



Please fax the completed form, **ALONG WITH A POLICE REPORT**, to:

ADA [REDACTED], ADA [REDACTED] or ADA [REDACTED]
FAX: 781-830-4808
PHONE: 781-830-4800

DATE:	REQUESTOR:	DEPARTMENT:
OFFICE NO.:	FAX NO.:	CELL NO.:
EMAIL ADDRESS:		ADDRESS:

Please provide as much information as is known:

TELEPHONE NO.:	CELL NO.:
IP ADDRESS:	ISP (if known):
SCREEN NAME:	
SUBSCRIBER NAME:	
SUBSCRIBER ADDRESS:	
COMPANY WHERE RECORDS ARE MAINTAINED:	

The basis for my belief that the records sought are relevant and material to an ongoing criminal investigation is:

I certify that I have not already received this information:

Officer's Signature: _____

FOR USE BY DISTRICT ATTORNEY'S OFFICE:			
Approved	Denied	ADA:	Date:



The Commonwealth of Massachusetts

Office of the District Attorney for the Norfolk District

Michael W. Morrissey
District Attorney

45 Shawmut Road
Canton, MA 02021
Telephone: 781-830-4800
Fax: 781-830-4801

ADMINISTRATIVE SUBPOENA, M.G.L. c. 271, s. 17B

, 2017

Dear Sir/Madam:

This office and the _____ Police Department are conducting a criminal investigation. We have reasonable grounds for the belief that records in your possession are material and relevant to that investigation. In compliance with the Administrative Subpoena provisions of G.L. c. 271, s. 17B, demand is herewith made for the following information:

Please do not disclose the existence of this request. Any such disclosure may impede the investigation and interfere with the enforcement of the law. Please forward this information to the undersigned Assistant District Attorney via email to [REDACTED]@state.ma.us or fax to [REDACTED].

Very truly yours,
MICHAEL W. MORRISSEY
DISTRICT ATTORNEY

By: _____

[REDACTED]
Assistant District Attorney