



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
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THOMAS A. TURCO, III
Secretary

March 9, 2020

VIA EMAIL ONLY

Emiliano Falcon
ACLU of Massachusetts
efalcon@aclum.org

Re: EOPSS Public Records Request

Dear Mr. Falcon,

The Executive Office of Public Safety and Security (EOPSS) is in receipt of your public records request seeking “[a]ll successful and unsuccessful grant applications, and all their related documents and attachments” “pertaining to Executive Office of Public Safety and Security (“EOPSS”) grants awarded to school districts for the purposes of acquiring security equipment and technology.”

After a diligent search, EOPSS was able to locate 145 responsive records. Given the sensitive nature of the applications and the time and resources that would be required to expend on reviewing and redacting all 145 applications, ACLU agreed to receive a document entitled “Safer Schools and Communities Initiative Local Equipment and Technology Grant Opportunity” which provides an executive summary and details the 143 award recommendations. This document was provided to ACLU on December 18, 2019. After review, ACLU agreed to receive one application to gain a better understanding of the types of redactions that would be applied to the applications. As such, please find enclosed Worcester Public Schools Grant Application.

Please note that redactions have been made to the identifying information of the individual points of contacts involved in the transactions and their contact information pursuant to records pursuant to G.L. c. 4, §7, cl. 26 (b) which exempts from public disclosure records that are related solely to internal personnel rules and practices of the government unit and whose non-disclosure is necessary for the proper performance of necessary governmental functions. Given the lack of

case law regarding the application of exemption (b) in Massachusetts, the federal courts interpretation of 5 U.S.C. § 552(b)(2) (hereinafter “exemption 2”), the federal equivalent to exemption (b), is instructive.

Exemption 2 shields from public disclosure information that is “related solely to the internal personnel rules and practices of an agency.” The courts have interpreted the phrase “personnel rules and practices” to include not only “minor employment matters” but also “other rules and practices governing agency personnel.” See *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1056 (D.C.Cir.1981)(en banc). The information need not actually be “rules and practices” to qualify under exemption 2, as the statute provides, but also exempts matters “related” to agency rules and practices. *Concepcion v. F.B.I.*, 606 F. Supp. 2d 14, 30–31 (D.D.C. 2009)(citation omitted).

EOPSS asserts that the information requested contains internal matters of a substantial nature, the disclosure of which would risk the circumvention of statute and/or agency regulation. Exemption 2 encompasses protection of sensitive internal agency information where public dissemination of same would render the information operationally useless and create an end-run on ongoing law enforcement efforts. To this end, exemption 2 is designed to prevent disclosure that would “benefit those attempting to violate the law and avoid detection.” *Crooker v. ATF*, 650 F.2d 1051, 1054 (D.C. Cir. 1981) (en banc). The disclosure of this information could circumvent the security measures which may allow an individual attempting to violate the law to make a fraudulent attempt to reroute the funds to a third party’s account thus jeopardizing public safety.

Such redactions were also made to avoid any business email compromise. The Federal Bureau of Investigation (FBI) has recognized such scams in which organized crime groups target companies in order to reroute funds and inflict damage. The FBI issues frequent advisories on this topic in hopes to gain awareness and offer suggestions to prevent such fraud. According to the FBI’s 2015 advisory, “businesses and personnel using open source e-mail are most targeted” and those “individuals responsible for handling wire transfers within a specific business are targeted.” The advisory also adds that the “spoofed e-mails very closely mimic a legitimate e-mail request.”

The redactions made to the contact information of the agency and company personnel involved, seek to prevent such business email compromise from occurring in the Commonwealth. An individual who sought to maximize this type of damage in the Commonwealth would find this information useful insofar as it would provide that individual with detail about and insight into the way EOPSS undertakes to conduct business with various vendors and transfer payment. Accordingly, in the reasonable judgment of EOPSS, disclosure of the redacted and withheld information would be likely to jeopardize public safety.

If you object to EOPSS’s response, you may, pursuant to G.L. c. 66, § 10(b) and 950 CMR 32.08(2), appeal its determination to the Public Records Division of the Office of the Secretary of the Commonwealth.

Sincerely,

A handwritten signature in blue ink that reads "Arielle Mullaney". The signature is written in a cursive, flowing style.

Arielle Mullaney
Assistant General Counsel