



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 20, 2020
SPR20/0762

Shawn A. Williams, Esq.
City of Boston
1 City Hall Plaza, Room 615
Boston, MA 02201

Dear Attorney Williams:

I have received the petition of Emiliano Falcon-Morano, of the *ACLU of Massachusetts*, appealing the response of the City of Boston (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on October 9, 2019, Mr. Falcon-Morano, requested “records pertaining to the sharing of video surveillance data, including but not limited to any interagency memorandums of understanding (‘MOUs’).” The City responded on March 20, 2020, with responsive documents to the request. Claiming to not have received all responsive documents, Mr. Falcon-Morano petitioned this office and this appeal, SPR20/0762, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv) (written response must “identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based...”); 950 C.M.R. 32.06(3); see also *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

Current Appeal

In his appeal, Mr. Falcon-Morano asserts “[t]he City of Boston sent records pertaining to vendor, Lan-Tel, some surveillance projects, and camera specifications. They did not send any records pertaining to the memoranda of understanding that are mentioned in the document we originally attached to the request...[w]e believe memoranda of understanding exist because they are mentioned in the document we attached to the original request and that they are covered by the request we originally made.”

Additional Responsive Records

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G.L. c. 66, § 10(a)(ii) (written response must “identify any public records or categories of public records sought that are within the possession, custody, or control of the agency”).

Based on Mr. Falcon-Morano’s petition, it is unclear whether the City possesses additional records responsive to Ms. Falcon-Morano’s request. I find the City must clarify this matter.

Conclusion

Accordingly, the City is to provide Mr. Falcon-Morano with a response as soon as practicable. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us. Mr. Falcon-Morano may appeal the substantive nature of the City’s response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Mr. Emiliano Falcon-Morano