



Massachusetts

June 5, 2024

Via Electronic Mail

Ian P. Cyr
Deputy Chief of Police
UMass Police Department
585 East Pleasant St.
Amherst, MA 01003
ipc@umass.edu
recordsrequest@umass.edu

Re: May 8, 2024 Public Records Request and University's Response

Dear Deputy Chief Cyr:

I write on behalf of the ACLU of Massachusetts, Inc. ("ACLUM") in response to your letter dated May 22, 2024 (the "May 22 letter"). As explained below, the UMass Police Department (the "Department") is unlawfully withholding public records responsive to ACLUM's public records request dated May 8, 2024 (the "May 8 request"). Please produce the requested records as soon as possible, but in all events no later than June 14, 2024.

ACLUM's May 8 request sought certain records related to the police action to remove and arrest protesters in and around the UMass Amherst campus on May 7 and/or 8, 2024 (the "UMass Amherst Action"). According to your May 22 letter, the Department is apparently refusing to produce even a single sheet of paper or frame of video relating to those events. Your letter asserts that the materials are shielded from disclosure through the Criminal Offender Records Information (CORI) Act under Exemption (a) and by Exemption (f) because the materials "would prejudice an ongoing investigation." Your letter further asserted, "There continues to be ongoing investigation into the actions of persons arrested during this event."

These exemptions could not possibly justify wholesale withholding of all responsive records. The records requested are presumed to be public unless the Department shows otherwise. *See* G.L. c. 66, § 10A (d)(1)(iv). And even to the extent an exemption might apply, the exemption must be construed "strictly and narrowly," *see Rabim v. District Attorney for Suffolk District*, 486 Mass. 544, 549 (2020), and any segregable non-exempt material must be released. *See Champa v. Weston Pub. Schs.*, 473 Mass. 86, 92 (2015). Here, the exemptions cited in your letter do not apply for at least three reasons.

First, multiple categories of requested records would not contain any CORI information and are not records of any arrests, charges, or investigations. These include, for example, category 1 (written instructions and briefing materials), categories 6 and 7 (records of unlawful assembly

determination and of any instructions or commands), and categories 9 through 12 (communications between government entities). The Department should immediately collect and produce records responsive to those categories.

Second, any exemption for CORI information does not apply. The mere fact that the records relate to an event where arrests occurred, or that resulted in certain people being charged with unspecified offenses, does not exempt records concerning the event from disclosure. *See, e.g., Boston Globe Media Partner, LLC v. Dep't of Crim. Just. Info. Servs.*, 484 Mass. 279, 290 (2020). Moreover, even if some of the requested records contain CORI information, the Department could simply redact the individual's name and other identifying information prior to releasing the record. *See Champa*, 473 Mass. at 92.

Lastly, the Department has not shown that Exemption (f) applies to any of these records, much less all of them. “[I]here is no blanket exemption provided for records kept by police departments solely because they are involved in investigatory work.” *See Globe Newspaper Co. v. Police Comm'r of Bos.*, 419 Mass. 852, 859 (1995). Rather, Exemption (f) prevents the disclosure only of “investigatory materials necessarily compiled out of the public view” where “the agency resisting disclosure has demonstrated that their release would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” *Police Comm'r of Bos.*, 419 Mass. at 858. The burden is on the government to provide enough “evidence about the nature and scope of the materials’ contents” to allow the factfinder “to infer that disclosure would more likely than not prejudice effective law enforcement.” *See Rahim*, 486 Mass. at 551-53.

Here, the Department has failed to identify any particular record to which Exemption (f) purportedly applies, but rather appears to be unlawfully applying the exemption wholesale to 12 separate categories of records. Nor has the Department provided any specific information about what investigation exists (beyond the bare assertion that “the actions of the persons arrested” are somehow being investigated), or who is conducting that investigation, or how any such investigation could possibly be prejudiced by the release of categories of records that would either be available to the individual defendants in discovery or relate to actions or communications not at issue in any pending prosecution. Similarly, the Department has provided no basis to withhold records of complaints of officer misconduct and internal affairs investigations, all of which are separate from any investigation of the arrested persons. There appears to be no basis to apply Exemption (f) to any of the requested records, much less all of them.

The Department is unlawfully withholding records of the UMass Amherst Action. The Department is currently in violation of the Commonwealth’s public records law. Please produce the requested records immediately, but in all events no later than June 14, 2024.

Page 3
University of Massachusetts Amherst
June 5, 2024

Sincerely,

/s/ Daniel L. McFadden

Daniel L. McFadden
Managing Attorney
(617) 482-3170 ext. 171
dmcfadden@aclum.org

Jessica Lewis
Staff Attorney
(617) 482-3170 ext. 334
jlewis@aclum.org