

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

ANDREW QUEMERE,

*Plaintiff,*

v.

NORTHWESTERN DISTRICT  
ATTORNEY'S OFFICE,

*Defendant.*

Civil Action No. 2384CV01341

JOINT APPENDIX OF EXHIBITS

Dated: May 27, 2025

Mason A. Kortz (BBO #691257)  
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# **EXHIBIT A**

*Quemere Public Records Request*

**From:** [Andrew Quemere](mailto:Andrew.Quemere@state.ma.us)  
**To:** [cynthia.von.flatern@state.ma.us](mailto:cynthia.von.flatern@state.ma.us)  
**Subject:** Public records request: Brady information 22-0017  
**Date:** Monday, January 10, 2022 5:33:59 PM

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To Whom It May Concern:

Pursuant to the Massachusetts Public Records Law (M.G.L. c.66, §10), I hereby request the following records:

- The office's Brady list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases
- All Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases
- All communications with criminal defendants and/or defense counsel advising them of the existence of Brady information or an officer's placement on a Brady list
- All communications with police departments or individual officers regarding the existence or disclosure of Brady information or an officer's placement, or potential placement, on a Brady list

I request that these records be provided in an electronic format that is searchable and machine-readable (M.G.L. c.66, §6A; 950 CMR 32.04). The records should be provided in a manner that preserves their original features — e.g., hyperlinks, color, images, etc. Records should not be printed out then scanned or subjected to other processes that would remove searchable, machine-readable text or other features. Furthermore, documents that originated separately should not be combined into a single file.

Please, to the extent feasible, provide all records as email attachments. I decline to use an online portal to request or receive records.

I also request that, if appropriate, fees be waived as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records as I believe this request is in the public interest.

If you have any questions about my request, please let me know as soon as possible. If you believe my request is overly broad, please provide a description of what responsive records are in your possession so that I can make an informed decision about whether and how to narrow it. The more detail you provide, the easier it will be for me to do so.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,  
Andrew Quemere

# **EXHIBIT B**

*NWDAO Initial Response*

**From:** [Von Flatern, Cynthia \(DAA\)](#)  
**To:** ["Aquemere0@gmail.com"](mailto:Aquemere0@gmail.com)  
**Subject:** FW: Public records request: Brady information 22-0017  
**Date:** Monday, January 24, 2022 9:38:37 AM  
**Attachments:** [BradytoQuemere1\\_1-24-22.pdf](#)

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**From:** Von Flatern, Cynthia (NWD)  
**Sent:** Monday, January 24, 2022 9:33 AM  
**To:** Andrew Quemere <[aquemere0@gmail.com](mailto:aquemere0@gmail.com)>  
**Subject:** RE: Public records request: Brady information 22-0017

Dear Mr. Quemere:

In response to your January 10, 2022 Public Records request, printed below, attached please find the first of two sets of documents containing all of the letters sent to satisfy the Northwestern District Attorney's obligations under *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Names of defendants and officers as well as docket numbers of individual cases have been redacted to protect persons' criminal offender record information (CORI), G.L. c. 4, sec. 7, cl. 26 (a); c. 6, sec. 167 et seq., and to protect persons' privacy interests. G.L. c. 4, sec. 7, cl. 26(c).

Each officer has a template letter with a water mark saying "Attorney Name." Individual letters that have been sent out for a criminal case indicate the name of the attorney representing an individual defendant. If no letters have been sent out for a particular officers, his or her file contains only the template letter.

Sincerely yours,

/s/ Cynthia Von Flatern

**Cynthia Von Flatern | Assistant District Attorney | Records Access Officer  
Northwestern District Attorney's Office**

[Cynthia.Von.Flatern@State.MA.US](mailto:Cynthia.Von.Flatern@State.MA.US) | [NorthwesternDA.org](http://NorthwesternDA.org)

One Gleason Plaza | Northampton, MA 01060

**Office** (413) 586-9225

**Please view our [Annual Report](#) and connect with the NWDAO on [Facebook](#)**

**From:** Andrew Quemere <[aquemere0@gmail.com](mailto:aquemere0@gmail.com)>  
**Sent:** Monday, January 10, 2022 5:34 PM  
**To:** Von Flatern, Cynthia (NWD) <[Cynthia.Von.Flatern@MassMail.State.MA.US](mailto:Cynthia.Von.Flatern@MassMail.State.MA.US)>  
**Subject:** Public records request: Brady information 22-0017

**CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.**

To Whom It May Concern:

Pursuant to the Massachusetts Public Records Law (M.G.L. c.66, §10), I hereby request the following records:

- The office's Brady list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases
- All Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases
- All communications with criminal defendants and/or defense counsel advising them of the

existence of Brady information or an officer's placement on a Brady list

- All communications with police departments or individual officers regarding the existence or disclosure of Brady information or an officer's placement, or potential placement, on a Brady list

I request that these records be provided in an electronic format that is searchable and machine-readable (M.G.L. c.66, §6A; 950 CMR 32.04). The records should be provided in a manner that preserves their original features — e.g., hyperlinks, color, images, etc. Records should not be printed out then scanned or subjected to other processes that would remove searchable, machine-readable text or other features. Furthermore, documents that originated separately should not be combined into a single file.

Please, to the extent feasible, provide all records as email attachments. I decline to use an online portal to request or receive records.

I also request that, if appropriate, fees be waived as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records as I believe this request is in the public interest.

If you have any questions about my request, please let me know as soon as possible. If you believe my request is overly broad, please provide a description of what responsive records are in your possession so that I can make an informed decision about whether and how to narrow it. The more detail you provide, the easier it will be for me to do so.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,  
Andrew Quemere

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This e-mail message is generated from the Office of the Northwestern District Attorney and contains information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this email information is prohibited. If you have received this email in error, please notify the sender by return email and delete it from your computer system.

# **EXHIBIT C**

*Determination in SPR22/0176*

February 3, 2022  
**SPR22/0176**

Cynthia M. Von Flatern, Esq.  
Assistant District Attorney  
Records Access Officer  
Northwestern District Attorney's office  
One Gleason Plaza  
Northampton, MA 01060

Dear Attorney Von Flatern:

I have received the petition of Andrew Quemere appealing the response of the Northwestern District Attorney's Office (Office/NWDAO) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 10, 2022, Mr. Quemere requested the following:

- [1.] The office's Brady list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases
- [2.] All Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases
- [3.] All communications with criminal defendants and/or defense counsel advising them of the existence of Brady information or an officer's placement on a Brady list
- [4.] All communications with police departments or individual officers regarding the existence or disclosure of Brady information or an officer's placement, or potential placement, on a Brady list.

The Office responded on January 24, 2022, providing numerous records in redacted form. Unsatisfied with the Office's response, Mr. Quemere appealed, and this case 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 agency or municipality 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); 950 C.M.R. 32.06(3); see also Dist. Att’y for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### ***Current Appeal***

In his appeal petition, Mr. Quemere contends that:

It is clear from reviewing the records that the names of many of the police officers that were redacted are not subject to the CORI statute. Many of these names are used in reference to departmental policy violations, not criminal charges; such policy violations are not covered by the CORI statute.

He also argues that “the office has not explained with specificity how the privacy exemption applies to the requested records.”

In an email to this office and the District Attorney’s Office subsequent to the opening of this appeal, Mr. Quemere further contends that:

The DAO withheld the names of police officers charged with crimes under the CORI law. The DAO has not provided enough information to demonstrate that the CORI law applies to these records. The records are likely public per the Boston Globe Media Partners, LLC v. Department of Criminal Justice Information Services decision.

## *The Office's Response*

In its January 24, 2022 response, the Office provides copies of “all of the letters sent to satisfy the Northwestern District Attorney’s obligations under *Brady v. Maryland*, 373 U.S. 83, 87 (1963)” and cites Exemption (a), CORI, and Exemption (c) of the Public Records Law for redacting the responsive records.

### *Exemption (a)*

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See *Attorney Gen. v. Collector of Lynn*, 377 Mass. 151, 54 (1979); *Ottaway Newspapers, Inc. v. Appeals Court*, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

### *CORI*

The current definition of criminal offender record information (CORI) is as follows:

“Criminal offender record information,” records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such

information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

G. L. c. 6, § 167.

Additionally, G. L. c. 6, § 172(m) provides in pertinent part:

Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

G. L. c. 6, § 172(m).

In its January 24, 2022 response, the Office states that “names of defendants and officers as well as docket numbers of individual cases have been redacted to protect persons’ criminal offender record information (CORI).” In a letter to Mr. Quemere and this office on January 31, 2022, the Office clarifies that “only one officer, an officer in the town of Erving, had a criminal case dismissed prior to arraignment. For that officer, the statutory exemption for CORI would not apply.” The Office argues that its Exemption (c) claim would still apply for that record.

Based on the Office’s response, it is not clear how the docket numbers of either the criminal defendants or the police officers fall within the definition of CORI. In Globe Newspaper Co. v. Dist. Att’y for the Middle Dist., 439 Mass. 374 (2003) (Middle Dist.), the Supreme Judicial Court concluded that “[d]ocket numbers of criminal cases prosecuted in public judicial proceedings, correlated with information that is also available from court or other public records, but not correlated with defendant-specific information, are public records under G.L. c. 4, § 7, Twenty-sixth, subject to mandatory disclosure under G.L. c. 66, § 10, and their disclosure is not prohibited by the CORI statute.” See Middle Dist., 439 Mass. at 385. Consequently, it is unclear

how the narrow scope of this request would allow docket numbers to be withheld under Exemption (a) and CORI under Middle Dist. The Office must clarify these matters.

With regard to the names and docket numbers of the police officers, it is not clear how the responsive letters constitute “information recorded in criminal proceedings,” where the letters were created after the criminal proceedings in which the police officers were involved. See G. L. c. 6, § 167. The Office must clarify this.

### *Exemption (c)*

Exemption (c) permits the withholding of:

personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.

G. L. c. 4, § 7(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Att’y Gen., 391 Mass. 1, 9 (1984); Att’y Gen. v. Assistant Comm’r of Real Prop. Dep’t, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

Massachusetts courts have found that “core categories of personnel information that are ‘useful in making employment decisions regarding an employee’” may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, “employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee,” may be withheld pursuant to Exemption (c). Wakefield Teachers Ass’n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under Exemption (c). See Globe Newspaper Co. v. Exec. Office of Admin. and Finance, Suffolk Sup. No. 11-01184-A (June 14, 2013).

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 292 (2017).

The types of personal information which this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 292 n.13; see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988)

(holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).

This exemption requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. Id. at 292.

In its January 24<sup>th</sup> response, under Exemption (c), the Office states that “names of defendants and officers as well as docket numbers of individual cases have been redacted . . . to protect persons’ privacy interests.” In its January 31<sup>st</sup> letter, the Office elaborates that “the police officers in question have information on file with their individual police departments that concern ‘officer misconduct’ or ‘officer dishonesty.’” The Office goes on to explain that it “must disclose to defense counsel in active criminal cases in which a police officer is a witness the police officer’s identity and a brief statement summarizing misconduct or dishonesty.” Further, the Office argues that “with respect to other types of documents within a police officer’s personnel file including those memorialized in the Brady letters at issue here, many will not be the result of a public investigation at all but will amount only to documentation by a supervisor of misconduct known to the supervisor.”

Based on the Office’s response, where the responsive records concern misconduct by police officers, I find the Office has not shown how the redacted records are not “records related to a law enforcement misconduct investigation.” See G. L. c. 4, § 7(26)(c). Consequently, the Office has not met its burden to redact the names of police officers pursuant to Exemption (c).

### ***Conclusion***

Accordingly, the Office is ordered to provide Mr. Quemere with a response to his request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray  
Supervisor of Records

cc: Andrew Quemere

# **EXHIBIT D**

*NWDAO Response to SPR22/0176*

District Attorney David E. Sullivan  
Northwestern District  
One Gleason Plaza  
Northampton, MA 01060  
(413)586-9225

February 16, 2021

Andrew Quemere

Via Zoom to [AQuemere0@gmail.com](mailto:AQuemere0@gmail.com)

**Re: SPR22/0176**

Dear Mr. Quemere:

After the Supervisor of Records' review of the Northwestern District Attorney's Office's (NWDAO's) provision of 191 pages of documents responsive to your Public Records request for

all Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases.

See Brady v. Maryland, 373 U.S. 83 (1963), NWDAO provided all of the Brady letters in NWDAO's custody. Because each letter related to a criminal case issued for each police officer with a Brady issue, the docket number and the name of the criminal defendant were redacted.<sup>1</sup> Similarly, the name and docket number for each police officer who was the subject of a Brady letter were redacted.

To clarify further the reason for redaction: docket numbers for each individual defendant constitute criminal offender record information or CORI defined as "records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not

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<sup>1</sup> For each officer who has a Brady letter on file, there is a template letter that does not relate to any specific criminal case. These letters have been provided with only the officer's name and docket number, if any, redacted.

dismissed before arraignment.” G.L. c. 6, , § 167. The Brady letters were sent to individual defense counsel in discovery. They are not part of the court file for each defendant and not part of any court records. Defense counsel who receive notification that a Brady letter exists for a specific officer may investigate that fact further, including summoning records of investigations under Mass. R Crim. P. 17. Without some steps, the information will never come to light at court and there would be no reason for anyone to know about the person’s criminal case. The information is information that is “*not* in the court’s records or any other public record.” Globe Newspaper Co. v. D.A. for the Middle Dist. 439 Mass. 374, 385 (2003) (emphasis in original). The docket numbers “would not be a public record, as the resulting list of docket numbers would inform the recipient that each case on that list has a particular attribute that could not have been ascertained from public records.” Id. Therefore, just as release of the criminal defendant’s name would violate CORI, release of his or her docket number would as well.

Similarly, with respect to police officers who have had a criminal case that has led to release of a Brady letter, that fact is not part of a publicly available criminal record. A person cannot make a search of a court list and determine which criminal cases relate to police officers. Although docket numbers that relate to a specific type of case, for example, assault and battery or trafficking cases, should be disclosed under the public records law, a defendant’s employment is not categorized in a court record. The names the police officers who are the subject of the Brady letter and the docket number for their court case, if any, should remain redacted.

With respect to the second ground supporting redaction, NWDAO maintains that the names of officers who are the subjects of a Brady letter are protected under the personnel/privacy exemption to the Public Records Law. G.L. c. 4, §7, cl. 26 (c). NWDAO is unwilling to release any letter that could invade the privacy of an individual when this Office is not the employer of the individual and not privy to details of any misconduct investigation. NWDAO joins the Plymouth County District Attorney in requesting that the newly established Peace Officer Standards and Training (POST) Commission within the Commonwealth further define what records related to police officer misconduct investigations constitute public records.<sup>2</sup> Waiting and abiding by a determination from POST will best safeguard officers from unwarranted invasion of their privacy while still supplying members of the public with information about what kinds of issues fall under Brady and what disclosure entails.

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<sup>2</sup> According to its website, the POST Commission is charged with creating a mandatory certification process for police officers, as well as processes for decertification, suspension of certification, or reprimand in the event of certain misconduct. In its work, the Commission will be reviewing disciplinary records of all Massachusetts police officers.

**Conclusion**

For the reasons particularly described above, NWDAO cannot and will not provide copies of Brady letters in unredacted form.

Sincerely yours,

/s/ Cynthia M. Von Flatern  
Cynthia M. Von Flatern  
Assistant District Attorney  
Records Access Officer

cc: Attorney Jeffrey Gottfredsen [jeffrey.gottfredsen@sec.state.ma.us](mailto:jeffrey.gottfredsen@sec.state.ma.us); [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)

# **EXHIBIT E**

*Determination in SPR22/0392*

March 1, 2022  
**SPR22/0392**

Cynthia M. Von Flatern, Esq.  
Assistant District Attorney  
Records Access Officer  
Northwestern District Attorney's office  
One Gleason Plaza  
Northampton, MA 01060

Dear Attorney Von Flatern:

I have received the petition of Andrew Quemere appealing the response of the Northwestern District Attorney's Office (Office/NWDAO) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 10, 2022, Mr. Quemere requested the following:

- [1.] The office's Brady list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases
- [2.] All Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases
- [3.] All communications with criminal defendants and/or defense counsel advising them of the existence of Brady information or an officer's placement on a Brady list
- [4.] All communications with police departments or individual officers regarding the existence or disclosure of Brady information or an officer's placement, or potential placement, on a Brady list.

***Previous Appeal***

This request was the subject of a previous appeal. See SPR21/0176 Supervisor of Records Determination (February 3, 2022). In my February 3<sup>rd</sup> determination, I ordered the Office to clarify its claims for redacting the responsive records. Subsequently, the Office responded on February 16, 2022. Unsatisfied with the Office's response, Mr. Quemere appealed, and this case 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 agency or municipality 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); 950 C.M.R. 32.06(3); see also Dist. Att’y for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### ***The Office’s February 16<sup>th</sup> Response***

In its February 16, 2022 response, the Office reiterates its claims for redacting the responsive records pursuant to Exemption (a), the CORI statute, and Exemption (c). See G. L. c. 4 § 7(26)(a), (c); G. L. c. 6, § 167.

#### *Exemption (a)*

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See Att’y Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that

such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

### *CORI*

The current definition of criminal offender record information (CORI) is as follows:

“Criminal offender record information,” records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

G. L. c. 6, § 167.

Additionally, G. L. c. 6, § 172(m) provides in pertinent part:

Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

G. L. c. 6, § 172(m).

Under Exemption (a) and CORI, the Office argues that “docket numbers for each individual defendant constitute criminal offender record information or CORI” and further argues the following:

The Brady letters were sent to individual defense counsel in discovery. They are not part of the court file for each defendant and not part of any court records. Defense counsel who receive notification that a Brady letter exists for a specific officer may investigate that fact further, including summoning records of investigations under Mass. R Crim. P. 17. Without some steps, the information will never come to light at court and there would be no reason for anyone to know about the person’s criminal case. The information is information that is ‘not in the court’s records or any other public record.’

...

Similarly, with respect to police officers who have had a criminal case that has led to release of a Brady letter, that fact is not part of a publicly available criminal record. A person cannot make a search of a court list and determine which criminal cases relate to police officers. Although docket numbers that relate to a specific type of case, for example, assault and battery or trafficking cases, should be disclosed under the public records law, a defendant’s employment is not categorized in a court record. The names the police officers who are the subject of the Brady letter and the docket number for their court case, if any, should remain redacted.

With regard to the names and docket numbers of the non-police-officer criminal defendants, I find the Office has not demonstrated how this information does not constitute “chronologically maintained court records of public judicial proceedings” or “published records of public court or administrative proceedings.” With regard to the names and docket numbers of the police officers, where these letters were created as templates after the criminal proceedings in which the police officers were involved, the Office has not demonstrated how this information fits within the definition of CORI. Accordingly, the Office has not met its burden to redact the letters under Exemption (a) and the CORI statute.

#### *Exemption (c)*

Exemption (c) applies to:

personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation

G. L. c. 4, § 7(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Att'y Gen., 391 Mass. 1, 9 (1984); Att'y Gen. v. Assistant Comm'r of Real Property Dep't., 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

When analyzing a privacy claim, there is a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law abiding and efficient manner. Id. at 292.

Under Exemption (c), the Office argues the following:

With respect to the second ground supporting redaction, NWDAO maintains that the names of officers who are the subjects of a Brady letter are protected under the personnel/privacy exemption to the Public Records Law. G.L. c. 4, §7, cl. 26 (c). NWDAO is unwilling to release any letter that could invade the privacy of an individual when this Office is not the employer of the individual and not privy to details of any misconduct investigation. NWDAO joins the Plymouth County District Attorney in requesting that the newly established Peace Officer Standards and Training (POST) Commission within the Commonwealth further define what records related to police officer misconduct investigations constitute public records.

In spite of the Office's February 16<sup>th</sup> response, as with the previous January 24<sup>th</sup> response, I find the Office has not shown how the redacted records are not "records related to a law enforcement misconduct investigation." See G. L. c. 4, § 7(26)(c). Consequently, the Office has not met its burden to redact the names of police officers pursuant to Exemption (c).

### ***Conclusion***

Accordingly, the Office is ordered to provide Mr. Quemere with a response to his request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,

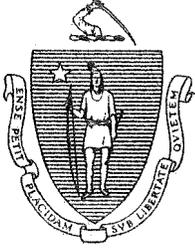
*Rebecca Murray*

Rebecca S. Murray  
Supervisor of Records

cc: Andrew Quemere

# **EXHIBIT F**

*NWDAO Response to SPR22/0392*



# The Commonwealth of Massachusetts

DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN  
DISTRICT ATTORNEY

ONE GLEASON PLAZA  
NORTHAMPTON, MASSACHUSETTS 01060  
TEL (413) 586-9225 FAX (413) 584-3635  
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March 14, 2022

Attorney Jeff Gottfredsen  
Staff Attorney  
Office of the Secretary of the Commonwealth  
Public Records Division  
1 Ashburton Place, Rm. 1719  
Boston, MA 02108

Andrew Quemere

*Via email to [Jeffrey.gottfredsen@state.ma.us](mailto:Jeffrey.gottfredsen@state.ma.us); [Aquemere0@gmail.com](mailto:Aquemere0@gmail.com); [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)*

Re: SPR22/0392

Dear Attorney Gottfredsen and Mr. Quemere:

As primary records access officer for the Northwestern District Attorney's Office (NWDAO), I have received the Supervisor's March 1, 2022 determination holding that NWDAO has not met its burden to show why redaction of the criminal defendant's docket number in each "Brady" letter requested by Mr. Quemere was necessary in order to protect the individual defendant's criminal offender record information (CORI) and that names of the police officers who are the subject of Brady letters, as well as docket numbers for any cases that form the basis for a finding that requires information be provided to defendants with cases where the police officers has been a witness or involved in investigation of the case. See Brady v. Maryland, 373 U.S. 83, 87 (1963). The undersigned wishes to explain further why the information will not be turned over.

1.

With respect to docket numbers of criminal cases, once the requestor has the criminal docket number, he would know the identities of each of the criminal defendants who happen to have or have had a case in which a police officer with a Brady letter on file with NWDAO was a witness in the criminal case. The requestor would have access to the identity of the individual criminal defendant solely by virtue of disclosure of information that NWDAO holds in confidence and has disclosed to defense counsel in accordance with its obligations under Brady. NWDAO continues to believe that this amounts to a release of CORI under Globe Newspaper v. District Attorney for the Middle Dist., 439 Mass. 374, 384 (1995) and that the information is

therefore exempt from the definition of public records under G.L. c. 4, § 7, cl. 26 (a). See *id.* at 385. (“[A] request for docket numbers correlated with information that is *not* in the court's records or any other public record effectively calls for the release of information that would not be a public record, as the resulting list of docket numbers would inform the recipient that each case on that list had a particular attribute that could not have been ascertained from public records. A district attorney's office has considerable information about its cases and defendants, not all of which is ultimately revealed on the court's records ....”) (emphasis in case). Docket numbers of the cases for which NWDAO has released a Brady letter constitute CORI under Globe Newspaper, *supra*.

2.

In addition, NWDAO must continue to withhold disclosure of the names of police officers who are the subjects of Brady letters in NWDAO's custody. It is well-settled that disciplinary documentation constitutes a personnel record under G.L. c. 4, § 7, cl. 26 (c). Wakefield Teachers Ass'n v. School Comm., 431 Mass. 792, 798 (2000). There is a policy reason for this: The encouragement of people, including the employee, to speak freely with those investigating the misconduct. *Id.* at 802.

The language of Exception (c) was changed in 2020 so that it now reads,

(c) personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.

G.L. c. 4, § 7, cl. 26 (c).

The Legislature has not defined police officer misconduct investigation. NWDAO, as a third-party holder of limited information regarding misconduct that has been reported to us by police, does not have sufficient information necessary to know what kind of misconduct investigation precipitated a report. The reputation and livelihood of a police officer, as for any employee, is critically important to that employee. Release of information that should remain private will jeopardize an employee's reputation, privacy, career, and life. In exercising the balancing required under Exception (c) of a person's privacy interest and the public's right to know, NWDAO believes that the privacy interest outweighs the public's right to know. This is particularly true in this case where 191 letters have been provided and, more importantly, the substance of the misconduct is contained within the letter.

NWDAO has another concern with the change in the language in exemption (c). The language appears after the phrase “any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.” When Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432 (1983) was decided, exception (c) read “personnel and medical files or information; also any other materials or data relating to a specifically named individual the disclosure of which may constitute an unwarranted invasion of personal privacy.” The court was called upon to decide whether the phrase

“disclosure of which may constitute an unwarranted invasion of personal privacy” modified the first phrase, “personnel and medical files or information,” or only applied to the second phrase, “also any other materials or data relating to a specifically named individual.” The Court explained, “if the modifying clause does not apply to the first phrase, we must defer to the Legislature’s decision that medical files or information are absolutely exempt from disclosure.” It went on to hold that the phrase applied only to the second part of the clause. It noted the rule of statutory construction that a “modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation.” *Id.* at *Moulton v. Brookline Rent Control Bd.*, 385 Mass. 228, 230-231 (1982), quoting *Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 133 (1949).

After the 2020 amendment, the statute’s specific language is that “this subclause shall not apply to records related to a law enforcement misconduct investigation.” G.L. c. 4, § 7, cl. 26 (c). It may be that this phrase does not refer to personnel or medical files which have long been held exempt from the definition of public records but only applies to the second “subclause” within exemption (c). That is: “any other materials or data relating to a specifically named individual.” The uncertainty in the statute presents an additional reason for redaction of police officers’ names.

Finally, NWDAO has not disclosed docket numbers for cases where a police officer had an identified criminal case. As with the cases of criminal defendants who have received Brady letters, correlation of the docket number with specific officers is information known only by NWDAO. It is not a court record. Contrast Globe Newspaper Co. v. District Attorney for the Middle Dist., *supra* at –(docket numbers for public corruption crimes can be determined by search of court records).

### Conclusion

NWDAO has provided to the requestor 191 letters which have been provided to defense attorneys or, in the case of template letters, are available to provide to defense attorneys. NWDAO maintains these letters to comply with its responsibilities pursuant to Brady v. Maryland, *supra*. Release of the letters without names of the police officers and docket numbers of the criminal cases and, if applicable, docket numbers of police officers’ criminal cases, allows the public to understand police misconduct that has occurred in any police departments within the Northwestern district. Redaction safeguards the CORI record of criminal defendants and maintains the privacy interests of the police officers, an interest long recognized in our Massachusetts caselaw.

Sincerely yours,



Cynthia Von Flatern  
Assistant District Attorney  
Records Access Officer

# **EXHIBIT G**

*Determination in SPR22/0696*

April 6, 2022  
**SPR22/0696**

Cynthia M. Von Flatern, Esq.  
Assistant District Attorney  
Records Access Officer  
Northwestern District Attorney's office  
One Gleason Plaza  
Northampton, MA 01060

Dear Attorney Von Flatern:

I have received the petition of Andrew Quemere appealing the response of the Northwestern District Attorney's Office (Office/NWDAO) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 10, 2022, Mr. Quemere requested the following:

- [1.] The office's Brady list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases
- [2.] All Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases
- [3.] All communications with criminal defendants and/or defense counsel advising them of the existence of Brady information or an officer's placement on a Brady list
- [4.] All communications with police departments or individual officers regarding the existence or disclosure of Brady information or an officer's placement, or potential placement, on a Brady list.

### ***Previous Appeals***

This request was the subject of previous appeals. See SPR21/0176 Supervisor of Records Determination (February 3, 2022); SPR22/0392 Supervisor of Records Determination (March 1, 2022). In my March 1<sup>st</sup> determination, I ordered the Office to clarify its Exemption (a) and (c) claims for redacting the responsive records. Subsequently, the Office responded on March 14, 2022. Unsatisfied with the Office's response, Mr. Quemere appealed, and this case 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 agency or municipality 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); 950 C.M.R. 32.06(3); see also Dist. Att’y for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### ***The Office’s March 14<sup>th</sup> Response***

In its March 14, 2022 response, the Office states that it is withholding docket numbers under Exemption (a), and withholding the names of police officers who are the subjects of Brady letters under Exemption (c) of the Public Records Law.

#### *Exemption (a)*

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See Att’y Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that

such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

### *CORI*

The current definition of criminal offender record information (CORI) is as follows:

“Criminal offender record information,” records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

G. L. c. 6, § 167.

Additionally, G. L. c. 6, § 172(m) provides in pertinent part:

Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

G. L. c. 6, § 172(m).

Under Exemption (a) and CORI, the Office argues that “once the requestor has the criminal docket number, he would know the identities of each of the criminal defendants who happen to have or have had a case in which a police officer with a Brady letter on file with NWDAO was a witness in the criminal case.” The Office goes on to argue that “NWDAO continues to believe that this amounts to a release of CORI under Globe Newspaper v. District Attorney for the Middle Dist., 439 Mass. 374, 384 (1995) and that the information is therefore exempt from the definition of public records under G.L. c. 4, § 7, cl. 26 (a).”

The Office also argues the following:

As with the cases of criminal defendants who have received Brady letters, correlation of the docket number with specific officers is information known only by NWDAO. It is not a court record. Contrast Globe Newspaper Co. v. District Attorney for the Middle Dist. ... (docket numbers for public corruption crimes can be determined by search of court records).

Based on the Office’s March 14<sup>th</sup> response, as with the Office’s previous responses, I find the Office has not met its burden to demonstrate how the requested docket numbers may be redacted pursuant to Exemption (a) and CORI. See G. L. c. 6, § 172(m); see also Globe Newspaper Co. v. Dist. Att’y for the Middle Dist., 439 Mass. 374, 385 (2003) (“docket numbers are assigned chronologically and maintained by courts as part of their court records, criminal proceedings against adult defendants are public proceedings, and docket number information thus falls squarely within the second listed exception to the CORI statute”); see also Att’y Gen. v. Dist. Att’y for the Plymouth Dist., 484 Mass. 260 (2020).

#### *Exemption (c)*

Exemption (c) applies to:

personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation

G. L. c. 4, § 7(26)(c).

Analysis under Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Att’y Gen., 391 Mass. 1, 9 (1984); Att’y Gen. v. Assistant Comm’r of Real Property Dep’t., 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This exemption does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

When analyzing a privacy claim, there is a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law abiding and efficient manner. Id. at 292.

Under Exemption (c), the Office argues the following:

NWDAO must continue to withhold disclosure of the names of police officers who are the subjects of Brady letters in NWDAO's custody. It is well-settled that disciplinary documentation constitutes a personnel record under G.L. c. 4, § 7, cl. 26 (c). Wakefield Teachers Ass'n v. School Comm., 431 Mass. 792, 798 (2000). There is a policy reason for this: The encouragement of people, including the employee, to speak freely with those investigating the misconduct. Id. at 802.

The Office goes on to argue that “the Legislature has not defined police officer misconduct investigation” and provides the following information concerning the PETA balancing test:

The reputation and livelihood of a police officer, as for any employee, is critically important to that employee. Release of information that should remain private will jeopardize an employee's reputation, privacy, career, and life. In exercising the balancing required under Exception (c) of a person's privacy interest and the public's right to know, NWDAO believes that the privacy interest outweighs the public's right to know. This is particularly true in this case where 191 letters have been provided and, more importantly, the substance of the misconduct is contained within the letter.

Finally, the Office argues that “after the 2020 amendment, the statute's specific language is that ‘this subclause shall not apply to records related to a law enforcement misconduct investigation.’ G.L. c. 4, § 7, cl. 26 (c). It may be that this phrase does not refer to personnel or medical files which have long been held exempt from the definition of public records but only applies to the second “subclause” within exemption (c).”

Please note that the updated language of Exemption (c) indicates that Exemption (c) “shall not apply to records related to a law enforcement misconduct investigation.” G. L. c. 4, § 7(26)(c). As with the Office's previous responses, I find the Office has not met its burden to redact the names of police officers subject to Brady letters pursuant to Exemption (c).

***Conclusion***

Accordingly, the Office is ordered to review the records, redact where necessary and provide the responsive records to Mr. Quemere, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,

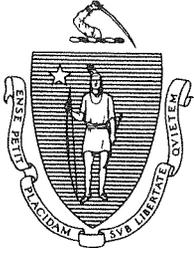
A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looping "M" and a long tail on the "y".

Rebecca S. Murray  
Supervisor of Records

cc: Andrew Quemere

# **EXHIBIT H**

*NWDAO Response to SPR22/0696*



The Commonwealth of Massachusetts

DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN  
DISTRICT ATTORNEY

ONE GLEASON PLAZA  
NORTHAMPTON, MASSACHUSETTS 01060  
TEL (413) 586-9225 FAX (413) 584-3635  
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June 3, 2022

Angela M. Puccini, Esq.  
Compliance Supervisor, Senior Attorney  
Office of the Secretary of the Commonwealth  
Public Records Division  
One Ashburton Place, Room 1719  
Boston, MA 02108

Re: Determination SPR22/0696

Dear Attorney Puccini:

Thank you for your inquiry regarding Determination SPR22/0696. Please be advised that, respectfully, NWDAO must decline to provide unredacted copies of the 191 letters previously provided to Mr. Quemere in response to his public records request. For the reasons previously stated to the Supervisor of Public Records, it is my belief that redaction to the letters was necessary to protect CORI information of the criminal defendants who had pending cases in which the letters were sent. Redaction of the police officers' names and their court cases, if any, was necessary to protect the privacy and personnel records of the police officers, G.L. c. 4, §7, cl. 26(c) as well as information considered private under CORI. G.L. c. 6, § 167 et. seq.; G.L. c. 4, § 7, cl. 26(a).

Sincerely yours,

A handwritten signature in cursive script that reads "Cynthia Von Flatern".

Cynthia Von Flatern  
Assistant District Attorney  
Records Access Officer

# **EXHIBIT I**

*Quemere Demand Letter*



MASON A. KORTZ  
CLINICAL INSTRUCTOR, CYBERLAW CLINIC  
LECTURER ON LAW, HARVARD LAW SCHOOL

DIRECT DIAL: 858-922-1990  
EMAIL: MKORTZ@LAW.HARVARD.EDU

ADMITTED TO PRACTICE: MA, NY

**BY EMAIL ([cynthia.von.flatern@state.ma.us](mailto:cynthia.von.flatern@state.ma.us))**

Mason A. Kortz  
Reginald F. Lewis Law Center  
1557 Massachusetts Ave, 4th Fl  
Cambridge, MA 02138

May 26, 2023

Cynthia Von Flatern  
Records Access Officer  
One Gleason Plaza  
Northampton, MA 01060

**Re: Andrew Quemere Public Records Request**

Dear Ms. Von Flatern,

I write on behalf of my client, Andrew Quemere, to request the production of unredacted versions of the public records Mr. Quemere requested on January 10, 2022. If your office fails to produce the unredacted records, or to set to a mutually acceptable timeframe for production, by June 9, 2023, Mr. Quemere will be forced to file suit so that production can be conducted under the supervision of the court.

## **I. Background**

On January 10, 2022, Mr. Quemere submitted a request to the Northwestern District Attorney's Office ("NWDAO"). Pursuant to the Massachusetts Public Records Law ("MPRL"),<sup>1</sup> Mr. Quemere requested a fee waiver and the following records:

1. The office's Brady list, which refers to a list of law enforcement officers who have credibility issues or other concerns that might need to be disclosed to defendants in criminal cases;

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<sup>1</sup> M.G.L. c.66, § 10.

2. All Brady information, meaning all records concerning individual law enforcement officers that might need to be, or have been, disclosed to defendants in criminal cases;
3. All communications with criminal defendants and/or defense counsel advising them of the existence of Brady information or an officer's placement on a Brady list; and
4. All communications with police departments or individual officers regarding the existence or disclosure of Brady information or an officer's placement, or potential placement, on a Brady list.

On January 24, 2022, the NWDAO provided responsive records but with docket numbers and officers' names redacted. The NWDAO argued that the docket numbers were exempt under MPRL Exemption (a)<sup>2</sup> and the of the Criminal Offender Record Information ("CORI") Law. It further argued that the officers' names were exempt under MPRL exemption (c).<sup>3</sup>

On January 26, 2022, Mr. Quemere appealed these redactions. On February 3, 2022, the Supervisor of Records for the Commonwealth determined that neither of the exemptions claimed by NWDAO applied to the records at issue.<sup>4</sup> She found that Exemption (a) was not applicable because, under Massachusetts law, docket numbers are public records subject to disclosure as they are not correlated with defendant-specific information.<sup>5</sup> She further found that exemption (c) was not applicable because the NWDAO failed to show that the requested records were not "records related to a law enforcement misconduct investigation," which do not fall under Exemption (c).<sup>6</sup> She ordered the Office to provide Mr. Quemere with a new response within ten business days.<sup>7</sup>

Despite the Supervisor's finding, the NWDAO declined to provide the unredacted records, leading Mr. Quemere to appeal again. On March 11, 2022, the Supervisor of Records issued another determination finding that neither exemption was applicable.<sup>8</sup> Finally, on April 6, 2022, the Supervisor of Records ordered the NWDAO to "review the records, redact where necessary and provide the responsive records to Mr. Quemere, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days."<sup>9</sup> The Northwestern District Attorney's Office ignored this deadline

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<sup>2</sup> G. L. c. 4, § 7(26)(a).

<sup>3</sup> G. L. c. 4, § 7(26)(c).

<sup>4</sup> See Attachment 1 (First Appeal Determination).

<sup>5</sup> *Id.* at 3-5.

<sup>6</sup> *Id.* at 5-6.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> See Attachment 2 (Second Appeal Determination).

<sup>9</sup> See Attachment 3 (Third Appeal Determination).

until June 3, 2022, at which point the NWDAO informed Mr. Quemere of its intention not to comply with the Supervisor of Records' order.

## II. Demand

Democracy requires an informed public. Through his written work, Mr. Quemere brings information to the public that will enable citizens to better understand consequential outcomes from law enforcement. Delaying the disclosure of this information for over a year denies Mr. Quemere and his audience timely access to information that should be available for their consideration. Accordingly, Mr. Quemere hereby requests that the NWDAO provide unredacted versions—specifically, with unredacted docket numbers and officers' names—of the documents it has already provided. Mr. Quemere asks that your office respond with the unredacted documents, or a plan to produce such documents in a timely manner, by June 9, 2023.

Mr. Quemere's request is supported by the plain text of Massachusetts Public Records Law, as repeatedly interpreted by the Supervisor of Records. He would prefer to resolve this matter out of court and spare the taxpayers of Hampshire and Franklin counties the expense of defending an unnecessary lawsuit. However, in the event that the NWDAO fails to produce the unredacted documents, or to propose a reasonable timeframe for production, Mr. Quemere is prepared to file suit to compel your office to respond to their request. Any such suit would be filed in the Superior Court for Suffolk County.

## III. Conclusion

Thank you for your attention in this matter. You may deliver the unredacted records to the mailing address above or via email at [mkortz@law.harvard.edu](mailto:mkortz@law.harvard.edu). Please feel free to contact me with any questions.

Nothing herein shall be deemed an admission or waiver of any rights, remedies, defenses, or positions, all of which are expressly reserved.

Sincerely,

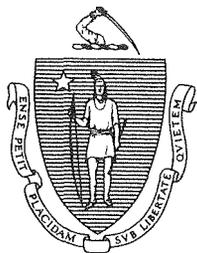


Mason A. Kortz  
Clinical Instructor, Cyberlaw Clinic  
Lecturer On Law, Harvard Law School

Reginald F. Lewis Law Center  
1557 Massachusetts Ave, 4th Fl  
Cambridge, MA 02138

# **EXHIBIT J**

*NWDAO Response to Demand Letter*



# The Commonwealth of Massachusetts

## DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN  
DISTRICT ATTORNEY

ONE GLEASON PLAZA  
NORTHAMPTON, MASSACHUSETTS 01060  
TEL (413) 586-9225 FAX (413) 584-3635  
www.NorthwesternDA.org

June 9, 2023

Attorney Mason A. Kortz  
Cyberlaw Clinic  
Reginald F. Lewis Law Center  
1557 Massachusetts Ave, 4<sup>th</sup> Fl.  
Cambridge, MA 02138

*Sent Via Email to [mkortz@law.harvard.edu](mailto:mkortz@law.harvard.edu) and [aquemere0@gmail.com](mailto:aquemere0@gmail.com)*

Dear Attorney Kortz:

Thank you for your letter received on May 26, 2023. Since 2018, Northwestern District Attorney David E. Sullivan has designated a committee to review its obligations and stay in conformance with the tenets of Brady v. Maryland, 373 U.S. 83 (1963). Pursuant to discovery obligations under Mass. R. Crim. P. 14, dissemination of Brady information to defense counsel in a criminal case secures a criminal defendant's right to potential exculpatory information, information potentially favorable to him, and information that can be used for impeachment. Commonwealth v. Mcfarlane, 102 Mass. App. Ct. 264, 275 (2023); Matter of a Grand Jury Investigation, 485 Mass. 641, 649 (2020).

NWDAO has also disclosed Brady information in response to public records requests by providing the discovery letters detailing what specific conduct any and all police officers in a given department have committed. The letter detail misconduct involving dishonesty, evidence tending to show a bias or motive to lie, and, for expert witnesses, a pattern of confirmed performance errors that could compromise the expert's conclusion. Provision of this information allows the public to see the nature of any police officer misconduct throughout communities in the Northwestern District. What NWDAO has not provided to Mr. Quemere and other requestors at this juncture are the names of specific officers in a given department and docket numbers of cases that they might have. The reasons for that information being withheld has been laid out for Mr. Quemere; it is the preservation of individual privacy rights, including confidentiality of personnel records, and the protection of an individual's criminal offender record information or CORI. G. L. c. 6, § 167 et seq.

For Mr. Quemere's request, the Public Records Division did find on March 1, 2022 that NWDAO did not meet its burden to show why the information needed to be redacted. On March 14, 2022, we again wrote to the Public Records Division and Mr. Quemere and explained why our letters would need to remain redacted. Another order from the Supervisor followed on April 1, 2022. On June 3, 2022 we wrote and advised Attorney Angela Puccini, Compliance Supervisor and Senior Attorney for the Public Records Division, that, respectfully, we would continue to decline to provide unredacted letters. The Public Records Division did not request enforcement from the Attorney General's Office. G. L. c. 66, § 10 A(b).

In a case similar to this one, the Boston University Department of Computational Journalism requested NWDAO's Brady letters. On January 23, 2023, NWDAO provided them, redacted of police officers' names and docket numbers, if any. The Public Records Division found that NWDAO failed to sustain its burden to show why redaction was necessary. NWDAO followed up with two additional letters, on March 8, and April 3, 2023, explaining why we were constrained to provide redacted copies of the letters to the public in response to a Public Records request. See SPR23/0280. On April 25, 2023, Professor Mulvihill from the Department of Computational Journalism requested enforcement from the Attorney General's Office.

The parties in SPR23/0280 have not heard back from the Public Records Division regarding this request nor have we heard from the Attorney General's Office. NWDAO requests that the parties pursue a resolution of this matter with the Attorney General's Office and the Public Records Division to see if a mutual understanding regarding the public's right to know and concern for individual privacy rights can be made. To this end, I have provided this letter to Professor Mulvihill, to Attorney Gottfredsen in the Public Records Division, and to the Attorney General's Office. We suggest that, at this juncture, Mr. Quemere pursue a joint resolution with NWDAO and the BU Department of Computational Journalism along with the Public Records Division and the Attorney General's Office. We look forward to your response.

Sincerely yours,



Cynthia M. Von Flatern  
Assistant District Attorney  
Records Access Officer

cc:

Attorney Jeffrey Gottfredsen, Public Records Division [Jeffrey.gottfredsen@sec.state.ma.us](mailto:Jeffrey.gottfredsen@sec.state.ma.us);  
SEC-DL-Preweb@sec.state.ma.us  
Professor Maggie Mulvihill [mmulvih@bu.edu](mailto:mmulvih@bu.edu)  
Attorney General's Office

# **EXHIBIT K**

*Transcript of Radio Interview of David Sullivan*

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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BN: Welcome to the show. I'm Bill Newman

BI: And I'm still Buzz Isenberg.

BN: And we have with us today the District Attorney for the Northwestern District. That is the district that encompasses Franklin and Hampshire County, David Sullivan. Dave Sullivan, thank you so much for being with us. I would like to begin by asking you about the lawsuit that was filed against your office by a reporter seeking public records. It got a lot of publicity, a lot of media coverage when first filed, but it's really been all quiet on the Western front since then. And I'm wondering if you could explain to our listeners what the lawsuit is about and what the district attorney's office position is. [0:00:41]

DS: Sure, the reporter was looking for records of police officers and in particular, the CORI or criminal records of any police officers, whether it was minor, major, going back even before they were police officers. So, we disagreed with that. We thought that it should be done through the judicial process. In other words, if somebody wants that reporter, then go before a judge and they'll allow those CORI records if they feel it's material. But we just disagreed with that, whether it's a police officer or a layperson. It could be an embarrassing record going back to when they were a teenager or something that's not even relevant to their police work. So, we just opposed that. That was a minor exception. We always give as much as we can, you know, with certain exceptions to reporters or anybody that asks for these public records. So, where the lawsuit is now, it's filed in the Suffolk Court. We'll be filing an answer probably within the next couple of weeks, but it'll be on a slow trajectory for now. I think it's on a two-year track. So, we'll try to resolve it beforehand, and we tried to negotiate with the reporter, give them everything we can, but with that exception. [0:02:10]

BN: The lawsuit is brought by the Shoestring, a reporter for the Shoestring, and it says that these are public records. You, as the District Attorney for the Northwestern District, take the position that they aren't public records. The case went through the supervisor of public records who, as I understand it, agreed with the DA's position, your position, and then the case goes to Suffolk Superior Court. The issue is whether or not these records, these records that are arguably covered by and protected from public disclosure by the criminal offender records information law in Massachusetts. That's the crux of this? Are those records private because they're covered by CORI or are they public because they involve public officials, that is specifically police officers? [0:03:08]

DS: No, we just oppose it because I think that a police officer has the same protection as any other lay officer. I will say that, you know, during the criminal discovery process, we produced these records for defense attorneys who have them and they can use them as much as the judge feels they're relevant. But that's a whole different set of circumstances because we have that obligation under Brady v. Maryland. But, you know, we try to release as much as we can, but we just kind of, we set the line that, hey, you know, it may not be relevant to anything. It's an old record, or it wouldn't be a new record because it would be in the newspaper probably. But, you know, we'll let

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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the courts decide what the breadth of that reporter's access to that record is, whether it's public or whether it's an exception to the rule. Because CORI has its own set of rules, as you well know, very strict as far as those records can be released. So, we just think that that particular statute overrides the public record exception. [0:04:23]

BN: Let me ask this, because it was one aspect of this lawsuit and the reporting that I didn't understand. What records does the district attorney's office have and why do you have them? [0:04:35]

DS: We don't have those records.

BN: You don't?

DS: That's the crux of it. It would be within the police department. And that's, of course, one of the things that we said is, well, ask the police department, you know? Because we told the reporter, yes, there is something in the record relating to that officer that is CORI-related, but we don't release the police officer's name. But we say, hey, here's this incident, this is what happened. But yeah, no, we don't have the record. [0:05:14]

BN: Is that a defense? You, the reporter, are asking the wrong entity for the records? [0:05:14]

DS: Yeah, that's one of the defenses, but of course, we're an agency of the government. You could say that, hey, we can get the records, but it's one of these, I think the records are with the local police department and they've got those records. So that may be another, but I think just the fact that they've asked for them. There's disciplinary records as well. So, you know whether those are, there is an exception in the new law, public records law, about disciplinary records. So, we're going to look at those and whether, if we can comply with those, that's fine. But we don't want to be holding information that can be released, but in this limited circumstance, I think that we have a good position to stand on. [0:06:08]

BN: The position that I read in the newspaper, District Attorney, is that the DA's office says, look, the law is whatever the law is, we'd like a, we, meaning you, would like a decision from a court that, in fact, answers the question: are these public records that you have to disclose?

DS: Exactly.

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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BN: And that seemed to me to be kind of a neutral position. Tell us what the law is. Are you vigorously opposing this or are you simply asking the court to tell, make a declaration on whether or not you have as district attorney an obligation to turn these records over to a reporter?  
[0:06:48]

BI: And while you're answering Bill's question, or should it be the legislature that is more clear about what should and shouldn't be available to the public? [0:06:53]

DS: Well, I think the public records law could be clearer as to whether these specific records are available. So yeah, we want the court, if it's got to go up to the Supreme Court, for them to make that decision whether the public records law overrides the CORI law, then we'll let the Supreme Court decide, or some, maybe lesser court, maybe the Appellate Court or even a Superior Court Justice, as long as it's a clear decision. [0:07:21]

BN: One last question on this, District Attorney, if I might. It seems to me that it matters that the records are being requested of police officers because police officers are public officials, and as public officials, the public has more right to information about them than it would to a person who doesn't hold a public office. And I'm wondering if you could give us your reflections on that aspect of the case. [0:07:45]

DS: Well, I think it's very important that we hold our public officials accountable. And I think what we're looking at is records that are very old, that are in the very distant past. And you know, should a person experience that embarrassment that this is raised later in their career? And again, that's why the CORI laws are there, and we just want to know hey under equal protection is the police officer protected the same as any other lay person? [0:08:20]

BN: District Attorney Dave Sullivan, we were talking, you and Buzz and I, we're talking before we went on the air about a topic that Buzz raised with you based on the recent Supreme Court decision regarding college admissions and more specifically the Supreme Court gutting affirmative action for college admissions and Buzz there was an aspect of that decision that you thought had implications locally and for agencies and governmental entities that are trying to hire and perhaps you could share with our listeners and repose that question to the District Attorney. Buzz? [0:09:05]

BI: Yes, District Attorney Sullivan. So, your office, I guess it's a two-part question. Number one, how important is it for your staff to be one that reflects diversity and inclusion and equity? And number two, do you in the hiring process consider race, ethnicity, sexual orientation in trying to promote a diversified staff? [0:09:20]

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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DS: Well, I think it's very important for any government agency, including the District Attorney's Office, to reflect our population and the diversity of opinions and ideas. And you don't want a monolithic office. You don't want an all-white office, although our two counties are very predominantly white. Let me give you an example. We have a number of Latino victims, so we need Latino victim witness advocates. We have a number of people that come into our community that may be of a different ethnic origin. So, we want to make sure that we have that staff that has an understanding of that culture and can respond appropriately. So, I think that our recruitment tries to be as diverse as possible. In other words, when we look for attorneys, we advertise in the Black Bar Association, or Latino Bar Association. We cast a wide net. We want every opportunity to hire people from those different cultures. So, it's difficult. I'll say that because number one is that there's a limited pool that comes out of West New England College and most want to practice civil law. They don't want to practice criminal law, whether it's defense or prosecution. So, you know, it's tantamount on every government agency to really cast that wide net. And certainly, we don't discriminate based upon sexual orientation or race or ethnicity at all. [0:11:02]

BN: District Attorney, I'd be interested to know, and if you can't answer this, I'm sure you'll just tell us, whether or not among district attorneys, and I know you're a member of the Massachusetts District Attorneys Association, whether there has been discussion about how this Supreme Court decision, which is specifically about college admissions, but nonetheless is clear that race preferences for persons of color in college admissions is not constitutional or is not legal, whether or not that has engendered discussion about how and the obstacles that might now be present for hiring persons of colors by District Attorneys? [0:11:46]

DS: Well, we haven't met as a body yet, but certainly I've had a few conversations with some colleagues, and that is a big concern is that, that factor that's very important may end up, who knows what the next Supreme Court ruling on employment will hold. I mean, as we all know, it's a very conservative court that's really gone very far to the right. So, you know, I'm concerned, but, you know, I think it's each DA's office that has to make its own outreach. And I think that when you do make that outreach, and it's a good one, then you're going to get more people of color to apply and hopefully get hired. [0:12:31]

BN: Well, it's one thing to say we're going to do outreach, and I don't think the Supreme Court actually is going to have a problem with saying, sure, look for applicants. I don't think that's going to be a problem, but the problem is going to arise when you're making a hiring decision. And that, it seems to me, is something the Supreme Court has specifically said with regard to college admissions, you cannot use race to put a thumb on the scale in favor of, or obviously as a negative for a person applying for a job. I think that's a matter of real concern for governmental agency who say, we want diversity in our workforce. It actually helps our jobs-- helps us do our job and is very important. And I have a final thought on that before we go on to another topic. [0:13:21]

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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DS: Yeah, I think that you try to recruit that diverse body of employees and certainly you pick the best qualified person. You know, on our hiring committees, we always have somebody from our diversity, equity, inclusion committee. We have a committee in the office that's about diversity, equity, inclusion. There's always somebody from that committee on the hiring committee. And that gives a different perspective than maybe somebody who's white and maybe doesn't have that mindset. So, I think it's very important to make sure we get that diversity from the very beginning. And certainly, I don't think that when you look at race, it's very important to understand that people actually have different backgrounds. And those backgrounds are very, very important when a prosecutor is making decisions to reflect a real holistic view of an individual. [0:14:21]

BN: We are speaking with the district attorney for the Northwestern District, Dave Sullivan. After the break, we are going to talk about bail and dangerousness hearings and who gets held pretrial and how many and why. I also want to raise the question about Donald Trump and specifically the question that has been bandied about quite a bit recently, which is the length of time it takes to get someone to trial on a serious case. We'll be right back. [0:14:45]

----- BREAK -----

BN: We continue our discussion with District Attorney David Sullivan. He is the District Attorney for the Northwestern District, which is comprised of the counties of Hampshire and Franklin. And I wanted to raise with you, District Attorney, a question that came up recently and has come up frequently because of the criticisms that the mayor of Springfield, Dominic Sarno, has made with regard to the judiciary saying someone was arrested, you let them out on bail and then they committed another crime and that's your fault Judge, you let them out. And it seems to me that the mayor has it all wrong or at least he has it ninety nine percent (99%) wrong because bail is not supposed to be used to hold someone because someone thinks they're dangerous. Bail is to be used to ensure the presence of a defendant at trial, a questionable proposition altogether. But if there is a concern, a significant concern that the defendant is dangerous. There is a process for holding someone not on bail, but on a dangerousness hearing. And I think that's something that because of years of experience with bail being used to hold people allegedly because they're dangerous, that there's quite a bit of confusion in the public's mind about that and I'm hoping you can help clarify that for us. [0:18:40]

DS: Sure. Well, I think number one, as we all know, a tenet of American justice is everyone is presumed innocent until proven guilty. And that is very counter to that, because, you know, as you mentioned, bail is to ensure someone's appearance that they show back up. Now, somebody who has fifteen (15) defaults and, you know, has really shown a disrespect for the process by just not showing up, then yeah, that merits some type of bail. The judge may set it at \$500 or \$1,000 or maybe just put conditions on that individual so that they appear, maybe put a bracelet on it. But when you move for dangerousness, it's really about that person being a danger to another person

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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or to the public and it's a special protocol under the, under chapter 276, 58A. And somebody said he helped her at least 120, up to 120 days, sometimes longer because things get continued. So that's a very, very dangerous, I should say it's a tool for a prosecutor, but it should be used very infrequently. And we really look at those type of situations and we try to work out conditions of release as opposed to dangerousness with no conditions that somebody's held for that 120 days. But sometimes we feel that it's merited because somebody's threatened somebody's life. They've attempted to murder somebody, you know, so it's a tough situation. [0:20:23]

BN: Well, this Massachusetts Supreme Judicial Court in the Brangan case said, held, was really clear that bail is not to be used unless it's really necessary and that as a means of assuring a defendant's appearance for their, for court, and for trial, it's highly disfavored. And I'm wondering whether that decision over past years has made a difference in the position to the District Attorney's Office with regard to going in front of a judge after someone is arrested or arraigned and or indicted and then arraigned in Superior Court in terms of what bail you asked for? [0:21:05]

DS: I think absolutely. I think policies changed. Maybe there's an outlier, but I know that from our office's perspective and the ones that I've seen, there's a lot less people being held on bail than there was before and I think that decision, the Brangan decision, was a good decision because it clarified, hey, this is what this is all about. You can't be setting \$100,000 for somebody that couldn't even post \$100. As you know, sometimes \$500 is enough to hold somebody for six months. So, you know, we always look at what a person can post. We don't want, you know, say it was \$150, the person only had \$100. We set it usually by agreement with a defense attorney for that amount. So, we try to reach an agreement with defense attorneys as to an appropriate bail if it is. But the presumption in Massachusetts is the personal recognizance that they're allowed to leave that court and that they agree to come back. And that's the standard. I'd say that's probably a good ninety five percent (95%) of all the cases that we have coming to our office is personal recognizance. [0:22:16]

BN: Any sense, and this is unfair to ask, I didn't tell you I was going to ask you this, any sense of how many people are in the Hampshire County Jail awaiting trial because they can't set bail? [0:22:26]

DS: I think there's very few. Usually most of them are folks that commit a crime while out on bail. In other words, their bail is revoked, and they're brought back. That's usually, you know, I don't know, if I had to guess, I'd say maybe fifteen (15) or twenty (20) maybe, and it's usually because of the revocation of bail. We really don't have that many dangerousness hearings, and maybe there'd be three or four that would be held at any given time on dangerousness. [0:23:00]

BN: So, there would be some in the jail who were held on dangerousness, some who were held

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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because they violated the conditions of their release, and other than that, you don't think there are actually very many who are held on cash bail because they can't meet it in Hampshire and Franklin counties? [0:23:16]

DS: Yeah, you'd have like a murder, maybe somebody who's held on murder charges. I know there's a couple that are at Bridgewater State right now. But I think the number of pretrial detentions has really been reduced over the last five years and it seems to be working well. But one of the things is that when people are released and then they commit another crime, then that's a reason for us to move for revocation. [0:23:49]

BN: District Attorney, before we go, I'd like to turn to one other topic and that is the issue that has arisen around Donald Trump's indictments and people asking me and I'm sure asking you: why does it take months maybe years for a case to come to trial and I'd appreciate your explaining that from the DA's point of view. [0:24:14]

DS: Sure. From both the DA's and the defense point of view, because I was in defense for sixteen (16) years, the defense attorneys really need to have the full picture of a case; They need to do their due diligence and due discovery. The prosecutor needs to produce it so that the defense attorney can properly represent their client. And this is a complicated case, it's just thousands of documents and just different parts of the case that are going to require really good investigators. Hopefully, he's going to get some attorneys that are going to represent him. I don't know if he's got a permanent counsel at this point, but without counsel to really do this due diligence and prepare a defense, Donald Trump won't really get a fair trial. So, it takes time and motions that could file. And these are motions that are very legitimate, and people should know that it's a defense attorney's duty to file these motions. We have the burden of proof. Donald Trump doesn't have to prove a single thing. He could sit there through the whole trial, not say a single thing and be found not guilty. But he has no obligation to produce any documents or any evidence against himself. So, you know, I want Donald Trump to get a fair trial like I want anybody else to get a fair trial. [0:25:40]

BN: And we should note, a motion, a word that we use a fair amount and kind of assume we lawyers assume everyone knows what we're talking about. A motion is a request to a court to do something, often written, pretrial motions, that is requests to do something like dismiss the case, exclude evidence, make decisions on what evidence will or will not be admissible, decide on how you're going to deal with, and this is really a matter of significance in Trump's case, how you're going to deal with classified information. It's classified, so it can't become public, but it's got to be public because it's part of a public trial. [0:26:16]

BI: Or to continue so that his co-defendant, Qualton Outa, can get counsel, which is also one of the delays that's happening here. [0:26:22]

Exhibit 1 – Unofficial Interview Transcript  
Interview of District Attorney David Sullivan on July 5, 2023, on WHMP

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BN: So, all of that I think is really goes into explaining why Trump is not going to trial immediately and while the prosecution's request for a trial in January as the primary start, I think is really unlikely to be succeed in front of the trial court. But I suppose it could. A final thought from you, District Attorney, on this? [0:26:46]

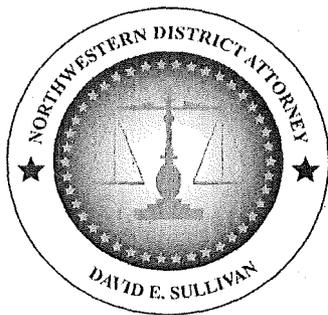
DS: Well, it's going to be a long process. The first thing I think of when I see all that material out there is, was there some illegal search? Was there some basis for those search warrants that wasn't warranted? So, I'd want to attack any evidence that they want to produce. [0:27:05]

BN: Well, we're going to leave it there. It's always a pleasure speaking with you, District Attorney Dave Sullivan. We really appreciate your time and insights. Thank you so much for being with us today. [0:27:14]

DS: Great. Thanks for having me, Bill, and Buzz. [0:27:18]

# **EXHIBIT L**

*Sample Records*



**OFFICE OF DISTRICT ATTORNEY DAVID E. SULLIVAN**

**NORTHWESTERN DISTRICT**  
One Gleason Plaza, Northampton, MA 01060  
56 Bank Row, Greenfield, MA 01301

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Date: 3/5/21

Re: Commonwealth v. [REDACTED]; Docket No. [REDACTED]

Dear Attorney Rountree:

Pursuant to its discovery obligations, the Commonwealth discloses the following information concerning a potential witness in this case: Montague Police Officer [REDACTED]. On January 29, 2021, a criminal complaint issued against Officer [REDACTED] charging him with one count of Assault and Battery on a Child with Injury. The case is currently pending in the Greenfield District Court.

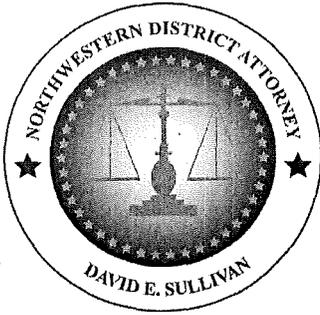
By disclosing this information, the Commonwealth is not agreeing that it is either relevant or admissible.

This information is being provided for trial preparation purposes only. Dissemination of confidential and/or CORI-related information may be a violation of an attorney's legal and ethical requirements.

Sincerely,

---

Assistant District Attorney



**OFFICE OF DISTRICT ATTORNEY DAVID E. SULLIVAN**

**NORTHWESTERN DISTRICT**  
One Gleason Plaza, Northampton, MA 01060  
56 Bank Row, Greenfield, MA 01301

---

Date:

Re: Commonwealth v. \_\_\_\_\_; Docket No. \_\_\_\_\_

Dear Attorney \_\_\_\_\_:

Pursuant to its discovery obligations, the Commonwealth discloses the following information concerning a potential witness in this case. Buckland Police [REDACTED]. On August 26, 2019, [REDACTED] was arraigned in Northampton District Court on one count of Indecent Assault and Battery, docket [REDACTED]. The case is currently in pretrial status.

By disclosing this information, the Commonwealth is not agreeing that it is either relevant or admissible.

This information is being provided for trial preparation purposes only. Dissemination of confidential and/or CORI-related information may be a violation of an attorney's legal and ethical requirements.

Sincerely,

\_\_\_\_\_  
Assistant District Attorney



**OFFICE OF DISTRICT ATTORNEY DAVID E. SULLIVAN**

**NORTHWESTERN DISTRICT**

One Gleason Plaza, Northampton, MA 01060  
56 Bank Row, Greenfield, MA 01301

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Date:

**Re: Commonwealth v. \_\_\_\_\_; Docket No. \_\_\_\_\_**

Dear Attorney \_\_\_\_\_:

Pursuant to its discovery obligations, the Commonwealth discloses the following information concerning a potential witness in this case, Amherst Police Officer John Chudzik, whose personnel file contains a sustained finding of untruthfulness.

In 1999, Officer Chudzik was found to have testified untruthfully at a trial of a defendant accused of Operating Under the Influence of Intoxicating Liquor.

The personnel file is not within the custody or control of the Northwestern District Attorney's Office.

By disclosing this information, the Commonwealth is not agreeing that it is either relevant or admissible.

This information is being provided for trial preparation purposes only. Dissemination of confidential and/or CORI-related information may be a violation of an attorney's legal and ethical requirements.

Sincerely,

\_\_\_\_\_  
Assistant District Attorney

**RULE 9A CERTIFICATE**

Pursuant to Massachusetts Superior Court Rule 9A(b)(5)(v)(B), I hereby certify that the foregoing Joint Appendix of Exhibits includes all exhibits served with the Plaintiff's Motion for Summary Judgment and that no additional exhibits were served with the Defendant's Cross-Motion for Summary Judgment.

Dated: August 18, 2025

/s/ Mason A. Kortz

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Mason A. Kortz, BBO# 691257