The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 19, 2018
SPR18/276

Nancy Nevils, Esq.
Stoneman, Chandler & Miller LLP
99 High Street
Boston, MA 02110

Dear Attorney Nevils:

I have received the petition of Peter Carr, Esq., on behalf of Jorge Teixeira, appealing the response of Weymouth Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Teixeira requested "[s]ettlement agreements entered into by your School District with parents and guardians, from January 1, 2011 through today, relative to the provision of special education services and/or educational placement(s) for students with disabilities, redacted of all personally identifiable information." The School initially provided a response dated September 25, 2017 in which it provided responsive records with portions redacted under Exemptions (a) and (c) of the Public Records Law. G. L. c. 4, § 7(26)(a), (c).

Previous appeals

This request was the subject of previous appeals. See SPR17/1671 Determination of the Supervisor of Records (December 18, 2017); SPR18/276 Determination of the Supervisor of Records (March 14, 2018). In my December 18th determination, I found the School had not met its burden to show that it produced records in accordance with Exemptions (a), (c) or the decision in Champa v. Weston Pub. Sch., 473 Mass. 86 (2015). I ordered the School to provide Mr. Teixeira responsive records in a manner consistent with the order, the Public Records Law and its Regulations.

The School responded on February 7, 2018 by providing records with fewer redactions. In its February 7th production of records, the School unredacted portions of the settlements "to show the financials on the first page of the documents for each settlement." Attorney Carr appealed and SPR18/276 was opened as a result. In my March 14th determination I found that an *in camera* review of the responsive records would facilitate a determination as to the applicability of exemption claims made by the School, in particular it would shed light on the

extent to which the redactions are in accordance with Exemptions (a), (c) and/or the decision in Champa. The School provided these records and I would like to thank it for its cooperation.

The Public Records Law

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

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). 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.

Redactions within responsive agreements

As discussed in my March 14th determination, the Supreme Judicial Court (SJC) found that with respect to a similar request for records, "both exemption (a) and exemption (c) to the definition of public records in G. L. c. 4, § 7, Twenty-sixth, apply to the agreements, but that personally identifying information in the agreements is subject to redaction, and when the agreements are properly redacted, they must be disclosed." Champa, 473 Mass. at 98-99. The Champa Court provides guidance on the applicability of certain statutes as they operate through Exemption (a), as well as Exemption (c). The SJC also provides the following:

> The agreements here, although they contain identifying information, also include information that does not appear to invade the reasonable privacy interests of students or their families. Notably, once personally identifiable information is redacted, the financial terms of such agreements, which necessarily reflect the use of public monies, partially or fully, to pay for out-of-district placements, do not constitute an unwarranted invasion of personal privacy; indeed, the public has a right to know the financial terms of these agreements.
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> Id. at 97-98.

With respect to Exemption (a), the SJC refers to the Family Educational Rights and Privacy Act (FERPA) and found "[t]he analysis to determine what redaction is necessary will be a case-by-case determination that considers the request, the school and the community, and the availability to the requester of other information that indirectly identifies the student. 34 C.F.R. §§ 99.3, 99.31(b)(1)." Id. at 93.

The SJC further indicates the following:

> The agreements may contain information that amounts to an unwarranted invasion of the student's personal privacy. As previously discussed, the agreements may link the name of the individual student (and his or her family) to information about the services and programming the child will receive and information about the child's disability, progress, and needs. Further, the agreements are likely to identify the out-of-district school, which may indirectly identify the child's disability. This type of information is highly personal, and disclosure may result in embarrassment and potentially lead to stigma, bringing it within the scope of exemption (*c*).
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> Id. at 97.

With respect to Exemption (c), the SJC indicates "[i]n assessing whether the documents contain identifying information, the inquiry must be considered 'not only from the viewpoint of the public, but also from the vantage of those who [are familiar with the individual].' Dep't of the Air Force v. Rose, 425 U.S. 352, 380 (1976)." Id. at 97-98.

In camera review

In his current appeal, Attorney Carr notes that "the following information is still improperly redacted from the settlement agreements: effective dates, applicable academic/school years, the duration of payments, and the name of the public agent who entered into and signed the agreements." Attorney Carr further indicates "all educational placement information remains redacted without any demonstrable need to protect individual privacy." As described in the School's cover letter accompanying the records provided to Attorney Carr, there are other redactions within the records, such as student name and date of birth. However, these redactions do not appear to be at issue in this appeal.

Upon *in camera* review of the responsive records, I find the School has not met its burden to withhold all the information described above by Attorney Carr. In particular, it is unclear how disclosure of this information could indirectly identify a student under the analysis articulated in Champa. The School must review the records and provide Attorney Carr with the responsive records accompanied by a response to support any remaining redactions. G. L. c. 66, § 10(b)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based…"); see also Globe Newspaper Co. v. Police Comm'r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511.

Conclusion

Accordingly, the School is ordered to provide Attorney Carr responsive records 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 this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Peter F. Carr, II., Esq.