

Number: 2003 - 3
Date: September, 2003

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Subject: Guidelines for the Keeper of Records Responding to Requests for Records Made Under G. L. c. 66 (the "public records law") when the Exemption Enacted by c. 313 of the Acts of 2002 ("An Act Providing Protections Against Terrorism") as Codified in G. L. c.4, sec. 7 (26)(n) (the "exemption clause") pertaining to non-disclosure of building plans is implicated.

Purpose: This bulletin provides guidance for the Keeper(s) of Records responding to requests for building plans when the exemption provided for in G. L. c. 4, sec. 7, clause 26 (n) is implicated ("exemption (n)"). The information in this bulletin is intended to supplement and not alter or replace the requirements and procedures for answering requests for public records contained in Commissioner's Bulletin No. 2000-04 ("Administrative Procedure for Answering Requests for Public Documents") dated March 29, 2000. This bulletin is being provided to ensure that this department continues to discharge its official duties efficiently and in a manner that comports with the requirements of both the public records law and public safety standards instituted by the government post September 11, 2001.

General Considerations: As a result of post September 11, 2001 terrorism concerns, the Massachusetts legislature enacted Chapter 313 of the Acts of 2002 ("An Act Providing Protections Against Terrorism") seeking to provide protections for the public against harm by strengthening existing public safety standards in the Commonwealth of Massachusetts. The Act exempts, among other things, building plans and building systems schematics from public disclosure under certain circumstances. For purposes of this bulletin and as it applies to the Inspectional Services Department the term records custodian means the Keeper of Records for the Inspectional Services Department as defined in Commissioner's Bulletin No. 2000-04. In addition, the Supervisor of Public Records recently issued SPR Bulletin No. 04-03 dated April 1, 2003 which sought to provide record keepers with "some guidance on dealing with public records requests for documents which may implicate the newly enacted exemption for public safety known as exemption (n)". This bulletin provides additional guidance for the Keeper of Records when presented with a request for public records that may fall within the new exemption contained in G. L. c. 4, sec.7 clause 26 (n).

Note: For the purpose of clarity and brevity, the pronouns "He" and "His" are used editorially throughout this bulletin and they should be interpreted as gender neutral.

GUIDELINES FOR RESPONDING TO REQUESTS FOR PUBLIC DOCUMENTS WHEN THE EXEMPTION CONTAINED IN G. L. c. 4, sec. 7 clause 26(n) MAY BE IMPLICATED.

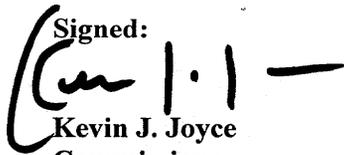
When the Keeper of Records is presented with a request for disclosure of public records he shall continue to follow procedures contained in Commissioner's Bulletin 2000-04. However, if a request is made for records pertaining to the layout, safety, or security of various locations within

the City, the Keeper of Records shall follow the procedures contained in this bulletin in addition to the requirements of Commissioner's Bulletin 2000-04. Accordingly, when presented with such a request the Keeper of Records shall implement the following procedure and considerations:

1. Review the request to determine if the records being requested fall within the realm of records newly exempted from disclosure by G. L. c. 66. This new exemption restricts from public disclosure, "blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat of vulnerability preparedness, or any other records relating to the security or safety of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety." G. L. c. 4, sec. 7, clause 26(n).
2. For purposes of reviewing requests the Keeper of Records shall interpret the phrase "records that...in the reasonable judgment of the custodian...are likely to jeopardize public safety" to include any request for records pertaining to any building the release of which are so designated by the Boston Police Department, the Massachusetts State Police or any other law enforcement agency having jurisdiction as "likely to jeopardize public safety." The records for any building, structure, or land so designated by such public safety official(s) shall automatically be deemed to fall within the realm of records protected from disclosure by the new exemption and therefore, they shall not be disclosed.
3. A comprehensive list of buildings, structures, or land so designated shall be adopted and maintained by the Inspector of Buildings. The list will be reviewed periodically by a Building Official. Locales shall be added or subtracted from the list as needed, based on information that the disclosure of records pertaining to the particular building shall be, in the reasonable judgment of the Building Official, likely to jeopardize public safety.
4. The Keeper of Records may, in his reasonable judgment, consider the following factors:
 - a. whether the building is public or private;
 - b. if the requestor has a legal interest in a pending Board of Appeal case or in the execution of an issued and open building permit; official notifications received from the Inspector of Buildings or the Local Inspector under G.L. c. 143 or from the Fire Commissioner under G. L. c. 148 or the City of Boston Fire Prevention Code pertaining to the condition, suitability for use, use or legal occupancy for any building, structure or land in the City of Boston;
 - c. information received from the head of Emergency Medical Services or the Public Health Commission or any public health official or medical doctor pertaining to the health and safety of any building or structure or their occupants;
 - d. information that is readily apparent to the keeper of records at the time that the request is being made;
 - e. information that is gathered from conversation with the person making the request, however, the Keeper of Records may not inquire as to the motive of the requestor; and
 - f. any other information that a public official may consider relevant in discharging their official duties in similar or substantially similar circumstances.
5. If the Keeper of Records denies a request for public records under the new exemption, he shall make the denial in writing, articulating with specificity the basis for such denial. *i.e.* "the release of plans for "X" building is likely to jeopardize public safety." Written denials shall continue to be issued on the form previously issued and approved by Commissioner's Bulletin No. 2000-04 or on any such form as may be subsequently issued as approved by the Commissioner of the Inspectional Services Department or by the Supervisor of Records for this purpose.

6. The Keeper of Records shall continue to act on all requests for records in an expeditious manner and in any event within the ten (10) days time limit prescribed by the public records law.
7. A Memorandum dated November 20, 2002 issued by the Inspector of Buildings for the City of Boston is hereby withdrawn and is to be removed from display in the Document Room and from any other place of display in the offices of the Inspectional Services Department.
8. Any requests for production of building plans that have been filed with this department in compliance with the requirements of the state building code under issued building permits and that have been sent off site for microfilming shall continue to be processed in strict compliance with the requirements of the public records law and Commissioner's Bulletin No. 2000-04. In the event that a request for production of such building plans is in danger of not being answered within the time permitted by the public records law because the requested plans are maintained off site for microfilming or for any other reason of practical difficulty, the Keeper of Records is authorized to cause the Local Inspector to retrieve such plans from the construction site or a copy of such plans so long as the cost of retrieving and copying said plans is paid to this department in accordance with the applicable provisions of the public records law.
9. A copy of this bulletin is to be displayed prominently in the Document room and entered in the electronic web page administered by this department in the normal course of business.
10. This bulletin is effective immediately and shall remain in full force and effect until it is altered, amended or revoked in writing.

Signed:



Kevin J. Joyce
Commissioner

Inspectional Service Department

Date: 9.29.03