

Peter Frei
101 Maybrook Road
HOLLAND, MA 01521

June 18, 2008

Alan Cote, Supervisor of Public Records
Office of the Secretary of the Commonwealth
One Ashburton Place
BOSTON, MA 02108

Dear Mr. A. Cote,

I herewith appeal the denial of my public records request under the freedom of information act, see attached copies of my letters dated April 24, and May 9, 2009, and copies of the two letters of the Chief Legal Counsel's Office, dated May 4, and May 12, 2009.

Joan O'Brien's decision is based on a misconceived interpretation of M.G.L. c.4, s.7 cl. 26(f).

Determining the applicability of exemption (f) requires a two-step analysis focusing on: (1) whether a law enforcing proceeding is pending or prospective; and (2) whether release of information about it could reasonably be expected to cause some articulable harm.

The time the investigation took place was most likely between February and July 2003 and not pending any longer.

Joan O'Brien failed to prove that the release of the report would prejudice Kevin Gleason, or how releasing the report would interfere with a pending enforcement proceeding.

M.G.L. c.66, s.10(c) declares a presumption that records are public and, in disputes, it states "the burden shall be upon the custodian to prove with specificity the exemption which applies."

Joan O'Brien's denial is contrary to plain language of applicable statutes and decisional law, see *NLRB v. Robbins Co.*, 437 U.S. 214, 224 (1978)(holding that government must show how records "would interfere with a pending enforcement proceeding");

Manna v. United States Dep't of Justice, 51F.3d 1158, 1164 (3rd Cir. 1995) (“To fit within Exemption 7(A)[federal exemption equal to Mass. state exemption (f)], the government must show that (1) a law enforcement proceeding is pending or prospective and (2) release of the information could reasonably be expected to cause some articulable harm.”);

Campbell v. HHS, 682F.2d 256, 259 (D.C. Cir. 1982 (stating that agency must demonstrate interference with pending enforcement proceeding).

Please order your subordinate to release the requested report and to mail me, the petitioner, forthwith a copy of said report as the law requires her to do.

I appreciate your cooperation.

Sincerely,

Peter Frei