



Robert C. Haas  
Police Commissioner

# City of Cambridge Police Department

TELEPHONE  
(617) 349-3300

FAX  
(617) 349-3320

WEB  
[www.cambridgepolice.org](http://www.cambridgepolice.org)

Robert W. Healy  
City Manager

October 15, 2009

Robert W. Healy  
City Manager

Re: City Council Order # 0-14, dated October 5, 2009

Dear Sir:

This is an addendum to my letter dated October 8, 2009 regarding the department's policy on "making available to the public information about crimes and suspects and other information not prohibited from public release."

Enclosed is the response from the Secretary of State's Office to Mr. David denying the appeal of the Cambridge Chronicle. Please include this letter with my original response.

If you require additional information please contact me.

Sincerely

A handwritten signature in black ink, appearing to read "Robert C. Haas".

Robert C. Haas  
Police Commissioner

Enclosure

RCH/bk



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Alan N. Cote  
Supervisor of Records

October 6, 2009  
SPR09/211

Mr. David L. Harris  
Cambridge Chronicle  
20 Holland Street, Suite 404  
Somerville, MA 02144

Dear Mr. Harris:

I have received your petition appealing the response of the Cambridge Police Department (Department) to your July 27, 2009 public records request. See G. L. c. 66, § 10(b) (2006 ed.) (Supervisor of Records has authority to resolve public records appeals); see also 950 C.M.R. 32.08(2) (appeal process). Specifically, you requested copies of the police logs between July 1 and July 27 containing inter alia the names of all people arrested within the City of Cambridge (City), ages of all people arrested and addresses of all people arrested. Additionally, you requested "access to all addresses, including street name and number, that police are dispatched to."

In a letter dated September 22, 2009, Attorney Kelly A. Downes, Legal Advisor to the Department, informed this Office that the names of all people arrested within the City, ages of all people arrested and addresses of all people arrested between July 1 and July 27 are available at no cost on the Department's website found at [www.cambridgema.gov/cpd](http://www.cambridgema.gov/cpd). See M.G.L. c. 41, § 98F.

However, the statutory requirements for the creation and release of a police log do not extend to the addresses to which the police respond. M.G.L. c. 41, § 98F (requiring a police department to maintain a publicly available list of all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested). By email dated August 10, 2009, Attorney Downes provided you with a written estimate of \$1215.00 for the provision of the records relating to "all addresses, including street name and number, that police are dispatched to."

A custodian may charge a fee if complying with a request requires "search time." 950 C.M.R. 32.03 (defining "search time" as the time needed to locate, pull from the file, copy, and re-file a non-computerized public record). A custodian may charge a pro-rated fee based on the hourly rate of the lowest paid employee who is capable of performing the task. 950

Mr. David L. Harris  
Page Two  
October 6, 2009

SPR09/211

C.M.R. 32.06(1)(a). While the custodian is permitted to charge for search and segregation fees, the fee charged should not serve as a deterrent for the requestor to access public records. See Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 436 (1983).

In the September 22, 2009 letter, Attorney Downes stated that the Department does not maintain the addresses to which the police respond in one centralized list, therefore, a number of records must be reviewed in order to provide this responsive information. Attorney Downes estimated that the Department would be required to collect and review approximately 500 police reports and other documents in order to provide the addresses to which the police were dispatched. Given the sensitive information, including identifying details of victims and witnesses, contained in these reports, close scrutiny of the records is required. See G. L. c. 4, § 7(26)(f) (Exemption (f) allows for the withholding of identifying details of victims and witnesses of crimes); G. L. c. 4, § 7(26)(c) (Exemption (c) permits the withholding of records which if disclosed may constitute an unwarranted invasion of personal privacy); G. L. c. 268, § 13B (criminalizing the intimidation of witnesses and others furnishing information in criminal proceedings). Consequently, the Department estimated it would take 25 hours to adequately review these records. An administrative employee would not have the knowledge of the records necessary to perform the review. As a result, the lowest paid employee of the Department capable of reviewing these records is paid the rate of \$40 an hour.

In addition to search and segregation costs, the Department may levy a fee for copying public records. It is estimated there will be 1,075 documents which will be copied at the rate of \$.20 per page. The Department's assessment of \$.20 per copy is in proper compliance with the Public Records Law. 950 C.M.R. 32.06(1)(a); 950 C.M.R. 32.06(1)(b).

#### Conclusion

Given that a large number of documents, which may contain sensitive information about the identities of victims and witnesses, are required to be properly reviewed, I consider this to be a reasonable fee estimate provided by the Department. Please note that if the actual costs of providing you with the responsive records are less than the estimated fees, the Department is to provide you with a refund of the difference. Accordingly, I will consider this appeal closed.

Very truly yours,  


Alan N. Cote  
Supervisor of Records

cc: Attorney Kelly A. Downes



# City of Cambridge Police Department

TELEPHONE  
(617) 349-3300

FAX  
(617) 349-3320

WEB  
[www.cambridgepolice.org](http://www.cambridgepolice.org)

Robert C. Haas  
Police Commissioner

Robert W. Healy  
City Manager

October 8, 2009

Robert W. Healy  
City Manager

Re: City Council Order 0-14 dated October 5, 2009

Dear Sir:

I am responding as requested to City Council Order No. 0-14, dated October 5, 2009 regarding the Department's policy on "making available to the public information about crimes and suspects and other information not prohibited from public release."

This order is likely in response to our ongoing disagreement with the Cambridge Chronicle about releasing addresses and identities of victims and witnesses. I strongly object to their characterization of what the Department is doing. Despite the fact that we have taken many steps to educate the Chronicle on the law, public safety and our reasoning, we have not seen any retraction or correction. Instead, we have only seen additional mischaracterizations and outright false reporting of the facts. I cannot come to any other conclusion except that they are taking a position that is intended to create controversy and attract readership. Given the media's responsibility to report the news in a fair, accurate and impartial way, I find their actions irresponsible.

The Cambridge Police Department determines what information it will make available to the public on a case by case basis. While making that determination, it is mindful of several factors including Mass General Laws, concern for privacy and safety of individuals and overall public safety. The Department is respectful of the public's right to know about safety issues and works to provide as much information possible while balancing the rights of individuals.

Please see the attached that outlines what the Chronicle has reported and what the facts are. Also attached is our letter to the Secretary of State's Office in response to their appeal.

If additional information is required please let me know.

Sincerely,

Robert C. Haas  
Police Commissioner



# City of Cambridge Police Department

TELEPHONE  
(617) 349-3300

FAX  
(617) 349-3320

WEB  
[www.cambridgepolice.org](http://www.cambridgepolice.org)

Robert C. Haas  
Police Commissioner

**COPY**

Robert W. Healy  
City Manager

September 22, 2009

Ms. Rebecca Murray  
Staff Attorney  
Office of the Secretary of the Commonwealth  
Public Records Division  
One Ashburton Place, Room 1719  
Boston, MA 02108

Re: Public Records Appeal

Dear Ms. Murray:

I write in response to the public records appeal filed by the Cambridge Chronicle on August 13, 2009. Our position is that we are in full compliance with the public records law.

On July 27, 2009, David Harris, Editor of the Cambridge Chronicle, made a public records request seeking, "access to and copies of the police log between July 1 and July 27, containing information including the names of all people arrested within the City of Cambridge, ages of all people arrested, and addresses of all people arrested." In accordance with M.G.L. c. 41, § 98F, the Cambridge Police Department makes this information available to all members of the public on our public log, which is maintained on the Department's web site, [www.cambridgema.gov/cpd](http://www.cambridgema.gov/cpd).

Mr. Harris, in his public records request, also requested "access to all addresses, including street name and number, that police are dispatched to (sic)." In our public log, the Cambridge Police Department reports the street on which incidents occur, but not the exact street address. The public log statute requires that we provide a summary of "all responses to valid complaints received." M.G.L. c. 41, § 98F. By reporting the street where the police respond, and a general description of the incident, the Department is in compliance with the plain language of the law. The public log statute does not require that we report the specific address of each and every location to which police respond. Indeed, there are circumstances in which the Department would be prohibited by law from doing so. For example, if police respond to an alleged sexual assault victim's home, we are prohibited from reporting his or her address, as this would tend to identify the victim. See M.G.L. c. 41, § 97D ("All reports of rape and sexual

assault or attempts to commit such offenses and all conversations between police officers and victims of said offenses shall not be public reports and shall be maintained by the police departments in a manner which will assure their confidentiality”): M.G.L. c. 265, § 24C (requiring that records which contains the name of a victim in an investigation or complaint for rape or assault with intent to rape shall be withheld from public inspection). Further, incidents involving juvenile arrests also require strict confidentiality. *See Police Comm’r of Boston v. Municipal Court of the Dorchester District*, 374 Mass. 640, 651 (1978)(noting that it was the intent of the legislature to provide broadly for the confidentiality of juvenile records). *See also* M.G.L. c. 119 §§ 60A, 65. By law, the Department is prohibited from identifying juvenile offenders. If a juvenile arrest occurs at the juvenile’s home, by releasing the exact address where the incident occurred, we would potentially compromise the confidentiality of that information. In addition, specific public records exemptions may apply to justify withholding the information requested by the Chronicle, specifically, exemption (c) (privacy) and exemption (f) (investigative material). Finally, where a case is likely to be presented to the Middlesex County Grand Jury, it may be appropriate to withhold the exact address of an incident, at least temporarily, in order to preserve the secrecy of the grand jury investigation.

The Department cannot interpret the public log statute as urged by the Chronicle without abandoning these significant protections in the law. It is a fundamental principle of statutory interpretation that if a sensible construction is available, the court shall not construe a statute to produce absurd results. *Commonwealth v. Raposa*, 453 Mass. 545, 550 (2009)(citations omitted). By reporting the exact address of each incident to which police respond, the department could potentially compromise victims and witnesses. Given the extensive legal protections afforded by the public records law, and other statutes that are designed to assure confidentiality for crime victims and witnesses, this cannot have been the legislature’s intent.

In its appeal, the Chronicle notes that “the privacy exemption does not apply to private addresses,” citing the Secretary of State’s Massachusetts Public Records Guide. In the Guide, a question is posed as to whether the names and addresses of customers of a municipally owned utility are public (see Public Records Guide, page 13). The Secretary of State concluded that in those circumstances, one’s address is not a “detail of a highly personal nature.” and therefore is not private. *See* Public Records Guide, page 13. In this case, however, the Chronicle is seeking “access to all addresses, including street name and number, that police are dispatched to (sic).” This is a very broad request which would encompass the home addresses of crime victims or witnesses. Clearly, information that could identify a crime victim or a witness is exempt from disclosure under the investigative exemption. In addition, the Department takes the position that one’s status as a crime victim or witness heightens an individual’s privacy interests in the release of his or her address to the public. There are also significant public safety concerns that can arise from the release of a crime victim or witness’s private address to the public – witness intimidation being one obvious concern. *See* M.G.L. c. 263A, §§ 12, 13 (detailing procedures for the confidentiality of witnesses requesting witness protection services); M.G.L. c. 268, § 13B (criminalizing the intimidation of witnesses, jurors and others furnishing information in criminal proceedings). In the Department’s response to the Chronicle’s public records request, we cite

both the investigatory and privacy exemptions as potentially applying to the information requested. *See* Attachment A, attached hereto.

The Chronicle complains that “the department is charging an exorbitant amount for records that should be publicly available and in a detailed, easy to-understand form.” However, the Department’s estimated charge is directly related to the work required to comply with the Chronicle’s request. The information sought by the Chronicle is not contained in one single report. Identifying the exact street address to which police responded from July 1 through July 27, 2009 will require review of 506 police reports manually, to consider the applicable law, and to determine if the release of that information would tend to identify a victim of a crime or a witness, or otherwise impair an investigation. This is a time intensive process, and thus it is appropriate to require payment for the costs of the employee’s time and for copying documents, as permitted under Massachusetts Law.<sup>1</sup>

Finally, the Chronicle contends that “the department is taking the stance that descriptions of suspects in all crimes are not subject to release.” That is inaccurate. The Department reviews requests for police reports on a case by case basis. In its appeal, the Chronicle has not identified specific cases where that information has been withheld so responding with specificity to the Chronicle’s claim is impossible. However, the Department does take the position that where a witness’s identification of a suspect is critical to an ongoing investigation, the premature release of that information to the public could compromise that investigation, taint the grand jury process, or in some instances subject the witness to intimidation. In those circumstances, we are clearly within our rights to withhold that information from the public, at least temporarily. There are also circumstances where the Department will release a suspect’s description to request the public’s assistance in locating a suspect. Again, this determination is appropriately made on a case by case basis according to the needs of the investigation.

The Cambridge Police Department fully respects the public’s legitimate interest in the functions of the department, and the public’s right to know. We are committed to fulfilling this obligation in a manner consistent with our core mission: public safety.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Kelly A. Downes  
Legal Advisor

Cc: David Harris

---

<sup>1</sup> In our response to the Chronicle, we indicated that “the size of the above estimate is directly related to the broad nature of your request. Accordingly, if you wish to narrow your request, the Department will provide you with a revised estimate of the cost to comply therewith.” *See* Attachment A, attached hereto.

## **Cambridge Police Department's statement in response to the Chronicle's false accusations**

The Cambridge Chronicle has falsely accused the Cambridge Police Department of withholding information that it believes it is entitled to obtain under the Public Records Law.

**Allegation:** The Police Department is keeping two arrest logs, one public and one not released to the public.

**Fact:** The Cambridge Police Department keeps one daily public log of all arrests and posts it on its website. There is only one log. The CPD is required under the Public Records Law to keep and maintain a daily public log to record "all responses to valid complaints received" M.G.L. c. 41, § 98F.

**Allegation:** The Police Department has been withholding the address of where each incident occurred.

**Fact:** The CPD releases at a minimum the street name and a corresponding cross street if the street is long. (Fictitious example: Mass Ave. and Thomas Street) The CPD does on many occasions release the house or business number. (Fictitious example: 2650 Mass. Ave.) The Chronicle has been misreporting the facts and has attempted to mislead the public to believe that it is withholding all information about where incidents occur in Cambridge. That is entirely untrue.

**Allegation:** The CPD has been withholding addresses to which police respond in violation of the law.

**Fact:** The Massachusetts General Laws set out very specific instances when the CPD is prohibited from releasing addresses. (Examples: addresses involving a juvenile offender, a domestic violence victim, or a sexual assault victim). In addition, there are occasions when CPD appropriately withholds an address from the public log if that information is critical to a case to be presented to the Middlesex County Grand Jury. The Public Records Law allows the Department to withhold information from the public in certain circumstances, for example, when the release of the information would compromise an investigation. The CPD does not disclose information that would compromise an ongoing investigation, contribute to witness intimidation, or re-victimize the victim. For example, publishing a specific house address may make it easier or encourage a suspect or associate of the suspect to retaliate for claims made against him or her. Additionally, victims often tell Police that they are concerned for their safety and are reluctant to come forward at all. In these cases, victims have a right to privacy. Decisions to release the exact address to which police respond, and not just the street name with corresponding cross-street if necessary, are made on a case by case basis.

**Allegation:** The Chronicle states that “the privacy exemption does not apply to private addresses.”

**Fact:** The Chronicle is quoting from the Secretary of State’s Massachusetts Public Records Guide but the quote is out of context. The Guide poses a question of whether the names and addresses of customers of a municipally owned utility are public. Clearly, the Secretary of State is not speaking to a public safety related issue and this example is not applicable. Crime victims and witnesses should be able to count on their police department to assist them in maintaining their privacy and security – that includes protecting their private residential address from being released to the public.

**Allegation:** The CPD recently stopped giving this information.

**Fact:** No policy or practice has been changed.

**Allegation:** The CPD has withheld the description of suspects in all crimes.

**Fact:** The Department does release descriptions of suspects to the public when it is determined that public assistance is needed in identifying a perpetrator, when immediate public safety concerns require descriptions to be released, and when releasing the information does not violate any law or policy. Again, there are many legal requirements that are taken into consideration when deciding whether and when to release the description of a suspect. Decisions are made on a case by case basis.

**Fact:** The Cambridge Police Department is committed to keeping the public informed in a manner consistent with its core mission: public safety.