

THE COMMONWEALTH OF MASSACHUSETTS  
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December 8, 2008

Attorney Kevin J. Mahoney  
Law Offices of Kevin J. Mahoney  
545 Concord Avenue  
Cambridge, MA 02138

Dear Attorney Mahoney,

Thank you for your letter, received in this office on November 24, 2008, in which you state that you have been retained to represent Jay Groob in his attempt to obtain materials in the investigative file of the Joan Webster murder.

As you know, in response to Mr. Groob's request under the Public Records Law G.L. c. 66, § 10 for "any and all records regarding the investigation of the Joan Webster murder in Massachusetts in 1981," I provided two police reports: a Harvard Police Department Missing Person Report dated December 2, 1981 and a Hamilton Police Department Report regarding the recovery of her remains dated April 4, 1990. The contents of these reports had been previously disclosed publicly.

As to other material in the file, I invoked the so-called "investigatory" and "privacy" exemptions to the public records law, G.L. c. 4, § 7 cl. 26 (f) and (c). (Thank you for pointing out my error: the privacy exemption is clause 26(c), not clause 26(a)). I informed Mr. Groob that the investigation into Ms. Webster's murder had been renewed prior to his request. Also, although Mr. Groob purported to represent the "family" of Ms. Webster, he did not provide a signed privacy release from Ms. Webster's next of kin as I had requested on the phone.

In your letter, you contend that neither exemption applies. You state that the investigation into the murder "has lay dormant for at least 15 years" and that this Office "cannot realistically argue that there is an on-going investigation into this murder." As for the "privacy" interests at stake, you refer only to those of possible suspects. You state that because of the publication of "The Paradiso Files: Boston's Unknown Serial Killer," a book by Timothy Burke that explores Leonard Paradiso's possible involvement in Ms. Webster's murder, "the individuals possibly connected with Ms. Webster's disappearance have already been publicized nationally." You further state that "release to a citizen of the Commonwealth long after the media had lost interest in the case will not affect the privacy interests, if any, of anyone suspected of the crime." You note that Paradiso's recent death has vitiated any privacy interest he may have had.

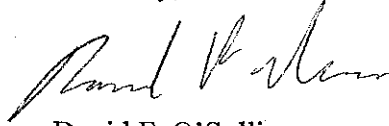
Your letter does not change our position. As you know, there is no statute of limitations for murder. This Office, in cooperation with other law enforcement agencies, has renewed the investigation in to Ms. Webster's murder. The material sought is comprised largely of witness statements and materials reflecting the pursuit of various leads and suspects including, but not limited to, Mr. Paradiso. Such materials implicate the core policies behind the shielding investigatory materials, namely "the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions." Globe Newspaper Co. v. Police Comm'r, 419 Mass. 852, 859 (1995); Id. at 862-863, quoting Bougas v. Chief of Police of Lexington, 371 Mass. 59, 63, (1976), ("Even materials relating to an inactive investigation may require confidentiality in order to convince citizens that they may safely confide in law enforcement officials.").

Further, you fail altogether to address the privacy interests of the victim, Ms. Webster, which now rest in her parents and next of kin. We are in contact with Mr. and Mrs. George Webster, and they relate that they have not hired your client and do not waive their privacy interest in the materials.

Rafuse v. Stryker, 61 Mass. App. Ct. 595 (2004), a case you cite in which disclosure of the contents of a murder file was upheld, was markedly different. There, some ten years after murder of Dr. Linda Goudey, no criminal charges had issued against the suspect, Dr. Timothy Stryker. The victim's mother and the administratrix of her estate, Marguerite Rafuse, who had filed a wrongful death suit against Stryker, subpoenaed materials from the file of the district attorney. The Appeals Court upheld the judge's order of disclosure because the district attorney had submitted "[n]o proof . . . to the motion judge that the investigation of this crime . . . was still ongoing or active, or how disclosure would foreclose any future criminal prosecution." Id. at 563. And, though "troubled" by the release of "citizen witness statements," the Appeals Court noted that "in giving a statement to the police, the witnesses were well aware" that the information might be disclosed not only in a criminal prosecution, but also in "a civil action arising out of and relating to the crime." Id. at 601. Also, importantly, the district attorney there did not invoke the victim's privacy interests, presumably because standing to invoke them rested in the victim's mother who sought the materials. And in apparent respect for those interests, and of maintaining the integrity of any future prosecution, the Appeals Court strictly limited disclosure. Id. at 602 ("Counsel for the parties shall not disclose the contents of the documents received from the district attorney's office to anyone but their clients except with the consent of that office or by leave of a justice of the Superior Court, and the parties are not to use the information and materials provided for any purpose other than this action."). In short, unlike in Stryker, disclosure here would 1) compromise the privacy interests of the victim and her family, and 2) likely prejudice our ability to obtain a conviction should charges issue.

As you are aware, you may challenge this action under the provisions of 950 C.M.R. 32.00 and G.L. c. 66, § 10(b). If you think I can be of assistance in some other way, please feel free to contact me directly at x5017.

Sincerely,



David F. O'Sullivan  
Assistant District Attorney

cc: First Assistant John T. Dawley

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