The Commonwealth of Massachusetts  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division  

Shawn A. Williams  
Supervisor of Records  

September 22, 2015  
SPR15/488  

Lieutenant Detective Michael McCarthy  
Director, Media Relations  
Boston Police Department  
One Schroeder Plaza  
Boston, MA 02120  

Dear Mr. McCarthy:  

I have received the petition of Shawn Musgrave, on behalf of MuckRock, appealing the nonresponse of the Boston Police Department (Department) to his request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, Mr. Musgrave requested records regarding cell site simulators. Despite our letter to you dated June 30, 2015 acknowledging the opening of this appeal, as well as follow-up messages from a member of my staff, no response was provided to this request.  

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10(c); 950 C.M.R. 32.08(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(c); see also District Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).  

Accordingly, whereas the Department has not overcome the presumption that the requested records are public, the Department is hereby ordered, within ten (10) days of this order, to provide Mr. Musgrave with the requested records. If the Department maintains that any portion of the responsive records are exempt from disclosure it must, within ten (10) days provide to Mr. Musgrave a written explanation, with specificity, how a particular exemption applies to each record. 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  

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the responsive record. 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.

If there are any fees associated with this response a written, good faith estimate must be provided. G. L. c. 66, § 10(a); see also 950 C.M.R. 32.06(2) (where cost of complying with a request for public records is expected to exceed ten dollars ($10.00), custodian of records shall provide written good faith estimate). Once the fees are paid, you must provide the responsive records.

Very truly yours,

Shawn A. Williams
Supervisor of Records

cc: Mr. Shawn Musgrave