

## *SUPPLEMENTAL RIGHT-TO- KNOW GUIDANCE FOR LAW ENFORCEMENT*

Using hypothetical scenarios NHMA is providing this supplemental guidance on how to respond to requests for law enforcement records, mostly emphasizing Factor C of the Freedom of Information Act, 5 U.S.C. 552 (b)(7); would releasing the records constitute an unwarranted invasion of privacy? This guidance also specifically addresses how to respond to requests for police records made by crime victims who are pursuing civil remedies.

### *Scenario # 1*

Sally was injured in a domestic dispute with her husband Ron. The police were called. They arrested Ron and he was incarcerated overnight at the county jail. Sally sought protection from further domestic violence incidents by seeking a temporary protective order from the Circuit Court – District Division under the provisions of RSA chapter 173-B. She asks the police department to provide her copies of the police department’s records concerning the response to the incident and the arrest of Ron.

#### *Answer:*

Victims of crimes have a special status. See RSA 21-M:8-k. There is a strong public interest in ensuring that victims, particularly victims of domestic and sexual violence, are provided information about resources that are available to them, RSA 21-M:8-k, II(i), informed about the criminal justice process, RSA 21-M:8-k, II(b), and have the inconveniences of the criminal justice process minimized, RSA 21-M:8-k, II(g). Given that, in our system, parallel civil proceedings occur in which the victim must allege facts and circumstances, supported by sufficient evidence to overcome the burden of persuasion, in order to ensure that the victim will be reasonably protected from the accused throughout the criminal justice process, even though that reasonable protection may stem from a civil protective order in addition to a criminal bail protective order, the victim has a right to obtain some evidence from the police department. RSA 21-M:8-k, II(c). The department need not provide all evidence to the victim, and probably should redact the names and identifying information of witnesses and other confidential sources. A reasonable offering of information could include the offenses charged, and such other information enough to allow a judge issuing an order under RSA chapter 173-B to determine what protections are necessary in order to facilitate the victim’s right to reasonable protection. Any information which would assist in the minimizing the inconveniences of the criminal justice process should be provided to the victim. Where the victim subsequently seeks compensation through the Victims’ Assistance Commission, the Commission will request that the law enforcement agency investigating the crime complete and submit the law enforcement authority verification form and provide copies of police reports. That form and attached police reports are not to be disseminated to the claimant or any party, unless specified by court order, such a request should be granted, and the requested records disclosed to the commission.

## ***Scenario #2***

Steve and Natch are neighbors in a single-family home neighborhood. Over a period of 5 years, numerous complaints are made to the local police department by both Steve and Natch about each other. Both allege the other engaged in various kinds of intolerable behavior. None of the complaints rises to the level of alleging a criminal offense or code violation under the town's land use and building code ordinances. Both Steve and Natch now ask for a complete copy of all documents in the possession of the police department concerning each other as well as the law enforcement records pertaining to the property addresses where they both reside. There is no evidence or allegation that the police department has not investigated or responded to the complaints made by Steve or Natch.

### **Answer:**

Both Natch and Steve have a privacy interest over the content of the complaints each has submitted to the responding police agency. Courts routinely have found protectible privacy interests in the identities of individuals who provide information to law enforcement agencies. Disclosure of a source's identity might subject the source to unnecessary questioning and harassment by those who look unfavorably upon law enforcement officials or by private litigants in civil suits incidentally related to the investigation. Weighed against these privacy interests is the public interest in determining how the law enforcement agency carried out its statutory duties to investigate and prosecute criminal conduct. None of the complaints made by either Steve or Natch relate to any alleged criminal conduct or potential land use code violations. Furthermore, there is no allegation that the police department failed to respond to any of the complaints. In this instance the privacy interests of Steve and Natch outweigh the public interest so the disclosure requests should be denied.

## ***Scenario #3***

Paul resides in a single-family home in a quiet neighborhood. A new neighbor moves in next door. The neighbor's late-night activities cause Paul to be suspicious of the neighbor's activities. On many occasions, people arrive at the neighbor's front door and then, after speaking with the occupants, quickly depart. Paul observes this conduct over a period of one month before visiting the local police department. He complains that his next-door neighbor is probably involved in illegal activity, possibly the sale of drugs. The police investigate and decide no enforcement action is necessary. Paul notices that the late-night visits by strangers to his neighbor's house continue in the weeks after he complains to the police. Paul complains to the police again, with the same results; the officers visit the neighbor, determine nothing out of the ordinary or criminal is happening, and no enforcement action is undertaken. Paul complains to the local newspaper about what is going on at his neighbors, and a reporter from the newspaper asks the police department for police records concerning the neighbor's address. In the request the reporter recounts the complaints by Paul and the apparent lack of action by the police.

Answer:

Paul has a strong privacy interest in ensuring his identity as a complaining witness is not disclosed. Weighed against that privacy interest is the public interest in whether the local police agency is apparently turning a blind eye to repeated complaints of alleged criminal activity at the home next door to Paul. The reporter has stated that the Paul's complaints are apparently being ignored. This would warrant a belief by a reasonable person that lack of appropriate investigative action by government is implicitly condoning criminal activity. The public interest would outweigh the privacy interest of Paul, however, appropriate redactions to the police records should be undertaken to ensure that Paul is not identified as the complaining witness. After redaction, the requested records should be provided to the reporter.

#### *Scenario #4*

Tim lives next to a newly constructed restaurant. The restaurant features live bands. Tim's town has a noise ordinance which states that noise above 85 decibels is not allowed after 9 PM and before 7 AM. Tim complains to the local police department that the restaurant is violating the noise ordinance. The police investigate using their properly calibrated decibel meters, and they determine that the noise is below the 85-decibel threshold and no action is taken. The following week, Tim calls again with the same result. After the third week with the same result, Tim orders his own decibel meter. Using it, he determines that the decibel level is 100 decibels while standing at his front door. Calling the police, he explains the situation, watch the police respond, fiddle with some equipment outside their car and watches them leave, all while his decibel meter continues to read 100. The next day, Tim requests a copy of all investigative reports of the police department related to noise complaints for the restaurant since it opened six months ago, alleging that the police are not properly investigating noise complaints because they are not taking action even though there have been instances where the decibel level is above the 85-decibel threshold.

Answer:

The allegation here is that the police are not doing their job. While the department may not know that Tim has a decibel meter, the request makes it apparent to the department that the requester's concern is how the department is performing in its duties relative to investigating noise complaints and that the requester has some information that the department is not doing so. Assuming that no cases are pending or prospective, then the department should provide information relative to investigations of noise complaints, ensuring that information about calling parties and witnesses is redacted, but providing informative relative to its use and calibration of the decibel meters for noise complaints.