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[CORVID-19 HAS CLOSED COURTS UNTIL JUNE 1, 2020]

PUBLIC RECORDS

- Mug Shots, incident reports, and prosecution data of police officers, judges, and public officials BEFORE an arraignment are PUBLIC RECORDS. However, fully prosecuted infractions are not public because of CORI (ironic). March 12, 2020. *Boston Globe Media Partners v. Boston Police Department*. THE SJC. On its own, commented that CORI does have a privacy balancing test which may be different for private persons that this decision involving police and public officials. A.G. Maura Healy representing the Police.
- Again on march 20, 2020 (pre-CORVID-19) A.G. Maura Healy this time on the side of the *Boston Globe* argued successfully with the *Globe* that internal electronic databases seeking information on defendants' date of offense, description of crime, defendant race/ethnicity and gender, disposition, and sentence are PUBLIC RECORDS. However, docker numbers are secret. Reasoning, a reporter or other could "cobble together something akin to a Statewide criminal history of the defendant..."

An important byproduct of this SJC decision is that "where public records are in electronic form, as they increasingly are and will be, a

public request that requires a government entity to search its electronic database to extract requested data DOES NOT MEAN that extracted data constitute the creation of a new record under the public records law.”

This has been a constant rejection technique by agencies to our reporters. Translated: clerks cannot now say “we cannot create a new record just for you.” *Attorney General v. District Attorney for the Plymouth District*, SJC-12722.

- MCAD is proposing a change to its regulations to make confidential all complaints it receives after the case is closed. The November Appeals Court decision in *Larrabee v. MCAD*, 18-P-464, requires the MCAD to disclose the complaints in “ongoing,” AKA not closed, complaints. The new regulation would make all complaints secret until there is a final disposition.
- Virtual Court Hearings. They are public. You need to know the ZOOM ID or telephonic number. Usual participants, observers, including the public and the press. In person emergency sessions limited to 3 persons holding media credentials.

NATIONALLY

HIPAA and COVID-19. HIPAA is being cited to reporters to block information. The scope of HIPAA is often misunderstood and misapplied. HIPAA does not apply to responders vs. providers (fire departments v. doctors).

If the entity a “covered entity” Health Plan, Health Care Provider IF they electronically transmit health information, or billing service or community health management system – IF NOT – then a public record. Also, if the information was a public record BEFORE Covid-19, it still is! Examples: zip code data, breakdown for gender, age groups, race/ethnicity, age, sex, number of tests, positive cases, deaths.

The press is “a vital source of information.”

