BOSTON GLOBE MEDIA PARTNERS, LLC VS. DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES & OTHERS[1]

Docket:	SJC-12690
Dates:	November 5, 2019 - March 12, 2020
Present:	Gants, C.J., Lenk, Gaziano, Lowy, Budd, & Cypher, JJ.
County:	Suffolk
Keywords:	Public Records. Criminal Offender Record Information. State Police. Police, Records. Municipal Corporations, Police, Public record. Privacy.

Civil action commenced in the Superior Court Department on May 12, 2015.

The case was heard by Douglas H. Wilkins, J., on motions for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Elizabeth N. Dewar, State Solicitor (Daniel J. Hammond, Assistant Attorney General, also present) for Department of Criminal Justice Information Services & another.

Jason M. Lederman, Assistant Corporation Counsel, for Boston Police Department.

Jonathan M. Albano for the plaintiff.

The following submitted briefs for amici curiae:

Ruth A. Bourquin & Matthew R. Segal for American Civil Liberties Union of Massachusetts.

Robert J. Ambrogi for Massachusetts Newspaper Publishers Association.

Pauline Quirion for Greater Boston Legal Services & another.

GANTS, C.J. In the summer of 2012, the State police arrested a Barnstable law enforcement officer for operating a motor vehicle while under the influence. The State police arrested a Tewksbury police officer for the same offense in August 2014. Following this second incident, a reporter for Boston Globe Media Partners, LLC (Globe), made public records requests to the State police, seeking booking photographs and police incident reports related to the arrests. The State police refused to comply with the requests, claiming that the records were "criminal offender record information" (CORI), as defined in G. L. c. 6, § 167, and therefore were not "public records," as defined in G. L. c. 4, § 7, Twenty-sixth, because they were "specifically or by necessary implication exempted from disclosure by statute." The Globe also requested a police incident report involving an investigation into whether a District Court judge had taken another passenger's watch from a bin at a security checkpoint at Logan International Airport. The State police denied that request on the same basis.

In addition, the Globe made a public records request to the Boston police department for, among other things, the names of officers charged with driving under the influence, as well as the related booking photographs and incident reports. The Boston police department withheld the records on the same grounds as the State police had. The Globe appealed all of these denials to the supervisor of records (supervisor) in the office of the Secretary of the Commonwealth, who upheld the law enforcement agencies' decisions in each case.

In May 2015, the Globe brought suit against the State police, the Boston police department, and the Department of Criminal Justice Information Services (DCJIS), among others (collectively, law enforcement agencies), seeking a judgment declaring that the requested records must be disclosed under the public records law. On cross motions for summary judgment, a Superior Court judge ruled in favor of the Globe and declared that booking photographs of police officers arrested for alleged crimes and police incident reports involving public officials were not exempt from disclosure under the public records law. The law enforcement agencies appealed, and a single justice of the Appeals Court stayed the judgment "insomuch as the judgment requires the named defendants to provide access to the records that are the subject of this action CORI." We

transferred the appeal to this court on our own motion. For the reasons that follow, we affirm the judge's decision, albeit on different grounds.[2]

Statutory background. This case requires us to attempt to harmonize the language and legislative purpose of two statutes: the public records law, G. L. c. 66, § 10, and the CORI act, G. L. c. 6, §§ 167-178B.

1. The public records law. The public records law, G. L. c. 66, § 10, governs the public's right to access records and information held by State governmental entities. Under the public records law, anyone has the right to access or inspect "public records" upon request. G. L. c. 66, § 10 (a). "The primary purpose of the [public records law] is to give the public broad access to governmental records." Worcester Tel. & Gazette Corp. v. Chief of Police of Worcester, 436 Mass. 378, 382-383 (2002). In enacting the public records law, the Legislature recognized that "[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner," Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 158 (1979) (Collector of Lynn), and that "greater access to information about the actions of public officers and institutions is increasingly . . . an essential ingredient of public confidence in government," New Bedford Standard-Times Publ. Co. v. Clerk of the Third Dist. Ct. of Bristol, 377 Mass. 404, 417 (1979) (Abrams, J., concurring).

"Public records" are broadly defined as "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee" of any Massachusetts governmental entity. G. L. c. 4, § 7, Twenty-sixth. But "[n]ot every record or document kept or made by [a] governmental agency is a 'public record.'" Suffolk Constr. Co. v. Division of Capital Asset Mgt., 449 Mass. 444, 454 (2007). The Legislature has identified twenty categories of records that fall outside the definition of "public records" and are consequently exempt from disclosure under the public records law. G. L. c. 4, § 7, Twenty-sixth (a)-(u). Here, only one exemption has been claimed by the law enforcement agencies: G. L. c. 4, § 7, Twenty-sixth (a) (exemption [a]) excludes records from disclosure where they are "specifically or by necessary implication exempted from disclosure by statute."

A public record holder may invoke exemption (a) as the basis for withholding requested records where another statute -- the "exempting statute" -- expressly prohibits disclosure. See, e.g., Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 544 n.5 (1977), citing G. L. c. 167, § 2 (copies of bank examination reports "shall be furnished to such bank for its use only and shall not be exhibited to any other person . . . without the prior written approval of the commissioner"); G. L. c. 111B, § 11 (alcohol treatment records "shall be confidential"); G. L. c. 41, § 97D (all reports of rape or sexual assault "shall not be public reports"). Alternatively, a record may be withheld where the exempting statute protects the record from disclosure by "necessary implication," such as where the exempting statute prohibits disclosure as a practical matter. See, e.g., Champa v. Weston Pub. Schs., 473 Mass. 86, 91 n.8 (2015) (Federal statute "does not expressly prohibit disclosure of 'education records,' but it does condition receipt of Federal funds on the nondisclosure of education records").

Under the public records act, "a presumption shall exist that each record sought is public and the burden shall be on the defendant agency or municipality to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law." G. L. c. 66, § 10A (d) (1) (iv). Therefore, the burden rests with the law enforcement agencies to prove that the CORI act specifically or by necessary implication exempts the requested records from disclosure.

2. The CORI act. First enacted in 1972, the CORI act centralized the collection and dissemination of criminal record information in the Commonwealth. St. 1972, c. 805. See New Bedford Standard-Times Publ. Co., 377 Mass. at 413. It created a unified management system for all criminal record information, allowing, for the first time, the compilation of a comprehensive State criminal history for each offender (CORI report). St. 1972, c. 805, § 1. It also strictly limited dissemination of those State-compiled criminal histories to criminal justice agencies and other entities specifically granted access by statute. Id. By imposing these restrictions, the Legislature intended to address the need of criminal justice agencies to access criminal offender information while "embedded[ing] in the statutory public policy of Massachusetts" its "interest in promoting the rehabilitation and reintegration into society of former criminal defendants." Globe Newspaper Co. v. Fenton, 819 F. Supp. 89, 97 (D. Mass. 1993) (Fenton).

In the following years, groups such as employers, victim advocates, and the press began to voice dissatisfaction with the inaccessibility of criminal record information and challenged the constitutionality of the CORI act and related provisions. See, e.g., New Bedford Standard-Times Publ. Co., 377 Mass. at 405 (challenging constitutionality of CORI statute insofar as it limited public access to index of court records); Fenton, 819 F. Supp. at 90 (challenging inaccessibility of newly created electronic indices of criminal cases); Globe Newspaper Co. v. Pokaski, 684 F. Supp. 1132, 1132 (D. Mass. 1988), aff'd in part and reversed in part, 868 F.2d 497 (1st Cir. 1989) (challenging constitutionality of criminal record sealing under G. L. c. 276, § 100C). After years of debate and gradual modification, see, e.g., St. 1990, c. 319; St. 1977, c. 691, the CORI act was substantially revised in 2010 by the enactment of CORI reform. St. 2010, c. 256. See Massing, CORI Reform -- Providing Ex-Offenders with Increased Opportunities without Compromising Employer Needs, 55 Boston Bar J. 21, 21 (2011) (discussing statutory history).

CORI reform created a new agency, DCJIS, to manage "data processing and data communication systems . . . designed to ensure the prompt collection, exchange, dissemination and distribution of such public safety information as may be necessary for the efficient administration and operation of criminal justice agencies and to connect such systems directly or indirectly with similar systems in this or other [S]tates." G. L. c. 6, § 167A (c). See St. 2010, c. 256, § 8 (c). In turn, DCJIS developed iCORI, defined as "[t]he [I]nternet-based system used in the Commonwealth to access CORI and to obtain self-audits." 803 Code Mass. Regs. § 2.02 (2017).

The definition of CORI has evolved over time and was most recently amended as part of the 2018 criminal justice reform bill. St. 2018, c. 69, §§ 3, 4. Currently, CORI is defined broadly as:

"records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to [G. L. c. 276, § 58A,] where the defendant was detained prior to trial or released with conditions under [G. L. c. 276, § 58A (2)], sentencing, incarceration, rehabilitation, or release."

G. L. c. 6, § 167. However, the definition goes on to place certain limitations on what constitutes CORI:

"Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. . . Criminal offender record information shall be limited to information concerning persons who have attained the age of [eighteen] and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of [eighteen]; provided, however, that if a person under the age of [eighteen] was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration."

Id. This definition is critically important because it identifies which offenses in a person's criminal history generally may or may not be disseminated as part of the CORI report available through iCORI.[3] Based on the current definition of CORI, an individual's CORI report generally would not include juvenile offenses, unless the juvenile was adjudicated as an adult; offenses not punishable by incarceration; and offenses that were dismissed before arraignment.

CORI reform also significantly expanded the availability of CORI reports. St. 2010, c. 256, § 21. Where before only criminal justice agencies and a narrow group of statutorily authorized employers and government agencies could access CORI reports, CORI reform created a tiered system of access to CORI based on the identity of the requestor, which DCJIS regulations refer to as "required access," "standard access," and "open access." See id. See also 803 Code Mass. Regs. § 2.05(2) (2017).

In the tier of "required access," criminal justice agencies, certain licensing authorities, and the criminal record review board may obtain all CORI, plus sealed records. G. L. c. 6, § 172 (a) (1).[4] In the tier of "standard access," prospective employers and landlords may obtain a limited amount of CORI regarding prospective employees or tenants: their pending criminal charges, including cases continued without a finding that have yet to be dismissed, and, unless sealed, misdemeanor convictions from the last five years and felony convictions from the

last ten years. G. L. c. 6, § 172 (a) (3). In the tier of "open access," any member of the general public, upon written request, may obtain an even more limited amount of CORI about a person: felony convictions from the last ten years that were punishable by imprisonment of five years of more, all felony convictions from the past two years, misdemeanor convictions from the past year, and information regarding custody status and placement if the person is incarcerated or on probation or parole. G. L. c. 6, § 172 (a) (4). The commissioner of DCJIS also may provide access to CORI to persons other than those entitled to obtain access where he or she finds that such dissemination "serves the public interest." G. L. c. 6, § 172 (a) (6).

The CORI act, however, does not prohibit anyone from attempting to obtain more information about the criminal history of a particular individual from court records or from police daily logs or arrest registers, which are presumptively public.[5] See G. L. c. 6, § 172 (m) (declaring that "chronologically maintained court records of public judicial proceedings" and "police daily logs, arrest registers, or other similar records compiled chronologically" are "public records"). Those who are frustrated by the amount of information available to them in a CORI report and want to obtain a complete criminal history can go to the clerk's office in every court house, search for every case under the individual's name, and review the court file.[6] They would be limited in this endeavor only by the practical constraints of time and expense; obtaining someone's criminal history in this piecemeal fashion does not violate the CORI act. See G. L. c. 6, § 178.[7]

Discussion. We now turn to the cross motions for summary judgment. "Our review of a motion judge's decision on summary judgment is de novo, because we examine the same record and decide the same questions of law." Kiribati Seafood Co. v. Dechert LLP, 478 Mass. 111, 116 (2017). The de novo standard is fortunate here, because when the Globe made its public records requests and when the judge was deciding the cross motions for summary judgment, the definition of CORI was materially different from the amended definition enacted in 2018 as part of the criminal justice reform bill. At the time of the judge's decision, the definition provided that CORI "shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto." See G. L. c. 6, § 167, as amended through St. 2010, c. 256, § 4. To interpret this language, DCJIS promulgated a regulation defining "the initiation of

criminal proceedings" as "the point when a criminal investigation is sufficiently complete that the investigating officer takes actions toward bringing a specific suspect to court." 803 Code Mass. Regs. § 2.03(4) (2017). In upholding the law enforcement agencies' decisions to withhold records from the Globe, the supervisor reached his conclusion that the CORI act encompassed the requested records based in part on this regulation. The Superior Court judge, however, ruled that the DCJIS regulation was invalid because it was inconsistent with the statutory language, and that the documents at issue were not CORI because they were generated before criminal proceedings were "commenced" by a complaint or indictment. And because the documents were not CORI, they were not "specifically or by necessary implication" exempted from disclosure under the public records law by the CORI act. He granted summary judgment to the Globe on that basis.

While this appeal was pending, the Legislature amended the definition of CORI and removed the language on which the challenged DCJIS regulation and the Superior Court judgment were based. Effective April 13, 2018, the sentence, "Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto," was struck from § 167 and replaced with the sentence, "Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment." G. L. c. 6, § 167, as amended by St. 2018, c. 69, § 3.

We decide this case under current law for three reasons. First, a judgment should declare the law as of the time when a final judgment enters. See Chief of the Fire Dep't of Lynn v. Allard, 30 Mass. App. Ct. 128, 131 (1991), quoting Hanscom v. Malden & Melrose Gas Light Co., 220 Mass. 1, 9 (1914) ("equitable proceedings, looking to prospective relief, take note of events occurring after the commencement of the action, . . . and 'relief should . . . be adapted to the facts and the law existing at the time of the entry of the final [judgment]"). Second, a declaration applying the current law is appropriate because the records at issue have not yet been produced. See Federal Nat'l Mtge. Ass'n v. Nunez, 460 Mass. 511, 519-520 (2011) (statute granting new protections in eviction proceedings applied in pending case because eviction had not yet occurred). And, finally, the issue is recurring, and resolving the dispute under current law is in the public interest. Therefore, we need not determine whether the DCJIS regulation interpreting the meaning of "the initiation of criminal proceedings" is valid

because the statutory language it interpreted is no longer part of the CORI definition in the statute. Instead, we consider whether the booking photographs and incident reports at issue are exempt from disclosure under the public records law specifically or by necessary implication of the CORI act in its current form.

1. Exemption (a) of the CORI act. We begin by looking closely at the current definition of CORI and conclude that the records at issue in this case are not CORI. As relevant here, records or data compiled by a Massachusetts criminal justice agency may be CORI where they (1) "concern an identifiable individual"; (2) "relate to the nature or disposition of a criminal charge, an arrest," a sentence, or release; (3) are "recorded in criminal proceedings that are not dismissed before arraignment" -- in other words, in a criminal proceeding where the defendant was arraigned;[8] (4) concern criminal offenses committed by a person who is eighteen years of age or older or where a juvenile was adjudicated as an adult; and (5) concern offenses that are punishable by incarceration. G. L. c. 6, § 167. The booking photographs do not meet this definition because they say nothing as to the nature of a criminal charge or arrest (that is, whether it was for operating a motor vehicle while under the influence or manslaughter) or its disposition; the photographs are simply the product of the booking procedure arising from an arrest. Moreover, there is no suggestion in the record that any of the police officers or the judge was arraigned on charges arising from the incident reports, so both the incident reports and the booking photographs fail to satisfy the part of the CORI definition requiring that the records be recorded in a criminal proceeding where the defendant was arraigned.

But our conclusion that neither the booking photographs nor the incident reports are CORI does not by itself resolve whether these records are public records that must be disclosed under the public records law. See Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 294 (1979) (whether something is CORI "may be too fine a point" to determine whether record is public). A record is not a public record and therefore is exempt from disclosure if it "specifically or by necessary implication" is exempted from disclosure by the CORI act. See G. L. c. 4, § 7, Twenty-sixth (a). We must therefore determine whether the CORI act necessarily implies that the requested records are exempt from disclosure under the public records law.

In determining whether the booking photographs or incident reports are "by necessary implication" exempted from disclosure by the CORI act, we must exercise considerable caution. "Because of the [public records act's] presumption in favor of disclosure, we have said that the statutory exemptions must be strictly and narrowly construed." Globe Newspaper Co. v. District Attorney for the Middle Dist., 439 Mass. 374, 380 (2003), quoting General Elec. Co. v. Department of Envtl. Protection, 429 Mass. 798, 801-802 (1999). We have also said that where the exemption from disclosure derives from the CORI act, "it must be construed narrowly." Globe Newspaper Co., supra at 383.

When the Legislature amended the CORI definition to exclude offenses dismissed prior to arraignment, it demonstrated a clear intent to protect individuals from the collateral consequences that might otherwise arise due to inclusion of those records in CORI reports. See Statement of Sen. Will Brownsberger, Criminal Justice Reform at a Glance (May 6, 2018), https://

willbrownsberger.com/criminal-justice-package-at-a-glance/ [https://perma.cc/X4HE-VSWD] (2018 amendment to CORI definition was intended to "[m]ake criminal records more private" by "[a]ssur[ing] that cases dismissed before arraignment do not appear on criminal records"). See generally Commonwealth v. Pon, 469 Mass. 296, 307 (2014) (Legislature recognized "that gainful employment is crucial to preventing recidivism, and that criminal records have a deleterious effect on access to employment"). It did not intend to make such information easier for third parties to obtain through a public records request. The law enforcement agencies encourage us to adopt that legislative intent as the basis for a "necessary implication" that the CORI act exempts records concerning unarraigned offenses from disclosure under the public records law.

However, where we must strictly and narrowly construe any exemption arising by "necessary implication," we are unwilling to declare that the CORI act absolutely protects from disclosure all records concerning offenses that were dismissed prior to arraignment or never reached arraignment. First, the goal of the CORI act is to limit the dissemination of someone's State-compiled CORI report only to authorized recipients. Certainly, if a member of the public or the press attempted to cobble together a person's criminal history through public records requests to various law enforcement agencies, those records might be exempt from disclosure "by necessary implication" because disclosure would subvert the

CORI act's limitations on access to criminal history aggregated by State law enforcement agencies.[9] But the Globe's requests in this case focus on a small number of specific incidents and would not permit it to assemble the criminal histories of the police officers or judge whose records are sought.

Second, so broad an exemption would effectively swallow the investigative exemption from the public records law, G. L. c. 4, § 7, Twenty-sixth (f). The investigative exemption exempts from disclosure "investigative materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest."[10] This language makes clear that some investigatory materials are public records, and we cannot read exemption (a) so broadly as to shield all investigatory materials created by police from disclosure. We therefore conclude that the booking photographs and incident reports sought here are not absolutely exempt from disclosure as public records under exemption (a) "by necessary implication" of the CORI act. See Reinstein, 378 Mass. at 289, quoting Bougas v. Chief of Police of Lexington, 371 Mass. 59, 65 (1976) ("There is no blanket exemption provided for records kept by police departments").[11]

2. Exemption (c) of the CORI act. The sole basis on which the law enforcement agencies claim the right to withhold the requested records is exemption (a). Because we find no "necessary implication" that the CORI act exempts the booking photographs and incident reports from disclosure, we conclude that the law enforcement agencies have not met their burden to show that the requested records are exempt from disclosure under the public records law. See G. L. c. 66, § 10A (d) (1) (iv). However, many of the concerns raised by the law enforcement agencies regarding the collateral consequences of disclosure of these records merit attention but are more appropriately asserted under the personal privacy exemption, G. L. c. 4, § 7, Twenty-sixth (c) (exemption [c]). We therefore take this opportunity to consider whether the requested records would be exempt from disclosure under exemption (c) were it invoked.

Exemption (c) exempts from disclosure "any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." Id. In contrast to exemption (a), which

creates an absolute bar to disclosure where it applies, exemption (c) is not absolute. Rather, "[a]gainst the prospective invasion of individual privacy is to be weighed in each case the public interest in disclosure: the tilt of the scale will suggest whether the subdivision (c) exemption should be allowed." Reinstein, 378 Mass. at 292. "Where the public interest in obtaining information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield to the public interest." Champa, 473 Mass. at 96, quoting Collector of Lynn, 377 Mass. at 156. See People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280, 291-292 (2017) (PETA).

On the privacy side of the scale, we generally "have looked to three factors to assess the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources." PETA, 477 Mass. at 292, citing Globe Newspaper Co. v. Police Comm'r of Boston, 419 Mass. 852, 858 (1995). "We have also said that 'other case-specific relevant factors' may influence the calculus." PETA, supra, quoting Globe Newspaper Co., supra. Here, those case-specific privacy factors include the risk of adverse collateral consequences to the individual that might arise from the disclosure of this criminal justice information. "On the other side of the scale, we have said that the public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner." PETA, supra.

In deciding whether to invoke exemption (c) for public records requests such as those made here, law enforcement agencies "should balance the interests of transparency, accountability, and public confidence that might be served by making the requested records public against the risk that disclosure would unfairly result in adverse collateral consequences to the accused." Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court, 483 Mass. 80, 102 (2019). If the request had sought records concerning the alleged misconduct of a private person, there might be little to offset the risk of adverse collateral consequences arising from such disclosure unless there were investigative reasons for public disclosure of the records. But the records in this case concern alleged misconduct by public officials and, for two reasons, that creates a substantial public interest in

disclosure that must be weighed against the risk of adverse collateral consequences.

First, police officers and members of the judiciary occupy positions "of special public trust." Police Comm'r of Boston v. Civil Serv. Comm'n, 22 Mass. App. Ct. 364, 372 (1986). By assuming their unique position of power and authority in our communities, police officers "must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel." Id. at 371. "In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities." Id. The same is true for judges; the extraordinary power invested in the judicial office demands a high standard of behavior to ensure public trust in the judiciary. Accordingly, the public has a vital interest in ensuring transparency where the behavior of these public officials allegedly fails to comport with the heightened standards attendant to their office.

Second, where police officers and judges allegedly engage in criminal conduct that does not result in an arraignment, either because of a nolle prosequi or a dismissal before arraignment, the public has a substantial interest in ascertaining whether the case was not prosecuted because it lacked merit or because these public officials received favorable treatment arising from their position or relationships. Such matters implicate not only the integrity of the public officials who allegedly engaged in criminal conduct but also the integrity of our criminal justice system. Cf. State v. Crepeault, 167 Vt. 209, 218 (1997) ("Our concern is for the integrity of the legal process, which suffers as much from the appearance as the substance of impropriety. . . . Fair or not, it is not enough that our public prosecutors be ethical in fact. They must be above any suspicion of wrongdoing" [citation omitted]).

The public interests furthered by the public records law -- transparency, accountability, and public confidence -- "are at their apex if the conduct at issue occurred in the performance of the official's professional duties or materially bears on the official's ability to perform those duties honestly or capably." Boston Globe Media Partners, LLC, 483 Mass. at 102. Generally, and in this case, the private interests advanced by the CORI act -- privacy, rehabilitation, and reintegration of criminal offenders into society -- do not offset the public's "right to know 'whether

public servants are carrying out their duties in an efficient and law-abiding manner.'" Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 606 (2000), quoting George W. Prescott Publ. Co. v. Register of Probate for Norfolk County, 395 Mass. 274, 279 (1985). In enacting CORI reform, the Legislature recognized that a public official's interest in rehabilitation and reintegration is limited by the public's concern with holding public officials accountable for misconduct when it made public corruption crimes committed by public officials ineligible for sealing. See G. L. c. 276, § 100A; St. 2010, c. 256, § 128 (excluding from sealing convictions for violations of G. L. c. 268A). See also Pon, 469 Mass. at 298 n.5 ("Convictions that are ineligible for sealing under [G. L. c. 276,] § 100A[,] include . . . crimes based on the conduct of public officials and employees, see G. L. c. 268A"). In addition, we have previously held that a "public official has a significantly diminished privacy interest with respect to information relevant to the conduct of his [or her] office." George W. Prescott Publ. Co., supra at 278. See also Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 (1974) ("An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case"). That is not to say that public officials have no interest in rehabilitation and reintegration; however, the diminished privacy interest must be balanced against the public's ability to ensure that law enforcement officers and judges are not above the laws that they are tasked with upholding.

Conclusion. In sum, where we must narrowly construe exemptions from disclosure under the public records law, we conclude that the booking photographs and incident reports sought here are not absolutely exempt from disclosure as public records under exemption (a) "by necessary implication" of the CORI act. The law enforcement agencies have therefore not met their burden to show that the requested records are exempt from disclosure under the public records law. See G. L. c. 66, § 10A (d) (1) (iv). We also conclude that, had the law enforcement agencies asserted the privacy exemption, exemption (c), these records would not be exempt from disclosure where the subjects of the requested records are public officials and the public interests in disclosure substantially outweigh the privacy interests in rehabilitation and reintegration furthered by the CORI act. There is a substantial public interest in the disclosure of police incident reports regarding alleged offenses by police officers and public officials that do not result in arraignment. And disclosure of the booking photographs will eliminate confusion as to the identity of those arrested where they may have common names that may be shared by others.

Judgment affirmed.

footnotes

[1]Massachusetts State Police, Department of Correction, North Andover Police Department, and the Boston Police Department.

[2]We acknowledge the amicus briefs submitted by the American Civil Liberties Union of Massachusetts; Greater Boston Legal Services and the Union of Minority Neighborhoods; and the Massachusetts Newspaper Publishers Association.</p&>

[3]We say "generally" may not be disseminated because we recognize that, as noted infra at 10, some requestors are entitled by statute or regulation to receive criminal history information that falls outside the definition of CORI, specifically juvenile offenses adjudicated in Juvenile Court and sealed adjudications. See G. L. c. 276, § 100A ("The commissioner [of probation], in response to inquiries by authorized persons other than any law enforcement agency, any court, or any appointing authority, shall in the case of a sealed record or in the case of court appearances and adjudications in a case of delinquency or the case of a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution, report that no record exists"); G. L. c. 6, § 172 (a) (1)

[4]There are four different levels within the "required access" designation, with the amount of access to CORI and other information dependent "on the language of the statutory, regulatory, or accreditation requirement that mandates obtaining CORI." 803 Code Mass. Regs. § 2.05(3)(a) (2017). Requestors with "required 4 access" receive access not only to CORI, but also to all juvenile offenses and all sealed offenses. 803 Code Mass. Regs. § 2.05(3)(a)(4).

[5]We say that these records are presumptively public because court records involving adults or juveniles adjudicated as adults may be impounded, sealed, or expunged, juvenile court records are closed to the public, entries regarding juvenile arrests must be removed from police logs, and police logs must be redacted where an offense is expunged. See Republican Co. v. Appeals Court, 442 Mass. 218, 223 (2004) (court records can be impounded and made unavailable for public inspection upon showing of good cause); G. L. c. 276, §§ 100A, 100B, 100C (sealing of certain probation files and court records); G. L. c. 276, §§ 100F, 100G, 100H, 100J (expungement eligibility and procedures); G. L. c. 41, § 98F (entries

regarding juvenile arrests); G. L. c. 276, § 100L (police logs must be redacted where case is expunged).

[6]Under the Trial Court's Uniform Rules on Public Access to Court Records, criminal cases may not be searched for a defendant's name by members of the public through the Trial Court's public Internet portal. See Rule 5(a)(2)(ii) of the Uniform Rules on Public Access to Court Records, Mass. Ann. Laws Court Rules, Trial Court Rules, at 1007 (LexisNexis 2018), and committee notes. Rather, criminal cases may only be searched by court case docket number. Id. Without a docket number, one must go to the clerk's office of a court house and search for criminal cases by case name, and such a search will reveal only those criminal cases in that court house with that name as a defendant. See Rule 2(b) of the Uniform Rules on Public Access to Court Records, supra at 1002.

[7]It would, however, be a crime for a member of the public, under false pretenses, to obtain from DCJIS or a law enforcement agency a more comprehensive criminal history regarding the individual than what is available under "open access." See G. L. c. 6, § 178. Moreover, CORI reform made it a crime for an employer to request that a prospective employee provide the employer with his or her CORI report. See G. L. c. 6, § 172 (d). Because individuals are authorized to receive a full and unrestricted CORI report regarding their own criminal history, G. L. c. 6, § 175, this provision ensures that employers can access only that information to which they are statutorily entitled.

[8]We interpret "dismissed before arraignment" to include cases where the prosecutor filed a nolle prosequi before arraignment, thereby preventing prosecution of the case. See Mass. R. Crim. P. 16 (a), 378 Mass. 885 (1979). See also Commonwealth v. Miranda, 415 Mass. 1, 5-6 (1993) (entry of nolle prosequi dismisses charges, rather than merely making them dormant, such that prosecution can reinstate charges only by refiling them); Commonwealth v. Brandano, 359 Mass. 332, 335 (1971) (describing entry of nolle prosequi as dismissal made with approval of Commonwealth); Commonwealth v. Aldrich, 21 Mass. App. Ct. 221, 224-225 (1985) (equating nolle prosequi and dismissal for purposes of double jeopardy analysis).

[9]We reach that issue in the companion case also issued today, Attorney Gen. v. District Attorney for the Plymouth Dist., 484 Mass. , (2020).

[10]The law enforcement agencies have not argued that this exemption applies in this case.

[11]We note that juvenile records, apart from the CORI act, may separately be specifically or by necessary implication exempt from disclosure under the public records law by G. L. c. 119, § 60A ("All other records of the court in cases of delinquency arising under [§§ 52-59], inclusive, shall be withheld from public inspection except with the consent of a justice of such court").