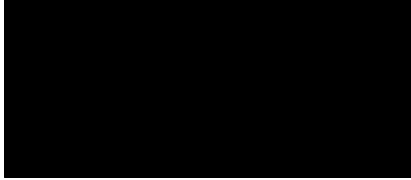



March 28, 2014



Re: Public Records Request
OLA# 27234

Dear Attorney 

You have requested documents in the possession, custody or control of the Boston Police Department under the Freedom of Information Act (FOIA). Specifically, you requested a copy of the following records:

1. Any documentation regarding the number of rape kits booked into police evidence over the past ten years, broken down by year;
2. Any documentation regarding the number of rape kits booked into police evidence that were sent to a public or private crime laboratory for testing over the past ten years, broken down by year;
3. Any documentation regarding the current total number of untested rape kits in any storage facilities currently under the Boston Police Department's jurisdiction and control; and
4. Any written policies or procedures regarding department practices on the handling of rape kit evidence, including testing protocols.

In response to your request, enclosed please find the Boston Police Department Rape Kit Statistics from 2004 - 2013, the Boston Police Department Crime Laboratory Forensic Serology Manual, Boston Police Department's Rule 204 (Procedures to Follow in Sexual Assault Cases), Boston Police Department's Rule 312 (Crime Laboratory - Evidence and Crime Scenes), Boston Police Department's Rule 205 (Death Investigation), and Boston Police Department's Rule 309 (Procedures for Handling Physical Evidence and Other Property Coming Into Police Custody).

We have been advised that all rape kits booked into BPD evidence are accompanied by a criminal complaint and are investigated by the Boston Police Department's Sexual Assault Unit. All Boston Police Department investigated rape kits are transported by the Sexual Assault Unit to the Boston Police Department Crime Laboratory for testing. All kits are tested at the Boston Police Department Crime Laboratory, none are sent to private laboratories for testing. All reported rape kit evidence submitted to the Boston Police Department Crime Laboratory is tested within 2-4 weeks from the date of receipt at the Crime Laboratory. As of March 24, 2014, there are three rape kits that were submitted and are awaiting testing.

Please note that all documentation provided to you has been done so in compliance with the Massachusetts Public Records Laws. Pursuant to M.G.L. c. 66 §10 and M.G.L. c. 4 §7(26)(c) and (f), any confidential investigatory material, medical information and information regarding specific witnesses / victims has been removed to protect their privacy. Finally, any information protected from disclosure under the Mandatory Criminal Record (CORI) Checks Law, per M.G.L. c. 6 §§167-178, has been withheld.

Sincerely,

Office of the Legal Advisor
617-343-4550

Boston Police Department Rape Kit Statistics 2004 - 2013

Rape Kits Booked Into Evidence by Year

2004	198
2005	175
2006	193
2007	147
2008	153
2009	196
2010	155
2011	156
2012	193
2013	182

See attached documents on Boston.

----- Forwarded message -----

From: [REDACTED]

Date: Wed, Apr 2, 2014 at 10:36 AM

Subject: Joyful Hearts | Boston update

To: [REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>, [REDACTED]

<[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>, [REDACTED]

[REDACTED]

<[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>

<[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>, [REDACTED]

All,

In response to my FOIA request, the Boston Police Department (“BPD”) provided a response that technically answers my questions, but does not seem fully transparent. The BPD sent a two page letter saying all kits are tested at the BPD Crime Lab and all kits are tested within 2-4 weeks from the date of receipt. As of March 24, 2014, there are 3 rape kits that were submitted and are awaiting testing. They provided a table of total rape kits booked per year and then all manuals for policies on how to handle them. All documents are attached here.

However, these documents do not seem to align with some news article in the past few years saying the BDP has a large backlog (over 6 months) when it comes to testing rape kits (e.g., http://bostonherald.com/news_opinion/local_coverage/herald_bulldog/2013/10/audit_finds_unprecedented_backlog_of_rape_kit). Today I reached out to one author discussing the backlog in Boston Police rape kit testing to see where he got his information. Maybe the BDP has reformed its approach or maybe something is missing.

I would appreciate discussing ideas on how to follow-up during the call today.

Best,

[REDACTED]

Email re: Boston.

----- Forwarded message -----

From: [REDACTED]
Date: Tue, Jun 17, 2014 at 5:11 PM
Subject: FOIA Request | Boston update
To: [REDACTED]@joyfulheartfoundation.org" [REDACTED]@joyfulheartfoundation.org>, [REDACTED]@joyfulheartfoundation.org" [REDACTED]@joyfulheartfoundation.org>
Cc: [REDACTED],

I finally was able to speak with a legal advisor, [REDACTED] at the Boston Police Department. Summarized below are my notes from the call today. I wanted to confirm (i) that these are the right things to be focusing on and (ii) that my suggested follow-ups would be useful (if you don't already know the answer to these questions). Any insight would be much appreciated.

- **Chronology of a rape kit entering BPD custody and being investigated**
 - An individual goes to the hospital when he/she has been raped or assaulted.
 - At the hospital, a rape kit will be utilized to capture any evidence.
 - The hospital will notify the Boston Police Department ("**BPD**") and BPD will come to pick-up the rape kit.
 - At this point, the rape kit is in BDP custody, but nothing is done with it until the alleged rape / assault victim contacts BDP to report the rape and press criminal charges. Statements may be made to hospital personnel, but the legal advisor was unsure whether the rape kit and the statements made to hospital personnel would be sufficient to investigate a case without the alleged rape / assault victim contacting BPD to press criminal charges.
 - The rape kits are held at BPD for six (6) months' to see if the alleged rape / assault victim will contact the BPD.
 - All rape kits are tested in house.
 - The two (2) to four (4) time frame I was originally given was apparently not accurate. Some of the tests alone, such as DNA testing, take longer than four (4) weeks to complete. The legal advisor was unsure whether the two (2) to four (4) week time frame was the time from an alleged rape / assault victim contacting the BPD to when testing began or what else it might have meant.
- **Statistics on rape kits that are not tested by BPD (aka "unreported kits")**
 - As of June 4th, the BDP had 41 unreported kits in storage
 - As noted above, the legal advisor doesn't know if a person doesn't contact the BPD, whether the BPD can take the case forward independently. I asked if he could look into this and he got defensive and said that he is not supposed to do civil investigation, just provide at hand information.
 - The legal advisor also was unsure how many cases are reported, but never go to trial due to the alleged rape / assault victim dropping the case. He said this probably occurs with some frequency, but is not sure of the exact numbers.
- **My proposed next steps**
 - Research whether the BPD push forward a lawsuit without the alleged victim's consent or presence?
 - Research whether the BPD follow-up with the alleged victim once it picks-up a rape kit or does the BPD have to wait for the alleged victim or a hospital advocate to contact them? What is done in other states?
 - Follow-up with the legal advisor in the next 2 weeks, if he doesn't provide

[REDACTED]

Boston.

----- Forwarded message -----

From: [REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>

Date: Tue, Jul 8, 2014 at 2:17 PM

Subject: Boston PD

To:

[REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>

Hi all,

I just got a phone call from a Lt. with the Boston PD sex crimes unit. I had reached out to him to see if he might be able to help with our request. He told me that they send all kits to the crime lab because they only have the capacity to store kits temporarily. He also said someone went in a few years back and tested old kits that had been stored at the PD. He recommended that we speak with Don Hayes, director of the lab, about the number of kits tested each year. His email is [REDACTED] <[\[REDACTED\]@pd.boston.gov](mailto:[REDACTED]@pd.boston.gov)>, and his phone number is [REDACTED]. He is willing to speak with us and suggested we schedule ahead of time. If [REDACTED]'s follow-up efforts aren't successful, perhaps this could be our next step.

--

[REDACTED]
Joyful Heart Foundation
[REDACTED]

boston

----- Forwarded message -----

From: [REDACTED]
Date: Wed, Jul 9, 2014 at 5:04 PM
Subject: FW: Request regarding annual activity of testing
To: [REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>, [REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>

[REDACTED],

Don got back to me right away, which was an unexpected surprise. Below are the numbers of sexual assault evidence collection kits tested from 2009 to 2013 in the crime lab. Are these numbers in line with what you would expect for Boston or lower? I will follow up with him regarding my other questions as he is prompt in responding and was willing to put it in an email.

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Donald Hayes [mailto:[\[REDACTED\]@pd.boston.gov](mailto:[REDACTED]@pd.boston.gov)]
Sent: Wednesday, July 09, 2014 5:00 PM
To: [REDACTED]
Subject: Re: Request regarding annual activity of testing

Greetings [REDACTED] from 2009 - 2013 the Boston Crime lab tested 898 Sexual Assault Evidence Collection Kits, (SAECK).

- 2009 - 196
- 2010 - 155
- 2011 - 156
- 2012 - 198
- 2013 - 193

We process all kit submitted for Criminal investigations that involve the Boston Police Department's Sexual Assault Unit. Feel free to contact me for additional information, Lt. Juliano had mentioned that you would be in touch with me.

Regards, Don Hayes

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] Forwarded message -----

From: [REDACTED]
Date: Thu, Jul 10, 2014 at 10:57 AM
Subject: FW: Request regarding annual activity of testing
To: [REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>, [REDACTED]
[REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>

Further responses from Don at BPD below.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Donald Hayes [mailto:[\[REDACTED\]@pd.boston.gov](mailto:[REDACTED]@pd.boston.gov)]
Sent: Thursday, July 10, 2014 10:14 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: Re: Request regarding annual activity of testing

Greetings [REDACTED] - You are welcome. In regard to your follow up questions.

- Could you distinguish between investigated rape kits versus reported rape kits? -
Investigated kits = reported kits.
- Is there a difference? - **NO**
- Is every kit that is booked into evidence that has a criminal complaint sent to the crime lab for testing? - **Yes**
- How long after an alleged rape will a reported rape kit take to get to your lab? - **The time between the alleged rape and the kit arriving at the laboratory can vary, it is really dependent upon when the victim goes to the hospital. Once the kit is collected at the hospital, the hospital notifies the police department from the jurisdiction where the assault occurred, for assaults that occurred in Boston, the hospital notifies the BPD Sexual Assault Unit. The average time for a kit to arrive at the BPD Crime Lab after SAU is notified is within 2 days, most within 24 hours. We are fortunate in Boston to have a dedicated Sexual Assault Unit since 1984. Kits can be submitted to the laboratory, 24/7, we have dedicated lockers refrigerators, for submissions during our laboratory off hours.**
- Once it is at your lab, how long does it take to being testing? - **Kits that arrive at the laboratory are tested and processed within 2 weeks to identify any potential biological evidence, semen, blood, saliva etc.**

- **To complete testing? - Completion of testing can vary; After kits are processed any identified biological evidence, which could be linked to the perpetrator, is forwarded to our DNA Section for DNA analysis. DNA analysis for most sexual assault cases is completed within 8 weeks. Any DNA profiles that can be linked to the perpetrator(s), are entered into the DNA database, CODIS. If there are reported consensual partners of the victim, that could have contributed biological material that was part of the evidence collection, we are required to exclude them, (consensual partner) from any generated DNA profiles before we can enter the profile into CODIS. If there is no identified biological evidence in the Kit, then we will move forward to other evidence from the case/crime scene, which could include clothing, bedding, condoms and various other items collected during the investigation.**
- **Are there any cases that will begin to be tested but then are stopped? If so, for what reasons? - Cases may be stopped upon notification from the SAU investigating detective or the Suffolk County District Attorney's office, for various legal reasons, ie. allegations unfounded, victim uncooperative, etc.**
- **When a BPD responder goes to the scene of an alleged rape, is that considered a reported case that goes to your lab? - Yes, if Boston Police is investigating the incident and there is physical evidence for laboratory analysis, the evidence comes to the BPD Crime Lab.**
- **I had submitted a FOIA request regarding rape kit testing and received the attached table? Could you explain the discrepancy between them? Are these counting different types of kits? - My numbers are from my labs yearly counts of kits received and processed for the calendar year at the BPD Crime Lab, some discrepancies could be due to processing kits that are submitted as a result of a homicide investigation.**

Regards, Don Hayes

On Wed, Jul 9, 2014 at 5:27 PM, [REDACTED] wrote:
Don,

Thanks so much for your prompt reply. Much appreciated. A few follow up questions I have are:

- Could you distinguish between investigated rape kits versus reported rape kits? Is there a difference? Is every kit that is booked into evidence that has a criminal complaint sent to the crime lab for testing?
- How long after an alleged rape will a reported rape kit take to get to your lab? Once it is at your lab, how long does it take to being testing? To complete testing? Are there any cases that will begin to be tested but then are stopped? If so, for what reasons?

- When a BPD responder goes to the scene of an alleged rape, is that considered a reported case that goes to your lab?
- I had submitted a FOIA request regarding rape kit testing and received the attached table? Could you explain the discrepancy between them? Are these counting different types of kits?

Thanks again for all of your help.

Best,

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From: Donald Hayes [mailto:██████████@pd.boston.gov]
Sent: Wednesday, July 09, 2014 5:00 PM
To: ██████████

Subject: Re: Request regarding annual activity of testing

Greetings █████ from 2009 - 2013 the Boston Crime lab tested 898 Sexual Assault Evidence Collection Kits, (SAECK).

- 2009 - 196
- 2010 - 155
- 2011 - 156
- 2012 - 198
- 2013 - 193

We process all kit submitted for Criminal investigations that involve the Boston Police Department's Sexual Assault Unit. Feel free to contact me for additional information, Lt. Juliano had mentioned that you would be in touch with me.

██

██████████

[REDACTED]

[REDACTED]

From: [REDACTED]
Date: Mon, Jul 14, 2014 at 4:17 PM
Subject: RE: Request regarding annual activity of testing
To: [REDACTED] <[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>, [REDACTED]
<[\[REDACTED\]@joyfulheartfoundation.org](mailto:[REDACTED]@joyfulheartfoundation.org)>

[REDACTED]

I had an informative call with Don at the Boston Crime Lab today. I think he highlighted some distinctions that were useful for my understanding of information to date and might be useful as tactical next steps / advocacy points.

There is a distinction between processing rape kits and DNA testing of the rape kits. Processing kits just means ensuring there is semen, blood, or some other bodily fluid that can be used for DNA testing. This takes about 2 weeks and is the timeframe I was previously given from the BDP legal counsel for time to process rape kits. The actual DNA testing, after the kit has been "processed" is where the backlog exists. In 2012, there was an 8 month backlog for DNA testing on rape kits.

Don explained that approximately 1/3 of all rape kits are tested in Boston (as opposed to at state crime labs) and that his lab (the Boston lab) has only 4 DNA analysts (as opposed to 35 or 40 in the state lab). During the time of his testimony in 2013, all 4 of his DNA analysts were out on maternity leave. He had presented testimony in front of a state congressional hearing to get resources for more DNA analysts in his lab. **To date, he has not gotten more DNA analysts for his lab. He said that if he had even 2 more DNA analysts, he could meet his target 8 week time frame to run DNA tests on processed rape kits.**

Now that his DNA analysts are back, turnaround time he aims for is about 8 weeks for DNA testing. However, he said that often the BPD wants fastest coverage for breaking & entering / theft cases, which extends the sexual assault DNA testing time. Moreover, until the DNA testing is complete, the individual (alleged rapist) cannot be added to a state database and any lawsuit cannot be pushed forward. So while the kits are "processed" in 2 weeks, until DNA testing is complete, the kits are not very useful.

Don provided the contact information for the state crime lab manager (Kristen Sullivan, [REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us), [REDACTED]). I will likely follow up with her, although the Boston issue of backlog seems to be addressed by Don's statement about the lack of DNA analysts in his lab and the occasional reprioritization of rape kits due to DNA testing for other types of crimes.

Below are my more detailed notes from the call. It seems that a tactical step that could help reduce backlog in Boston would be to advocate/lobby for more DNA analysts in the Boston Crime Lab. I am unsure if this is something Joyful Hearts does, but figured I would raise the idea.

- When did the policy of sending all kits to BPD SAU crime lab begin? Before that policy, what was the process?

- The crime lab is a separate unit of the BPD. 1984 was when the SAU was founded. Before that time, different district detectives around Boston worked on SA cases. There was not a unit focused on these crimes. Since the early 1980s the crime lab has been around and processing crime lab kits.
- One of my teammates learned that incidents that do not occur in Boston are taken to the State Crime Lab, not your lab. What area is Boston defined as? Does it include, Dorchester? Roxbury? Somerville? Do you know whether the State Crime Lab follows the same policy? Do you know how many kits the State Crime Lab tests annually? Do you know someone I could speak with at the State Crime Lab?
- Boston Crime Lab processes any criminal incidents investigated by Boston police comes to Boston Crime Lab. Some areas are state controlled areas such as highways, parks, the Esplanade, etc...There are properties in Boston that are state controlled and state run. In those cases, the kits would generally go to state labs. Boston includes Dorchester, Roxbury, Mattapan, East Boston, South Boston, Hyde Park, Roslindale, Greater downtown Boston Area, Charlestown.

Best,

[Redacted]

[Redacted]

[Redacted]
[Redacted]
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