

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

SUFFOLK, SS

A.C. No. 2018-P-0255

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BOSTON GLOBE MEDIA PARTNERS, LLC,

Appellant,

v.

DEPARTMENT OF PUBLIC HEALTH,

Appellee.

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ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT FOR  
THE COUNTY OF SUFFOLK

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**BRIEF OF APPELLANT BOSTON GLOBE MEDIA PARTNERS, LLC**

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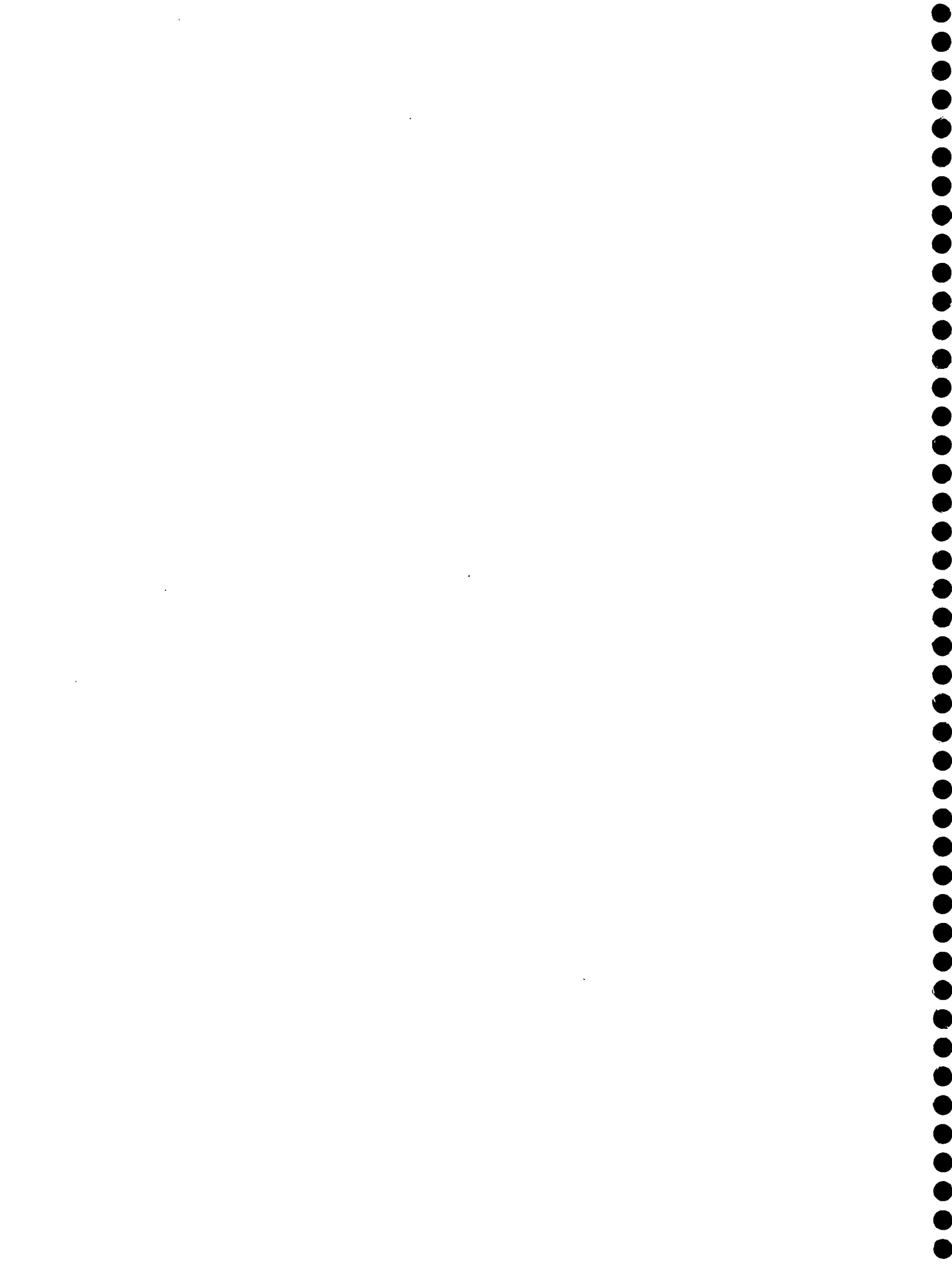
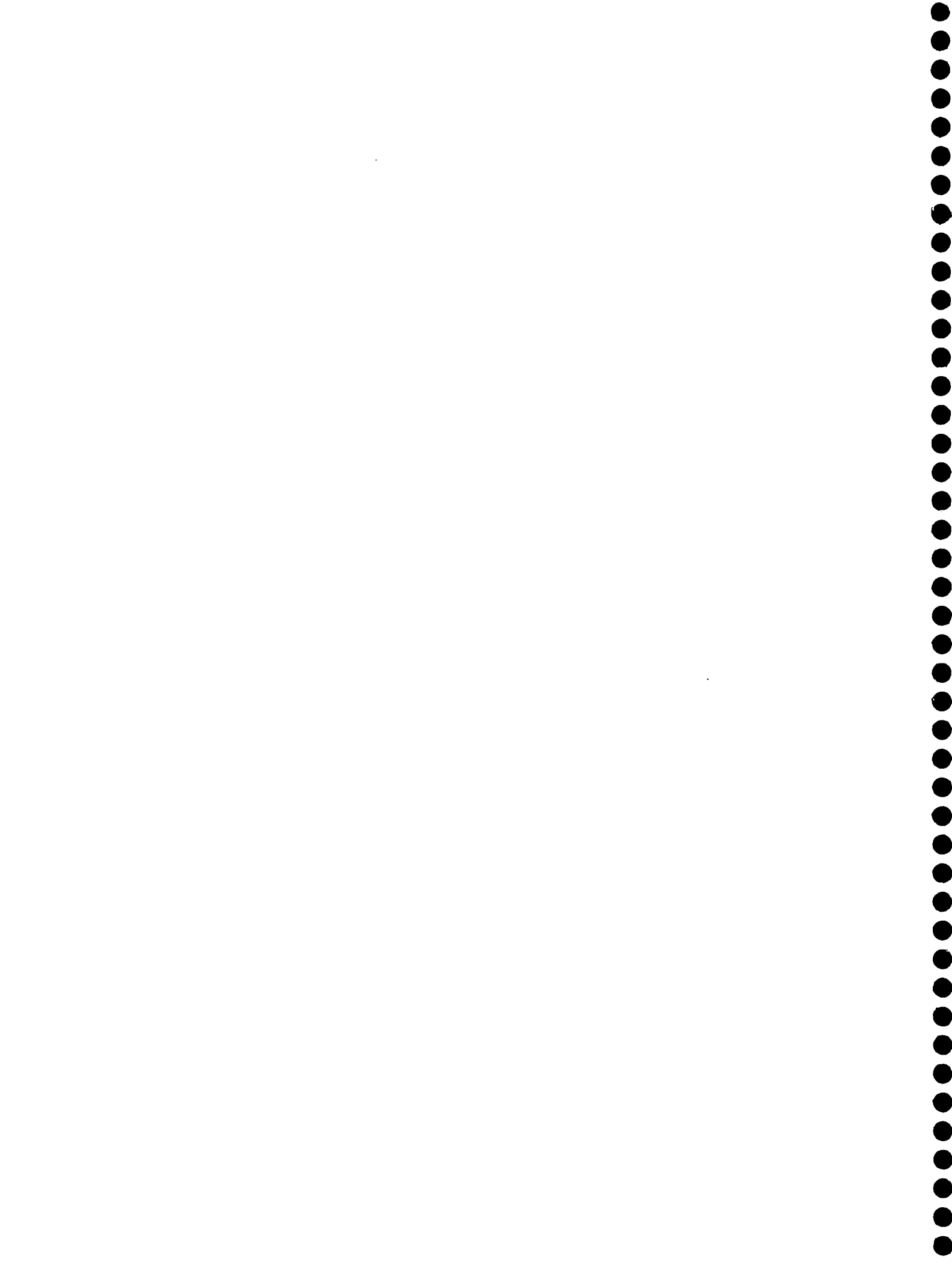


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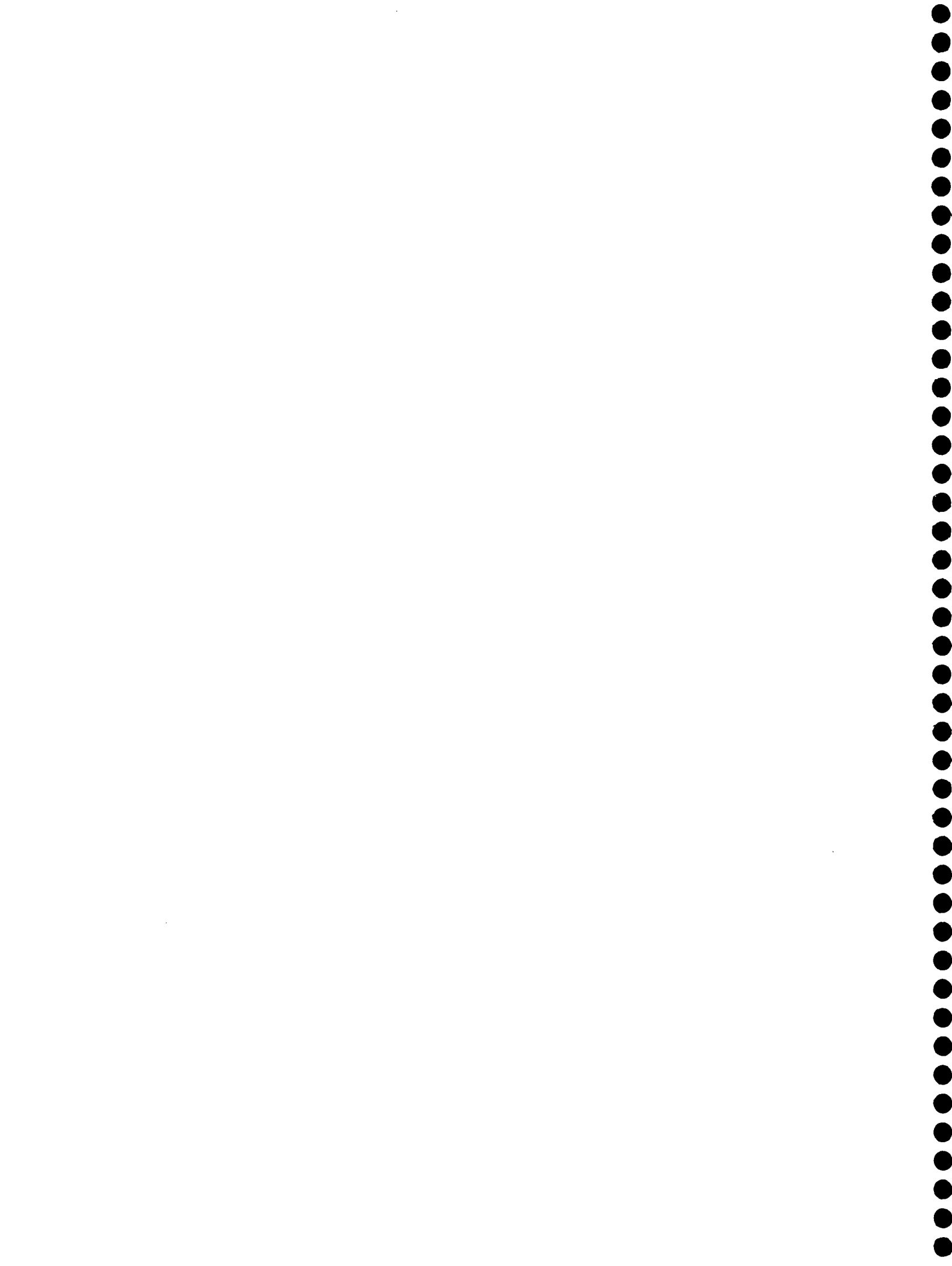


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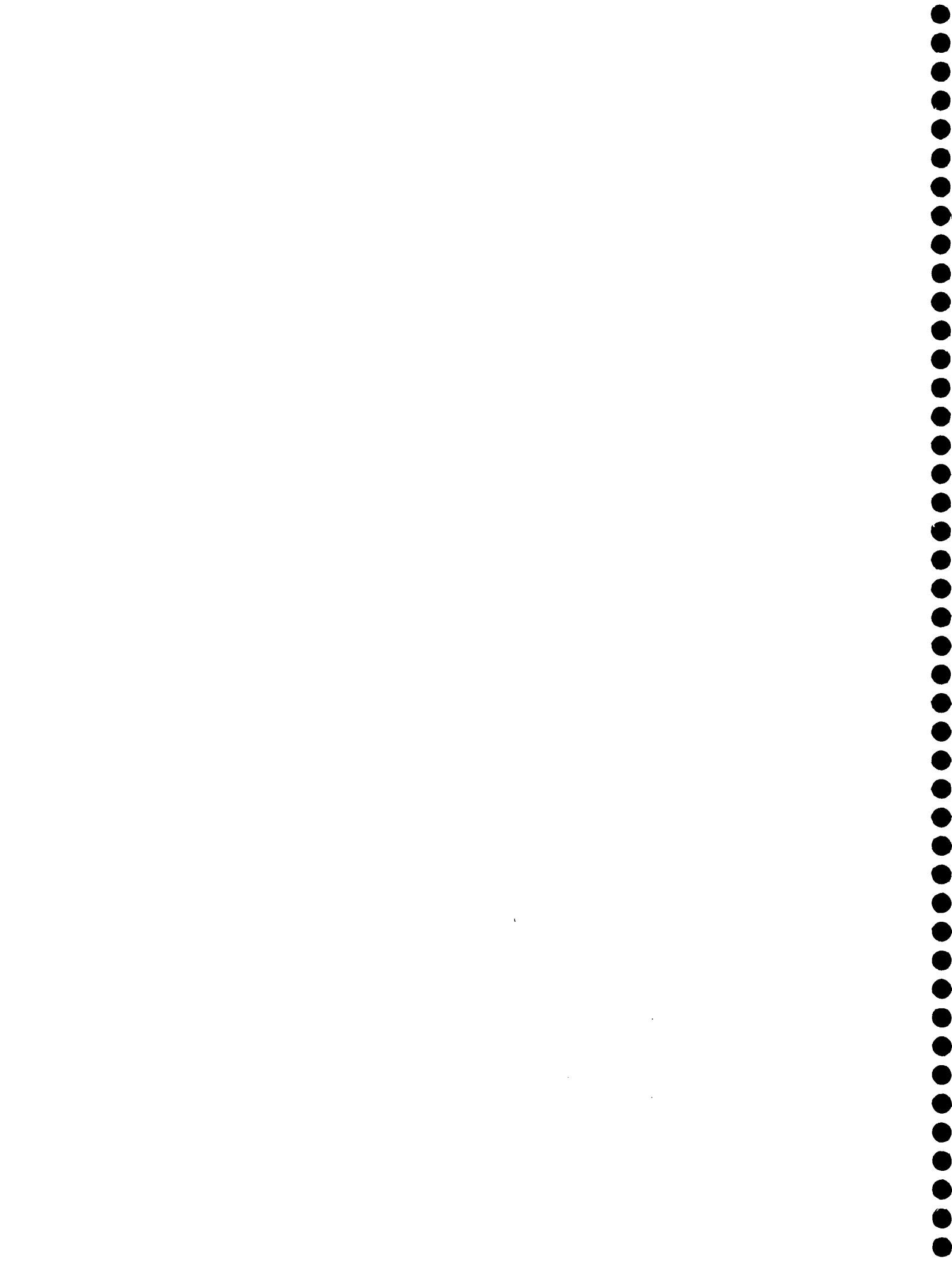
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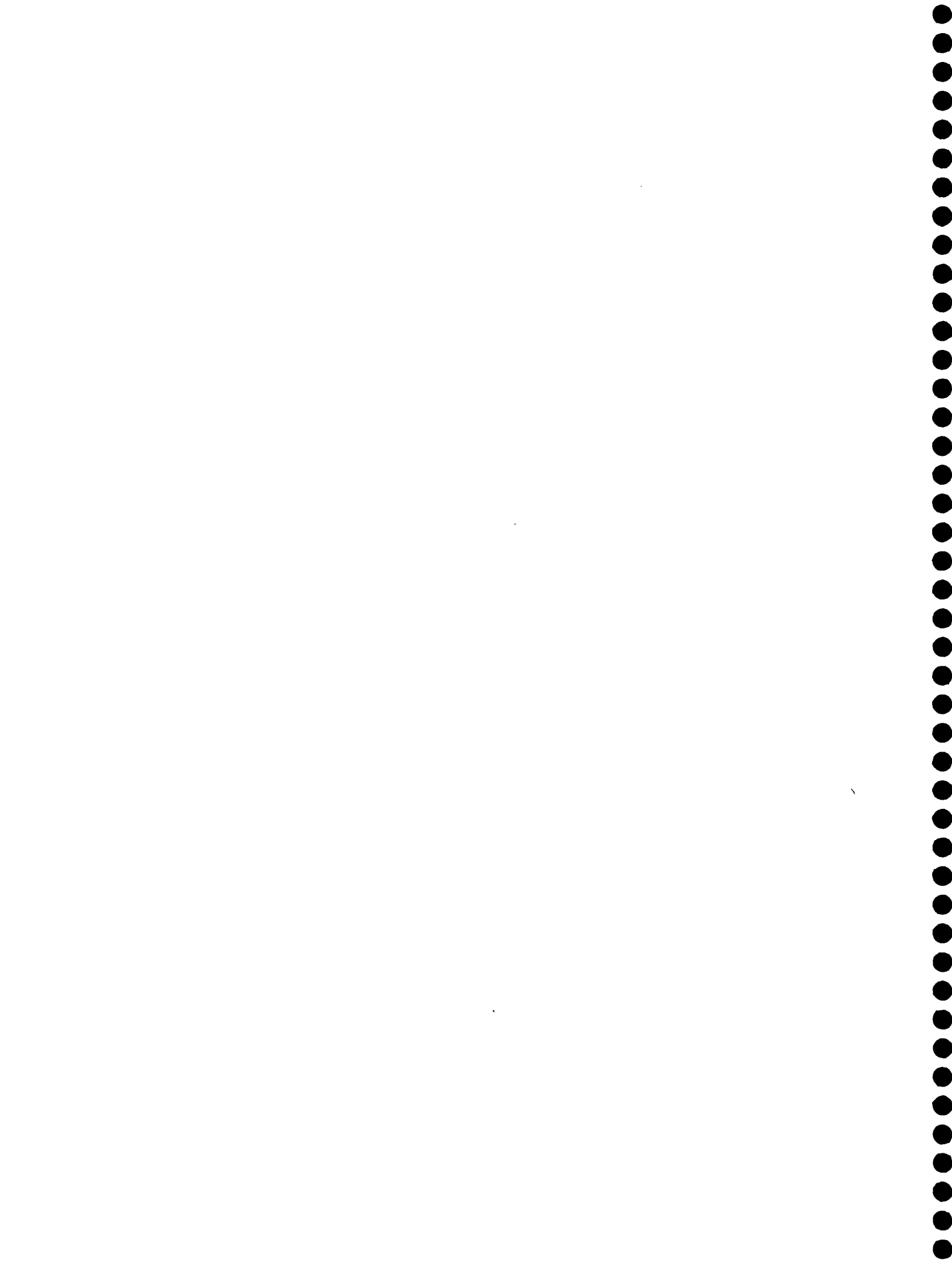
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## **I. STATEMENT OF ISSUES**

Whether the Superior Court erred by granting summary judgment in an action under the Public Records Law declaring that the Department of Public Health had carried its burden of demonstrating that the disclosure of electronic indexes of birth and marriage records would be an unwarranted invasion of personal privacy under G.L. c. 4, § 7, cl. 26(c).

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

This is an appeal from a judgment of the Superior Court (Green, J.) declaring that electronic indexes of birth and marriage records maintained by the Department of Public Health are exempt from disclosure under the Public Records Law as "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy[.]" G.L. c. 4, § 7, cl. 26(c).

Plaintiff-Appellant Boston Globe Media Partners, LLC (the "Globe") commenced this action on December 30, 2014 against the Massachusetts Department of Public Health ("DPH"). See Record Appendix ("RA") 2. The complaint sought a declaratory judgment determining that certain electronic indexes of birth and marriage





certificates maintained by the DPH are public records under G.L. c. 4, § 7, cl. 26, and an order of enforcement under G.L. c. 66, § 10(b) requiring production of the records. RA 13.

On May 4, 2016, the parties filed cross-motions for summary judgment. RA 3. On August 5, 2017, after argument, the Superior Court granted DPH's summary judgment motion, declaring that electronic indexes listing all births that have occurred in Massachusetts from 1953 through January 2011 and all marriages that have occurred since 1983 are exempt from the Public Records Law under G.L. c. 4, § 7, cl. 26(c). RA 177-92. The Globe timely filed a notice of appeal on September 27, 2017. RA 3.

**B. STATEMENT OF FACTS**

**1. Birth and Marriage Certificates Are Public Records in the Commonwealth.**

Vital records (e.g., records of births, marriages, divorces and deaths) have been recorded in Massachusetts since 1635. Statewide collection of vital records began in 1841. RA 29.

The Registry of Vital Statistics ("Registry") is a department within the DPH that collects, processes, corrects and issues copies of Massachusetts birth, death, and marriage records. *Id.* at 29. Members of the



public may obtain certified copies of vital records by placing orders at the Registry counter using the subject's name. *Id.* at 30.

Birth, death, marriage and divorce records are also available at the city or town of the Commonwealth in which the event recorded occurred. RA 31. (J.A. 3). *See generally Sec'y of Commonwealth v. City Clerk of Lowell*, 373 Mass. 178, 181 (1977) ("City and town clerks are requested, on a continuing and regular basis, and are required to furnish certified copies of birth and marriage certificates to citizens[.]").

Approximately 4.6 million birth certificates and 2.2 million marriage certificates are unrestricted, publicly available records. RA 36. Certain categories of birth and marriage certificates are not available to the public by statute. *See, e.g.,* G.L. c. 46, § 2A (birth and marriage records of persons born out of wedlock); G.L. c. 46, § 2B (preadoption birth certificates); G.L. c. 46, § 13 (e), (f), (g) and (h) (original records after amendment or correction of official record due to adoption, paternity or nonpaternity determination, and sex reassignment surgery). The Registry only makes available to the



public "unrestricted" birth and marriage certificates that are not covered by these statutes. RA 33-34.

The public also may purchase hard copies of birth and marriage certificates from the Registry by mail or via the Internet. RA 30. Online requests for birth and marriage certificates are processed through a private company called VitalCheck with which the Registry has partnered. , *Id.*<sup>1</sup> In Fiscal Year 2014, the Registry collected \$1,601,343 in fees for certified copies of birth, marriage and death records; use of the research room and equipment; and responses to data requests. *Id.* at 31.

**2. The Registry Makes Electronic Birth and Marriage Records Publicly Available in Its Registry's Research Room.**

The Registry operates a research room that is open to the public. RA 32. Members of the public use state-owned computer terminals located in the research room to view electronic "index" information about birth, death,

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<sup>1</sup> VitalCheck advertises itself as a "fast and convenient way to order certified government-issued vital records online." RA 30. VitalCheck's website also states that, in addition to its vital records services, VitalCheck's parent company, LexisNexis, offers background check services; family history and genealogy; (online) death records; (online) marriage records; real estate records; the "Ultimate People Finder;" personal assets search; and a wide range of public records. *Id.* at 31.



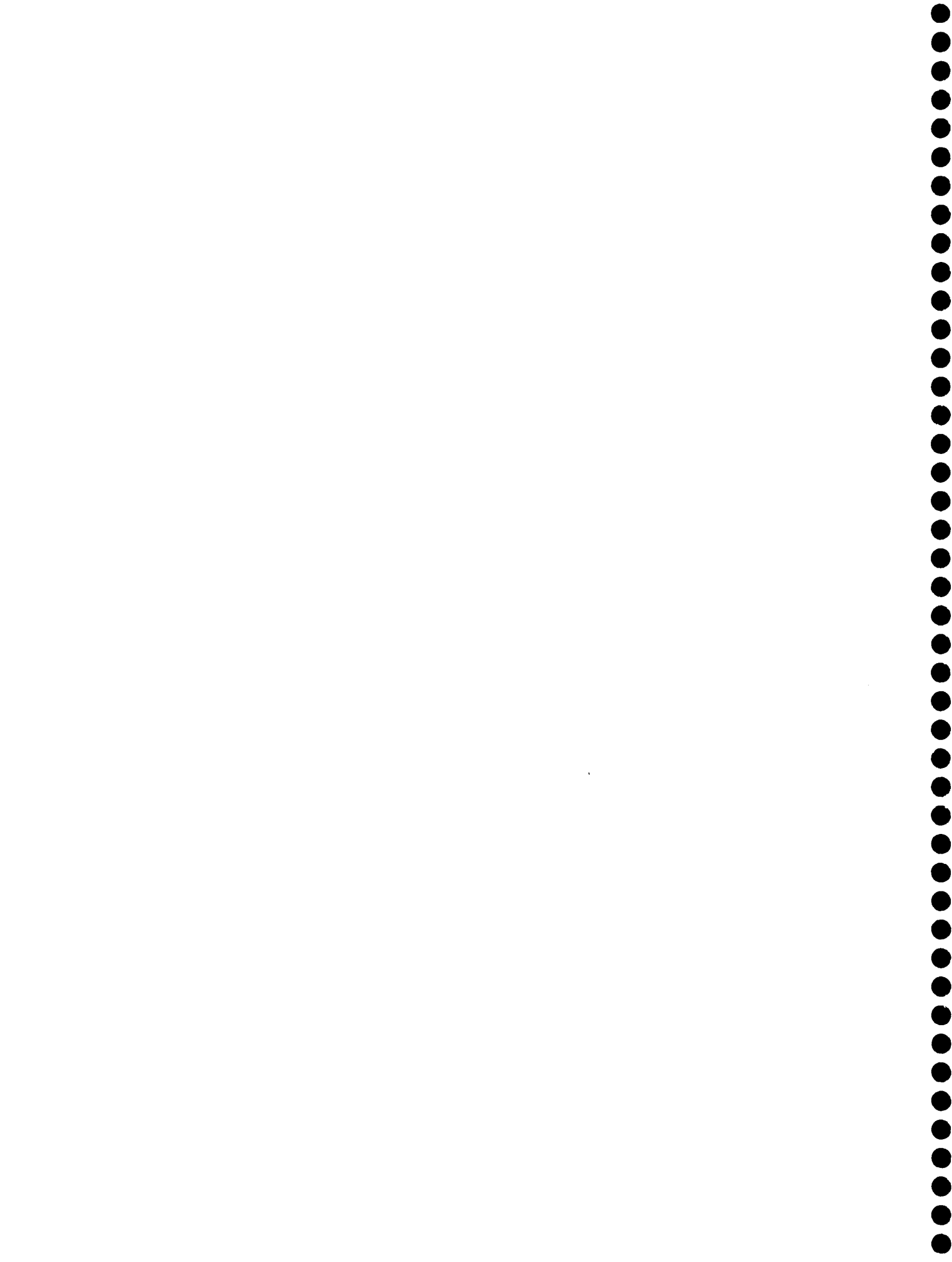
marriage and divorce records. RA 32. The public is allowed to use these computer terminals during regular business hours for a fee of \$9.00 per hour. *Id.* These terminals display index entries for unrestricted birth and marriage certificates that are publicly available. *Id.* at 33-34.

There are two databases searchable through the public facing terminals. RA 32. One of the databases was created in 1987 and contains information regarding (a) births that occurred in the Commonwealth from 1987 through approximately January 2011; and (b) marriages that have occurred since 1983. The second database, sometimes called the WebTop database, was created in 2008 and contains birth information from 1953 through 1986, as well as scanned images of birth certificates for that period. *Id.*<sup>2</sup>

The instructions on the public facing computer terminal screen reads "Enter the complete or the first

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<sup>2</sup> In 2011, the DPH created a third database for vital records known as the Vitals Information Partnership (VIP) electronic birth registration. RA 35. The VIP birth registration system is not available on the Registry's public facing terminals or through any other means. *Id.* The Globe's public record request does not encompass the VIP database. *Id.* at 41-42, 136, 168, 180.





few letters of a last name. First name is optional." It is not necessary to know a person's first or last name to access the index information. For example, by typing in the letters "AA" into the computer terminal, one is able to view and scroll through a list of names of people in the 1987-2011 birth certificate indexes as well as the 1983-to-present marriage certificate indexes. It is possible to view all the names in each index that begin with A by conducting 26 searches using a different letter of the alphabet as the second letter of the name, and continue through the alphabet. RA 33.

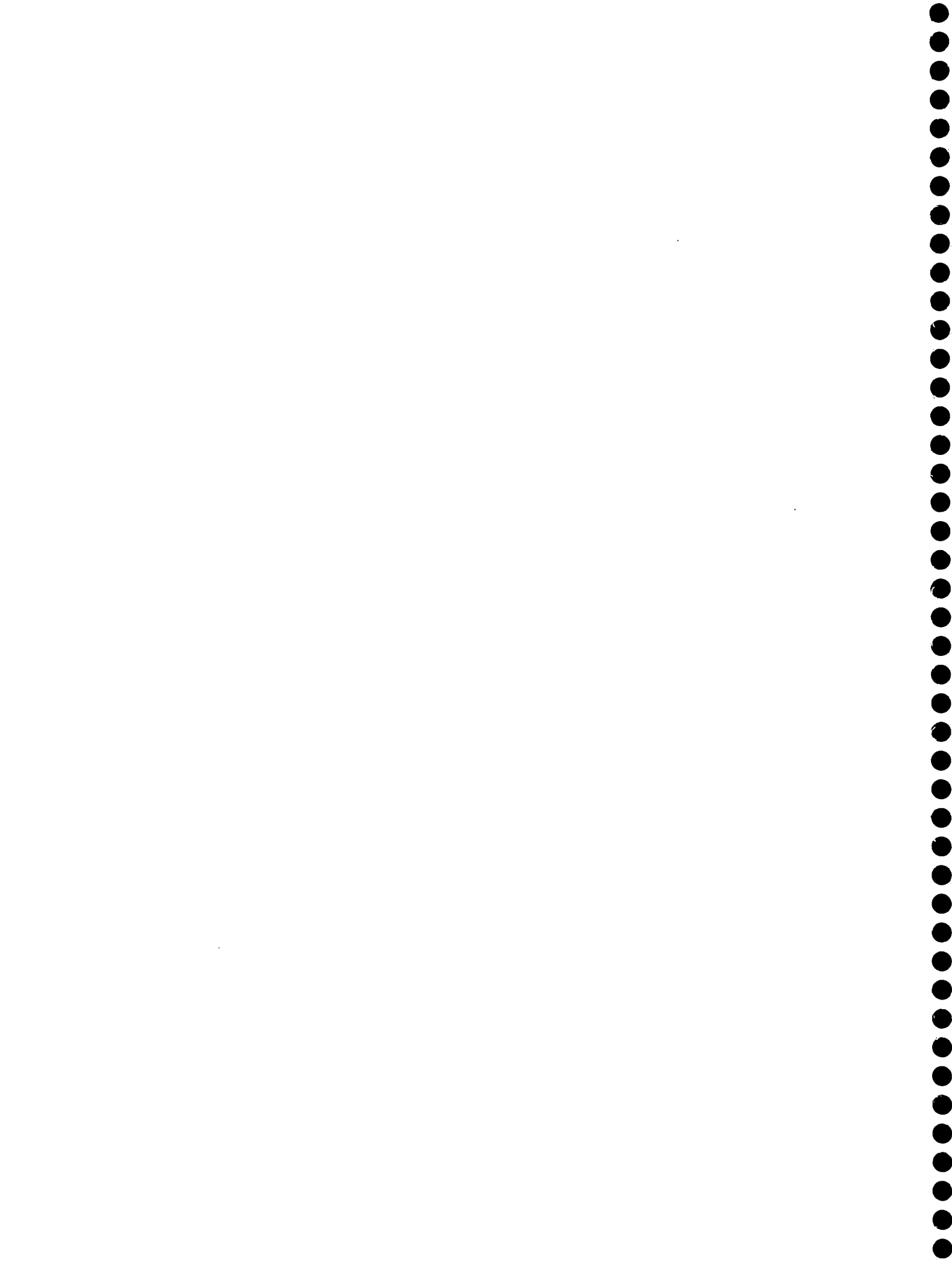
The WebTop database allows a user to search by 15 possible criteria, including last name, first name, middle name, gender, city/town of birth, mother's first name, mother's last name, father's first name, and father's last name. For example, one may search for all the births that occurred in the City of Somerville in a given year, and retrieve a long list of births. Each entry contains a file name, birth date, last name, first name, middle name, birth city, and mother's first name. A user can click on the item, wait a few seconds, and then see the full birth certificate with more detailed information. RA 33. Although users cannot print the results of their search queries from either



database, *id.*, there are no restrictions on members of the public transcribing index information viewed on the Registry's public facing computer terminal. RA 128-29, 169.

A user can obtain from the public facing terminals the following birth information regarding a person: last name, first name, date of birth, place of birth, mother's/parent's name, father's/parent's name, and the location of the record in the locked vault. For the years 1953-1986, the person's middle name also is available. RA 32. This information is more limited than what is provided on certified copies of birth certificates sold by the Registry, which generally includes: Child's First, Middle and Last Name; Father's First, Middle and Last Name; Mother's First, Middle and Maiden Name; Mother's Present First, Middle and Last Name; Street and City Address of both Parents; Place of Birth of both Parents; Date of Birth of both Parents; Parents' Ages at time of Child's birth; Parents' race; Parents' Occupation; and Name and Address of Attendant at Birth. *Id.*

A user can obtain the following marriage information from the public facing terminals regarding a person: last name, first name, date of marriage,



spouse, place where the license was filed, certificate number, and the location of the record in the locked vault. RA32-33. This information also is more limited than what is provided on certified copies of marriage certificates sold by the Registry, which generally include: Spouses' Maiden and Married Names; Spouses' Dates of Birth; Spouses' Occupations; Spouses' Street and City Addresses and Zip Codes; Number of Marriages for each Spouse; Maiden Names of Spouses' Mothers; Spouses Fathers' Names; Date and Place of Marriage including, if applicable, Church Name; and Name of Person who Performed Ceremony. *Id.* at 33.

**3. The Registry's Electronic Birth and Marriage Indexes Only Contain Public Information.**

The Registry operates its computer terminals in a way that ensures the public may only view electronic records of birth and marriage records that are public by law. RA 33. See, e.g., G.L. c. 45, § 2A (forbidding public inspection of birth certificates of children born out of wedlock or abnormal sex births, or fetal deaths); G.L. c. 46, § 13 (limiting access to original birth certificates when the official records have been corrected due to marriage of parents of children born out of wedlock; adoption; completion of gender



reassignment surgery; or paternity determination). The Registry complies with these statutory requirements by programming its computer terminals to display content which is updated nightly to remove information that is not available to the public. RA 34. The computer terminals do not display entries for records that are not available for examination by members of the public on a given day. *Id.* at 33.

#### **4. Other Sources of Birth and Marriage Records**

There are many publicly available alternative sources of birth and marriage certificate information concerning Massachusetts residents. RA 129, 169. For example, the Office of the Secretary of the Commonwealth has provided its statewide electronic voter list (which includes dates of birth) to many political parties and campaigns. *Id.* at 129-30, 169.

Massachusetts cities and towns generally provide copies of their voter registration/resident lists (including dates of birth) to any member of the public upon request. For instance, the City of Cambridge charges \$20 for a CD-ROM of its voter list. RA 130, 169-70.

Other states also make birth information publicly available. The State of Rhode Island provides its





statewide voter list (including dates of birth) to anyone for \$25 on CD-ROM. Kentucky makes its index of births, marriages and deaths (from 1911 to 1999) available on CD-ROM for \$31.80. RA 130, 170.

Private companies also offer birth date information. Ancestry.com has posted the Massachusetts Birth Index for people born in 1901-1960 and 1967-1970. Users can search Ancestry.com by birth year, city, partial name, and other ways. RA 102, 170. Instant Checkmate also operates a website where users can obtain birth dates and other information, including access to criminal records, related court documents, addresses, and known aliases. *Id.* at 130, 170. Another site, FamilySearch, has birth records from 1841-1915. *Id.* at 130, 170.

Marriage certificate information also is available from multiple sources. The DPH makes public its electronic index of divorces (which indicates marital status). RA 131, 171. Ancestry.com has posted the Massachusetts marriage index for people wed from 1901-1955 as well as 1966-1970, and allows users to search by, among other things, birth year, city and partial name of married persons. *Id.* Target and Bed Bath & Beyond offer online wedding registries that anyone can



look up to confirm a recent or upcoming nuptial. RA 131-32, 172. The Boston Globe, New York Times and other papers publish wedding announcements. *Id.* at 132, 172.<sup>3</sup>

Other states also make marriage information publicly available. Washington State sells its index of Marriage Certificates (1968-2014) in Excel format for \$30. Minnesota offers a searchable index of Marriage certificates on its web site. Supp. Wallack Dec. ¶ 22 (J.A. 103); 9A Add. Stmt. ¶ 13.

#### **5. Public Interest Uses of Birth and Marriage Information**

The Globe regularly collects information contained on birth, marriage, divorce, and death certificates in order to report on matters of public concern. RA 132-36. Birthdate and marriage records often are needed to verify a person's identity. Common examples are when a person has a common name, has petitioned the Probate Court for a name change, see G.L. c. 210, § 12, or has exercised the common law right to "assume a name which he deems more appropriate and advantageous to him than

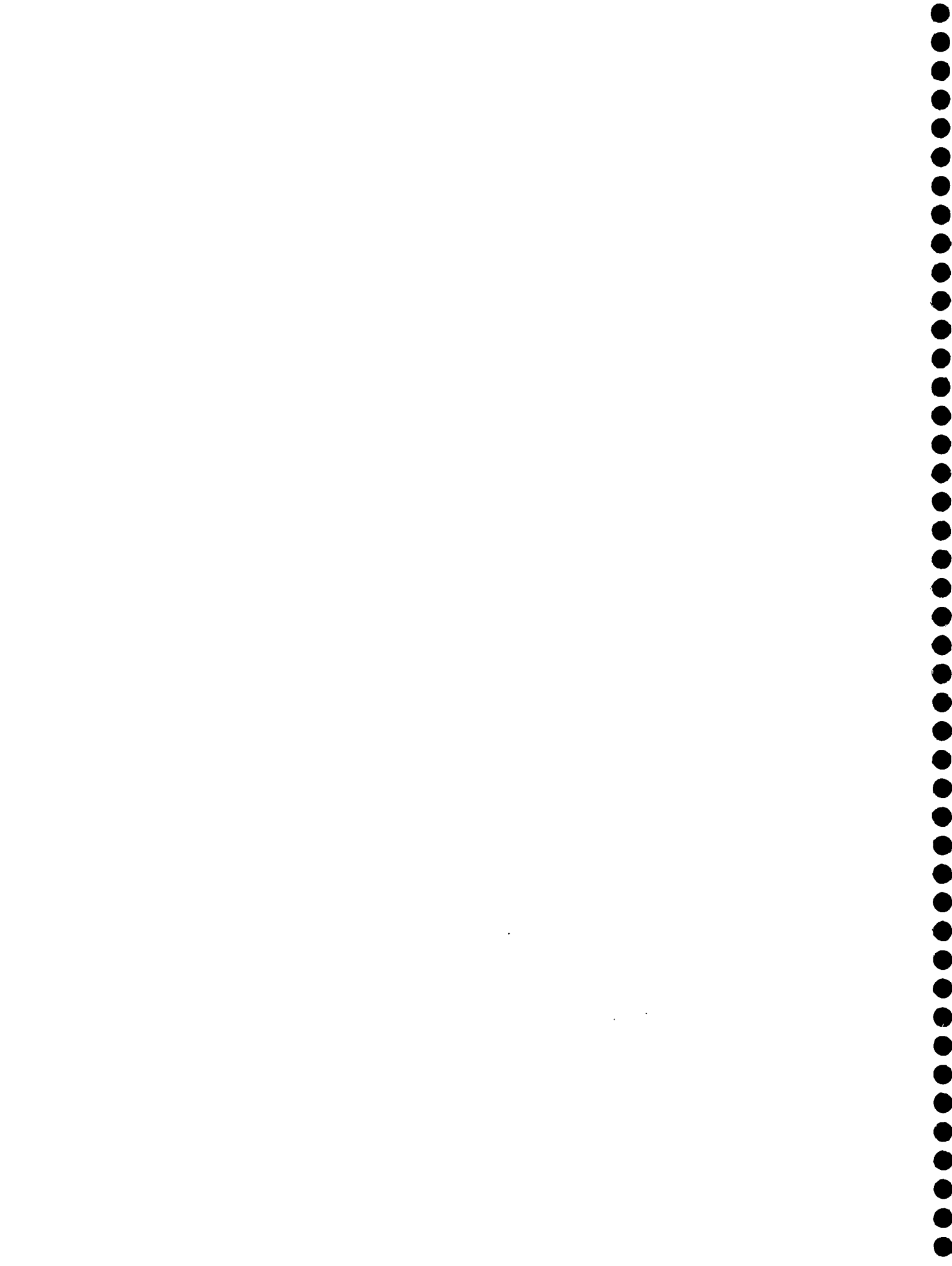
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<sup>3</sup> The Commonwealth previously has made public an index of all persons who received approval to officiate a marriage for a day in 2014. The Globe used the data to identify marriages officiated by Governor Deval Patrick, including the day and place of the wedding and the names of the wedding couple. RA 131.



his family name in his present circumstances, if the change is not motivated by fraudulent intent." *Clerk of Lowell*, 373 Mass. at 184-85 (internal quotation marks and citation omitted). See also *id.* at 183 ("Where a person is in fact known by two names, either one can be used. This principle has been applied in about every connection.") (internal quotation marks and citation omitted).

In 2015, for example, the Globe filed a public records lawsuit against the State Police Department seeking the birthdates of State Troopers. The birthdates were required in order to obtain from the Registry of Motor Vehicles driving records of persons arrested for driving under the influence and who were believed to be Troopers. See *Boston Globe Media Partners, LLC v. Department of State Police*, Suffolk Civ. No. 15-3396-A. The Superior Court in that case entered a preliminary injunction later reversed by this Court for consideration of the Supreme Judicial Court's intervening decision in *People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources*, 477 Mass. 280 (2017), which interpreted for the first time the public safety exemption found in G.L. c. 4, § 7, cl. 26(n). *Boston Globe Media Partners, LLC v. Department*



of State Police, 92 Mass. App. Ct. 1112 (2017) (Rule 1:28 Mem. and Order).

Birthdate information also is needed in order to perform research for news articles, including identifying trends (such as changes in the birth or marriage rate across the state), conducting background checks on candidates for elected office, and verifying that the state is correctly recording births and marriage certificates for every city and town in Massachusetts. RA 82.

#### **6. The Globe's Public Records Requests**

On May 10, 2013, Globe reporter Todd Wallack made a public records request to DPH asking for electronic copies of the Registry's indexes of birth, divorce, marriage and death records. RA 35. The records sought by the Globe were electronic copies of the same limited index information that the Registry allows members of the public to see on computer terminals in its research room. *Id.* at 35-36, 168. The Globe intended the public records request to be for an electronic copy of the most up-to-date birth index and marriage index made available on the Registry's public facing computer terminals.<sup>4</sup>

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<sup>4</sup> The Globe did not seek a copy of the Registry's centralized VIP database. RA 35-36, 136, 168.





On December 20, 2013, the Globe filed an appeal to the Supervisor of Public Records (the "Supervisor") pursuant to G.L. c. 66, § 10(b) challenging DPH's failure to produce any documents or provide a formal response to the Globe's public records request. RA 37. On February 14, 2014, the Supervisor issued an order to DPH requiring that the records sought by the Globe "be made available in accordance with the Public Records Law." *Id.*

In response to the Supervisor's order, DPH provided the Globe with responsive death and divorce records, but refused to provide responsive copies of the Registry's indexes of birth and marriage records. *Id.* The Globe then filed a second appeal to the Supervisor. *Id.* On March 28, 2014, the Supervisor granted the Globe's appeal and ordered DPH to provide the Globe with electronic copies of the Registry's indexes of birth and marriage records. *Id.*

On June 10, 2014, DPH filed a request for reconsideration with the Supervisor, asking the Supervisor to reverse his prior rulings that electronic copies of the Registry's indexes of birth and marriage records are public records. RA 37, 50-74. On October

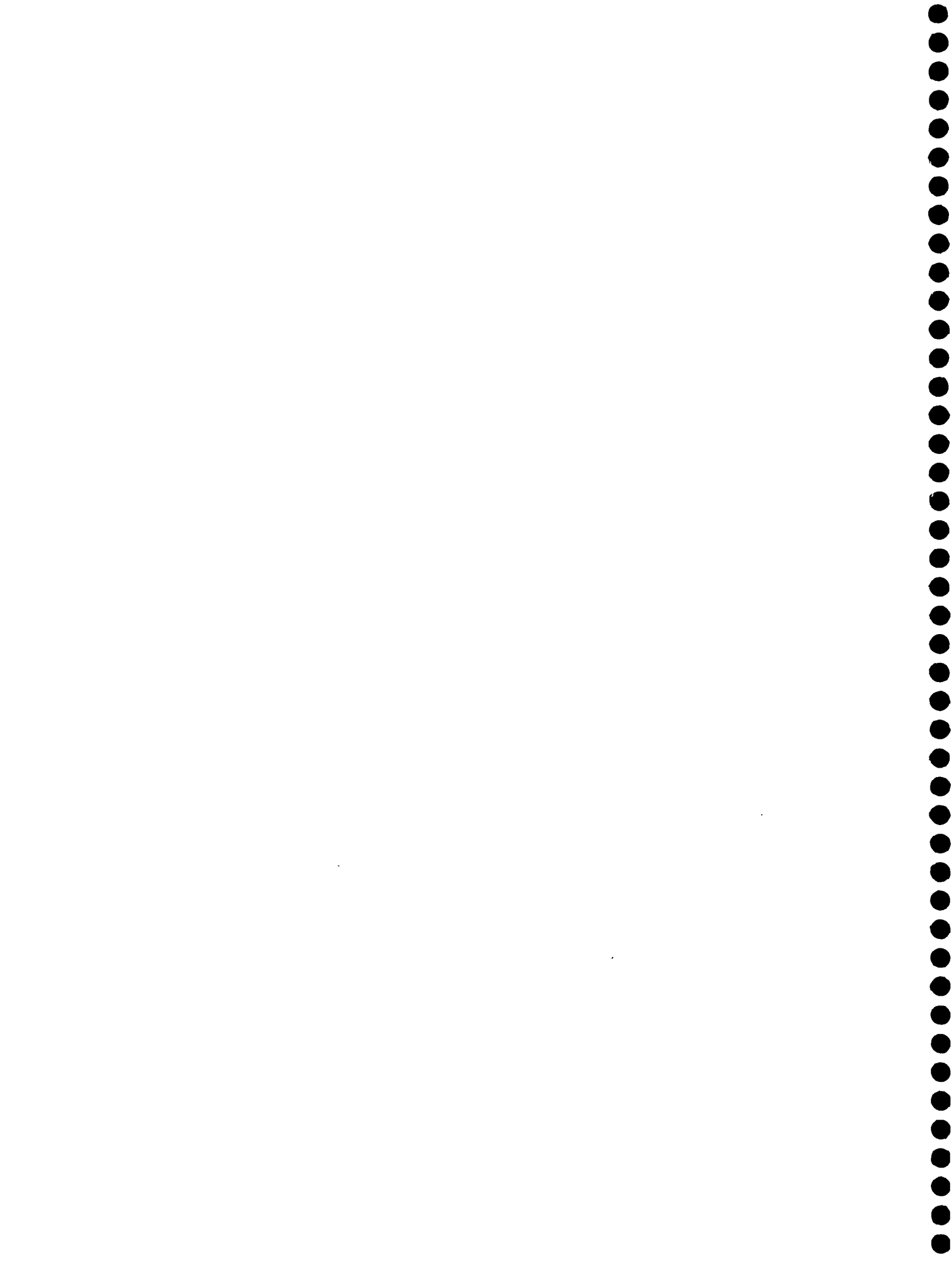
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17, 2014, the Supervisor granted DPH's request for reconsideration. *Id.* at 37-38, 70-74. Reversing his two prior orders, the Supervisor ruled that electronic copies of the Registry's indexes of birth and marriage records were exempt from mandatory disclosure on the grounds that the records were "specifically or by necessary implication exempted from disclosure by statute." *Id.* at 72-73. See G.L. c. 4, § 7, cl. 26(a). The Supervisor also opined that DPH had made a "compelling argument" that the information was exempt because disclosure would constitute an "unwarranted invasion of personal privacy." *Id.* at 73. See G.L. c. 4, § 7, cl. 26(c).

### **III. SUMMARY OF ARGUMENT**

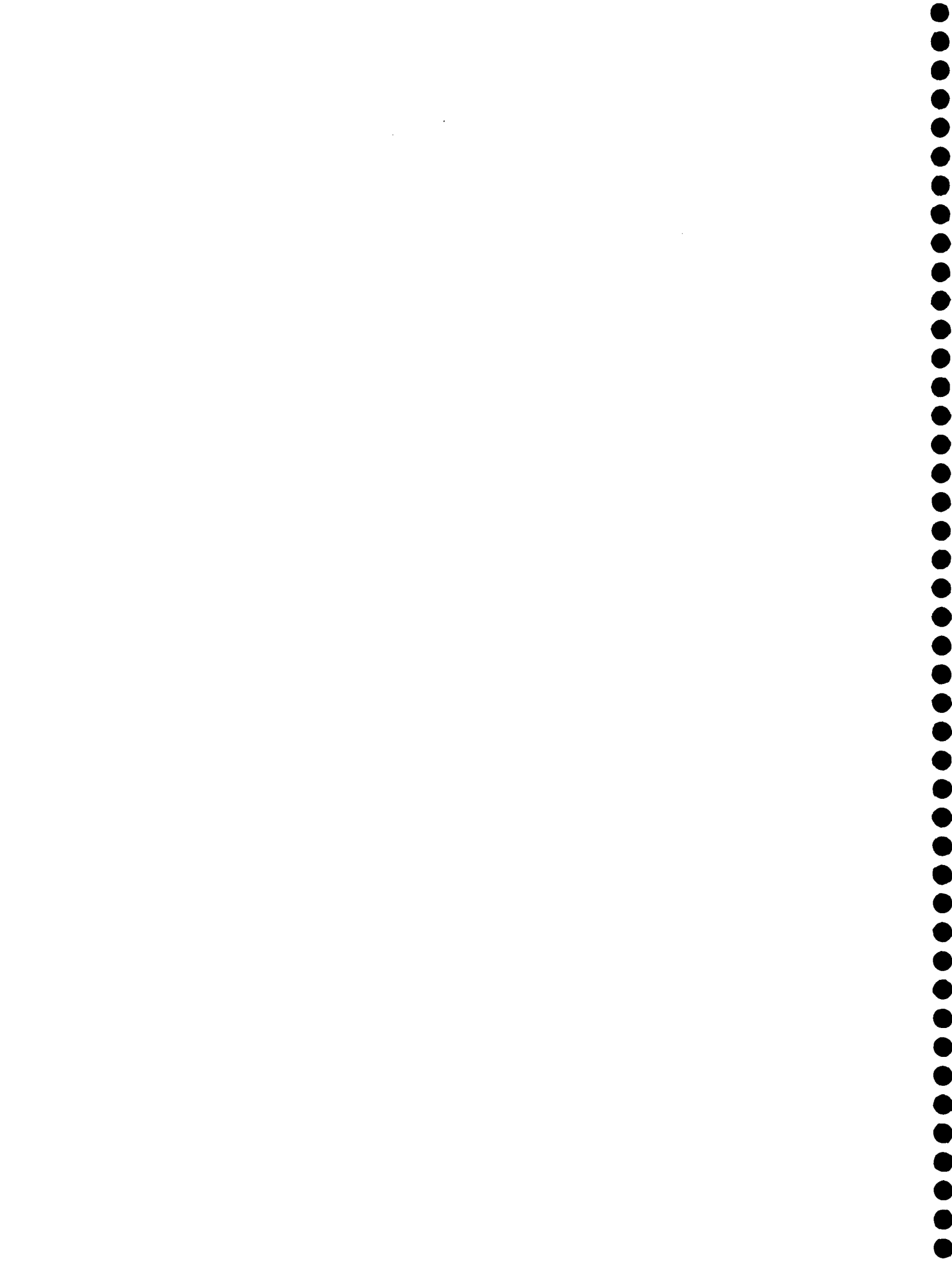
The Superior Court erroneously ruled that the DPH had carried its burden of demonstrating the privacy exemption applied to the birth and marriage indexes at issue. The privacy exemption only applies to the disclosure of "intimate details" of a "highly personal nature." Unless that threshold legal test is met, the exemption is inapplicable and no balancing of public and private interests is required. Because of the public nature of birth and marriage information, the DPH failed to carry its burden of proof under that the records were



intimate details of a highly personal nature, requiring judgment for the Globe as a matter of law. (Pages 18-26)

The Superior Court ruled that the disclosure of the birth and marriage indexes would facilitate identity theft and other malicious uses. The summary judgment record, however, contained no evidence that disclosure of the information would pose a risk of identity theft, and the Court correctly rejected the DPH's argument that compliance with the Globe's public records requests would result in the disclosure of non-public information such as records of adoption or gender reassignment. The absence of supporting evidence in the record, combined with the legislative exclusion of birth and marriage information from the definition of personal information protected by the Data Privacy Act, G.L. c. 93H, precluded as a matter of law the entry of summary judgment in favor of the DPH on this issue. (Pages 27-32)

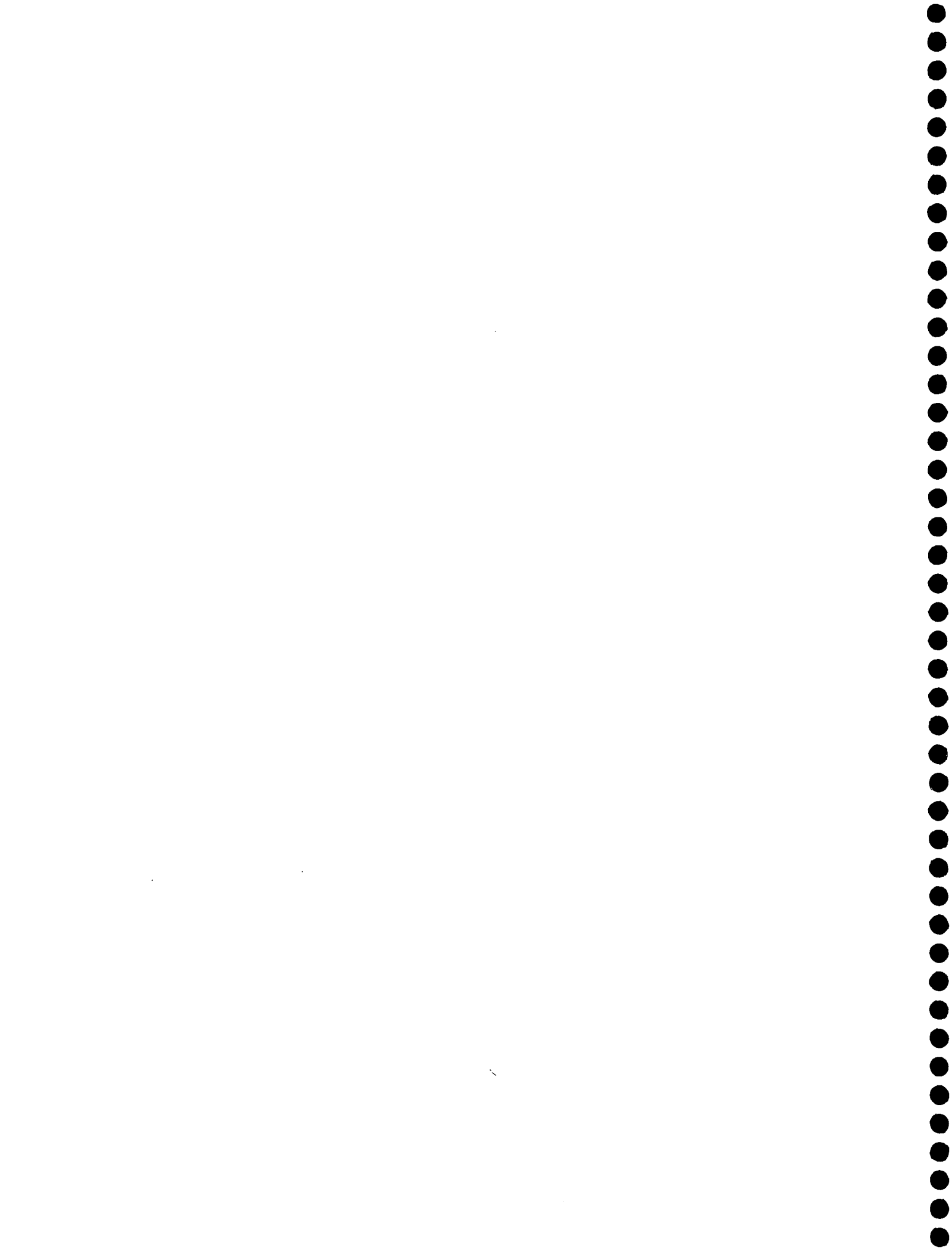
The Superior Court ruled that because the indexes at issue are compilations of birth and marriage information, the aggregate effect of disclosure on the privacy of Massachusetts residents creates a sufficient privacy interest to trigger the privacy exemption. Cases recognizing a privacy interest in data compilations,



however, have been based on a finding that the compilations aggregate a combination of personal data about a particular individual. In this case, unlike cases involving criminal history record information, the only information disclosed about any particular individual is publicly available birth and marriage records. Summary judgment in favor of the DPH therefore was precluded as a matter of law. (Pages 33-37)

Assuming that marriage and birth indexes are sufficiently akin to intimate details of a highly personal nature to trigger the privacy exemption, the Superior Court's balancing of the public interest in disclosure against the asserted privacy interests was based on an error of law. The Court erroneously assumed that the Globe's request would not serve as a check on the DPH's performance of its public functions, and erroneously excluded from the balancing process the other public interests served by availability of birth and marriage records. (Pages 37-43).

The Superior Court correctly rejected the DPH's arguments below that birth and marriage indexes were specifically or by necessary implication exempted from disclosure by statute pursuant to G.L. c. 4, § 7, cl. 26(c). None of the statutes cited by the DPH apply to





the electronic database that the DPH permits members of the public to view in public facing terminals located in the Registry's office. (Pages 43-49)

#### IV. ARGUMENT

##### A. The Registry's Electronic Indexes of Birth and Marriage Certificates Meet the Statutory Definition of a "Public Record."

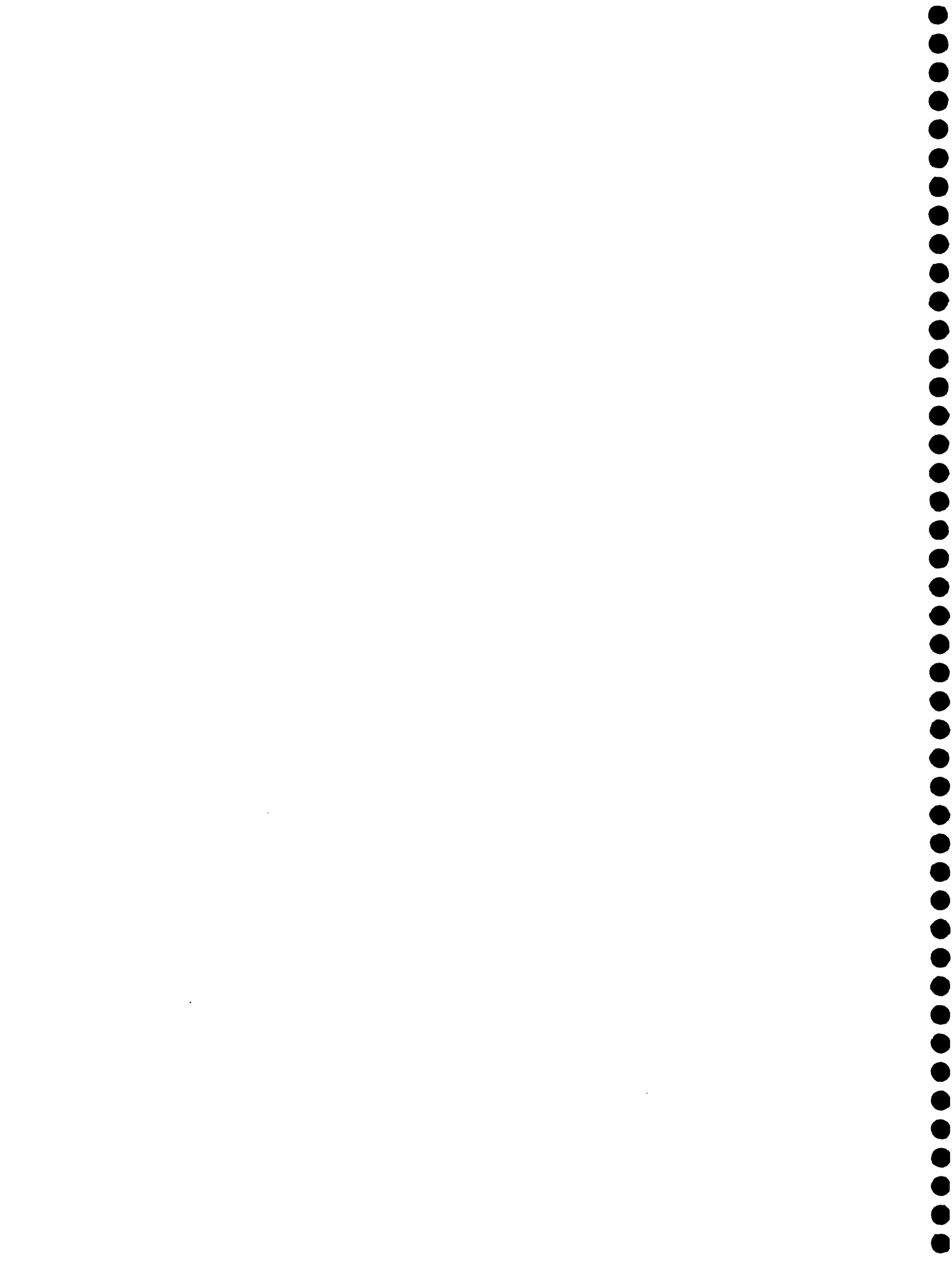
"Public records" are defined by G.L. ch. 4, § 7 cl.

26, as, in pertinent part:

[A]ll books, papers . . . or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof ...

G.L. ch. 4, § 7 cl. 26. Because electronic indexes of birth and marriage certificate information are "documentary materials or data" that are "made or received" by an employee of an "agency" or "department" of the Commonwealth, the documents satisfy the statutory definition of public records.

Nor is there any doubt that the Public Records Law applies to electronic copies of the indexes. The statutory language expressly covers "documentary materials or data, *regardless of physical form or characteristics.*" G.L. ch. 4, § 7 cl. 26 (emphasis added). See also Supervisor of Public Records Bulletin



3-96 (June 6, 1996) ("records created or maintained on a computer are subject to the disclosure requirements of the Public Records Law"). As one leading commentator has stated:

[I]f a records custodian receives a request for electronic records, the custodian is expected, as best to his or her abilities, to provide the records in an electronic format. To respond otherwise could possibly be construed to be in bad faith or counter to the tenets of the Public Records Law.

Rebecca S. Murray, *Freedom of Information and Public Records Law in Massachusetts* (MCLE 4th ed. 2015) at 56. See also 950 CMR 32.04(5)(d) (requiring records custodians "to the extent feasible, provide public records to a requester in electronic format unless the record is not available in electronic form").

**B. The DPH Had the Burden of Proving that Birthdate and Marriage Records Are Exempt from Disclosure under the Public Records Law.**

General Laws ch. 4, § 7 cl. 26 exempts from the definition of public records certain specified categories of documents or information. These statutory exemptions to mandatory disclosure "must be strictly construed." *Attorney General v. Ass't Comm'r of the Real Property Dep't of Boston*, 380 Mass. 623, 625 (1980). "If a dispute over a withheld document is brought to court, the statute establishes a clear 'presumption that

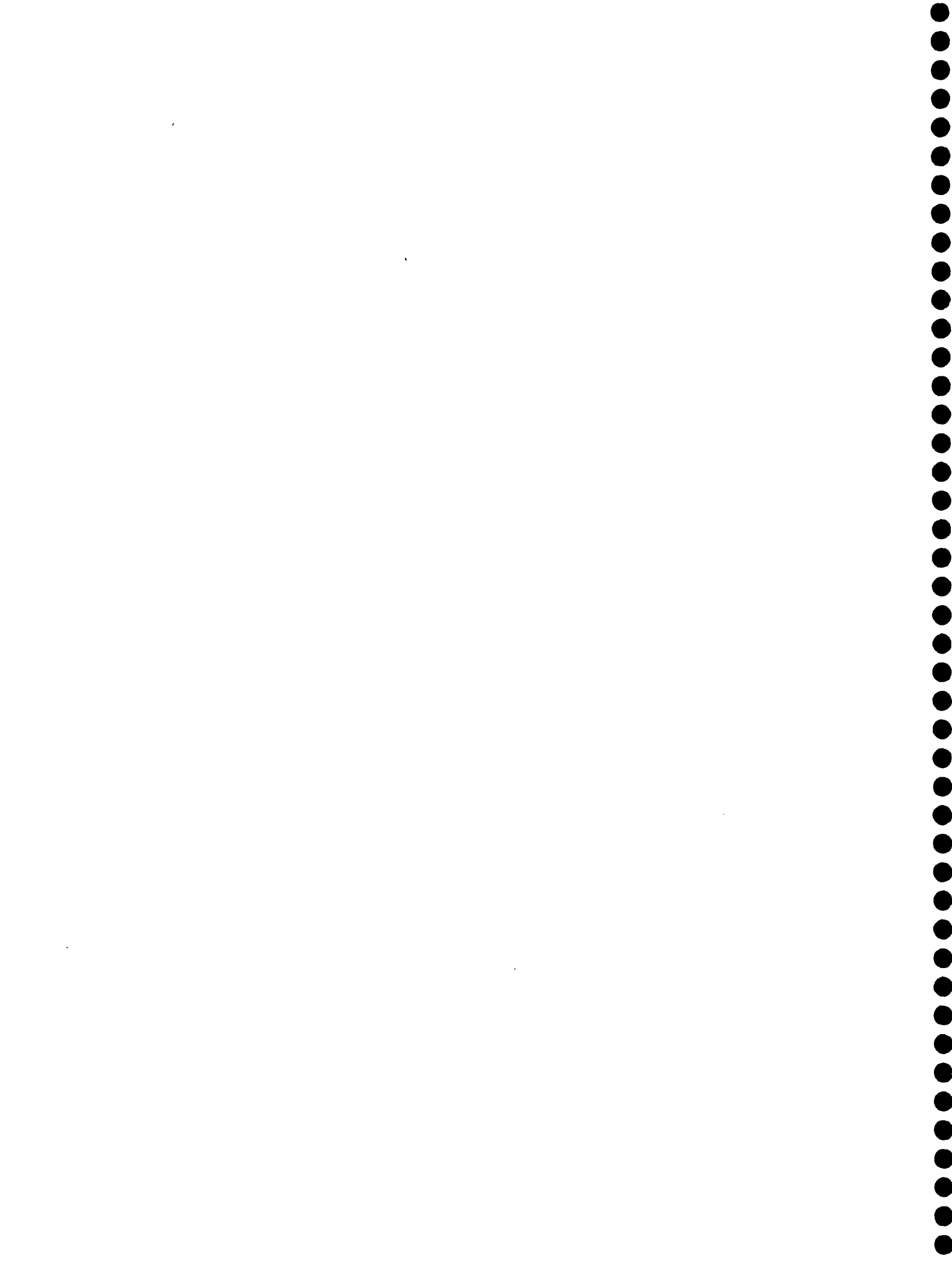


the record sought is public' and places the burden on the record's custodian to 'prove with specificity the exemption which applies' to withheld documents." *Suffolk Const. Co., Inc. v. Division of Capital Asset Management*, 449 Mass. 444, 447, 454 (2007) (quoting G.L. c. 66 §10(c)); See also *Champa v. Weston Public Schools*, 473 Mass. 86, 90 (2015).<sup>5</sup>

The Superior Court correctly ruled that the DPH bore the burden of proving that the birth and marriage indexes are exempt from disclosure. RA 182. Based upon the summary judgment record, however, it was error for the Court to conclude that the DPH had shown that the disclosure of indexes would be an unwarranted invasion of personal privacy under § 7, cl. 26(c).

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<sup>5</sup> As the Superior Court noted, as a result of the 2017 amendments to the Public Record Law (enacted after the requests at issue here), G.L. c. 66, § 10A(d)(1)(iv) now provides that "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 record may be withheld in accordance with state or federal law." RA 182 n. 2. The Court correctly ruled that the pre-amendment version of the statute controlled here. *Id.*

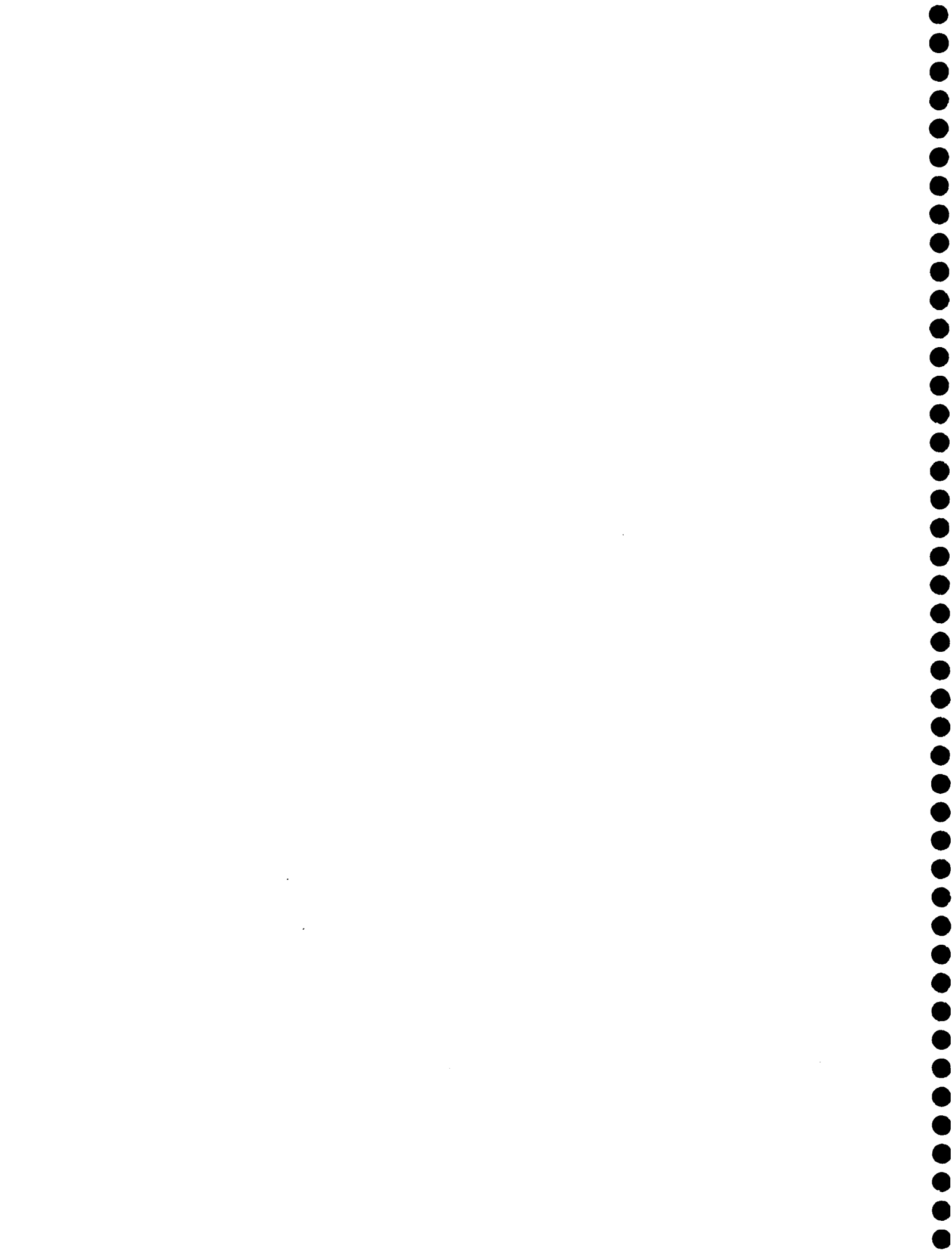


**C. The DPH Failed to Prove that Disclosing Birth and Marriage Indexes Would Be an Unwarranted Invasion of Personal Privacy.**

G.L. c. 4, § 7, cl. 26th (c) provides that materials or data relating to a specifically named individual, "the disclosure of which may constitute an unwarranted invasion of personal privacy," are exempt from mandatory disclosure under the Public Records Law. The personal privacy exemption requires courts to apply a two-part analysis examining (a) whether the information at issue constitutes "intimate details" of a "highly personal nature" and (b) if so, whether the public interest in disclosure outweighs the asserted privacy interest. *Pottle v. School Comm. of Braintree*, 395 Mass. 861, 866 (1985) (balancing of public interests is not necessary when threshold privacy test is not met); see also *Attorney General v. Collector of Lynn*, 377 Mass. 151, 157 (1979); *Assistant Com'r of Real Prop. Dept. of Boston*, 380 Mass. at 625-26. See generally *Globe Newspaper Co. v. Police Commissioner of Boston*, 419 Mass. 852, 858 (1995).

**1. Birthdates and Marriage Records Are Not Intimate Details of a Highly Personal Nature.**

Only if the threshold test of whether the information constitutes "intimate details" of a "highly





personal nature" does the Court balance the public interest in disclosure against the asserted privacy interests. See *Cape Cod Times v. Sheriff of Barnstable Cty.*, 443 Mass. 587, 594-95 (2005) ("We have held that subclause (c) precludes inspection only in cases where disclosure would publicize 'intimate details' of 'a highly personal nature.'" (internal quotation marks omitted); *Brogan v. Sch. Comm. of Westport*, 401 Mass. 306, 308 (1987) (absentee records "are not 'intimate details' of a 'highly personal' nature, the 'kind of private facts that the Legislature intended to exempt from mandatory disclosure'" (internal quotation marks omitted); *Pottle*, 395 Mass. at 866 (because the threshold test was not met, "there is no occasion for us to inquire whether any invasion of privacy would be 'unwarranted'"); *Asst. Comm'r of the Real Prop. Dept.*, 380 Mass. at 625-26 ("The public right to know should prevail unless disclosure would publicize 'intimate details' of 'a highly personal nature'"); *Collector of Lynn*, 377 Mass. at 157 ("we cannot say that disclosure publicized 'intimate details' of a 'highly personal' nature"); *Hastings & Sons Publishing v. City Treasurer of Lynn*, 374 Mass. 812, 817-18 (1978) ("While we appreciate an employee's desire not to have his or her



income publicized, the plaintiff is not seeking disclosure of facts involving 'intimate details of a highly personal nature'") (internal quotation marks and citation omitted). See generally Rebecca S. Murray, *Freedom of Information and Public Records Law in Massachusetts* (MCLE 4th ed. 2015) at 29 (privacy exemption "is limited to 'intimate details of a highly personal nature'").

The dispositive nature of the threshold test was reaffirmed by the Supreme Judicial Court in *Wakefield Teachers Ass'n v. Sch. Comm. of Wakefield*, 431 Mass. 792, 801-02 (2000). The plaintiff in *Wakefield* argued that the exemption for personnel records (also found in c. 4, § 7, cl. 26(c)), requires a showing that the information in a personnel record constitutes "intimate details of a highly personal nature." *Id.* at 800. The *Wakefield* Court rejected that argument, stressing that only the privacy exemption -- and not the personnel exemption -- requires proof that disclosure implicated "intimate details of a highly personal nature." 431 Mass. at 801-02. See also *Cunningham v. Health Officer of Chelsea*, 7 Mass. App. Ct. 861, 862, (1979) ("Clause Twenty-sixth (c), exempting material which may constitute an invasion of personal privacy does not



support nondisclosure where the information sought does not amount to "intimate details of a highly personal nature.").

The birth and marriage information at issue in this case bear none of the indicia of intimate details of highly personal facts. "Information such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal[.]" *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600 (1982). See also *Doe v. Registrar of Motor Vehicles (Doe II)*, 1993 WL 496590, at \*7 (Mass. Super. June 8, 1993) (age is not an intimate detail of a highly personal nature).

Any privacy interest in one's age "is weak" due to "both the nature of the information disclosed and the availability of this information from many other sources." *Doe II*, 1993 WL 496590, at \*6. "As universally-shared conditions, age [does] not mark one as 'different,' unlike 'intimate details' of one's personal life." *Id.* at \*7.

"A second reason why age [does] not constitute "intimate details of a highly personal nature" is because [it is] not, after all, intimate. "Intimate" refers to something "[p]ertaining to or indicative of



one's deepest nature;" "[e]ssential; innermost ... [v]ery personal; private." *American Heritage Dictionary* 672 (2d ed. 1985). *Doe II*, 1993 WL 496590, at \*6; see also *id.* ("One's age is also available to the public, give or take a few years.").

Any putative privacy interest in birthdate and marriage information is further reduced by the fact that "the same information is available from other sources." *Police Commissioner of Boston*, 419 Mass. at 858 (internal citations and quotations omitted). See also *Collector of Lynn*, 377 Mass. at 157 ("the seriousness of any invasion of privacy resulting from disclosure of the records of real estate tax delinquents is reduced since substantially the same information is available from other sources"); *cf.* *Restatement (Second) of Torts*, § 652D (1977) ("there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record").

As the *Doe* Court explained:

Information about an individual's date of birth is widely disseminated in the public sphere. It is available as a matter of public record on street and voting lists maintained by city and town clerks. The court takes judicial notice that it is also available from birth and marriage certificates. See G.L. c. 46, §§ 1-2A. Accident reports available from the Registry as a matter of public record





contain birth dates, as do the driving histories of persons convicted of motor vehicle offenses, also public records available from the Registry.

*Doe II*, 1993 WL 496590, at \*4.

The Registry routinely provides birth and marriage certificates to the public (for a fee) and allows the public to view birth and marriage index information on its public facing computers (for a fee of \$9.00 an hour). The same information is available from multiple other sources, including voting lists and numerous commercial services (the latter of which, like the DPH, provide the information for a fee). RA 169-72; see also *Doe II*, 1993 WL 496590, at \*4.

In sum, because public birth and marriage indexes are not intimate details of a highly personal nature, "there is no occasion for [the Court] to inquire whether any invasion of privacy would be 'unwarranted,'" thus requiring judgment in the Globe's favor as a matter of law. *Pottle*, 395 Mass. at 866.<sup>6</sup>

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<sup>6</sup> The DPH argued below that whether disclosure would reveal "intimate details of a highly personal nature" is not an essential element of proving that the privacy exemption applies but merely one of several factors the Court may consider. But the Supreme Judicial Court cases cited above never have been overruled. Most recently, in *People for the Ethical Treatment of Animals*, 477 Mass. at 291-92, the Court stated that "where the public interest in obtaining the requested information



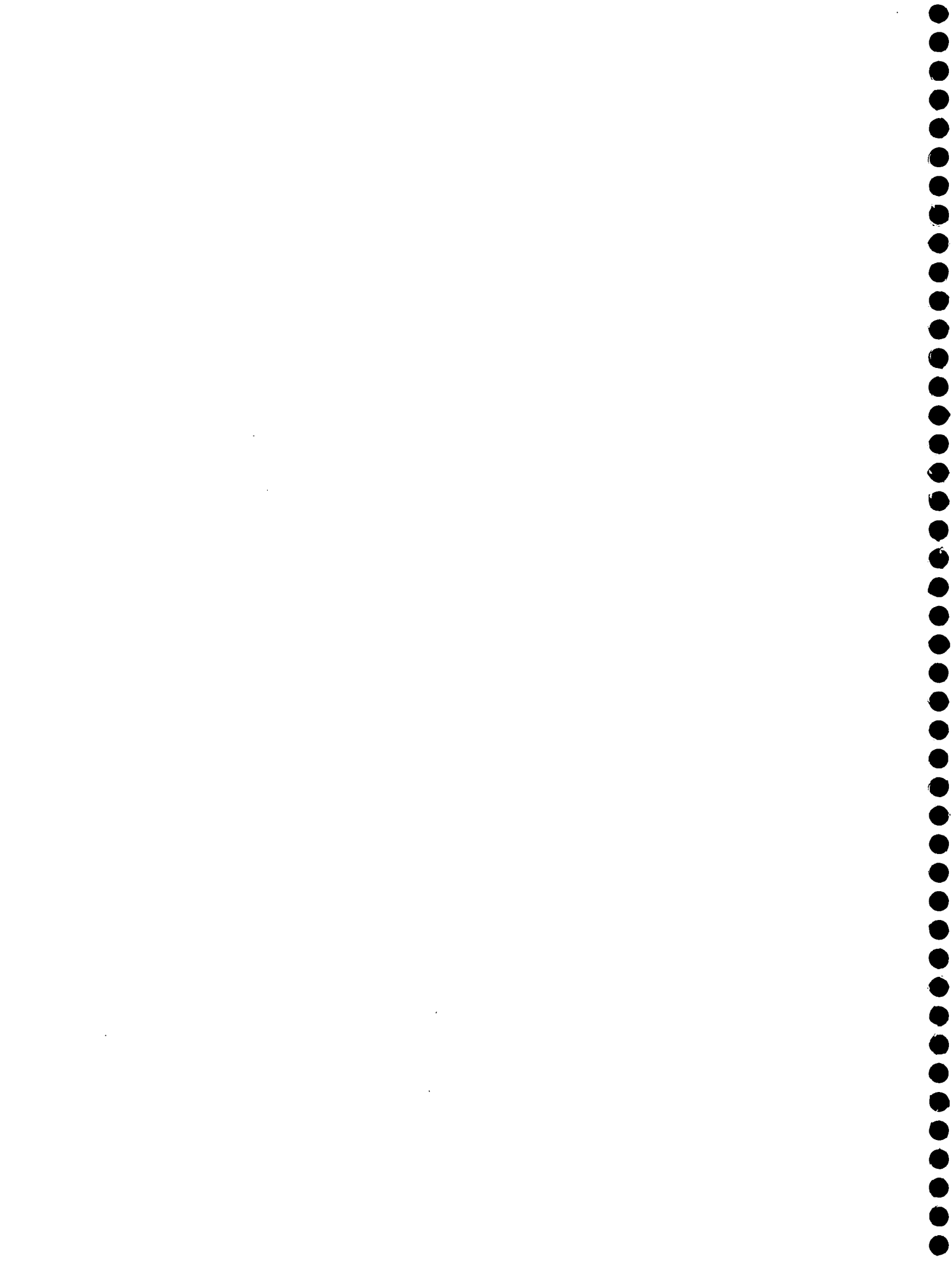
2. **Electronic Birth and Marriage Indexes Are Not Compilations of Personal Data Entitled to Heightened Protections.**

The Superior Court ruled that "[e]ven if discrete pieces of the information the Globe seeks are not considered intimate details of a highly personal nature[,] the aggregate effect of other disclosed information on the privacy of the total number of persons whose data would be disseminated weighs against disclosure here." RA 188 (citing *Doe v. Registrar of Motor Vehicles (Doe I)*, 26 Mass. App. Ct. 415 (1988) and *Georgiou v. Comm'r Of Dep't Of Indus. Accidents*, 67 Mass. App. Ct. 428, 435 (2006)). The factors relied upon by the Court were as follows:

1. The requests encompassed birth information for approximately 4.6 million people and marriage

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substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield." *Id.* The Court identified three factors relevant to assessing 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." *Id.* at 292 (citing *Police Comm'r of Boston*, 419 Mass. at 858). Each of those factors, as shown above, support the legal conclusion that the indexes do not contain intimate details of a highly personal nature.



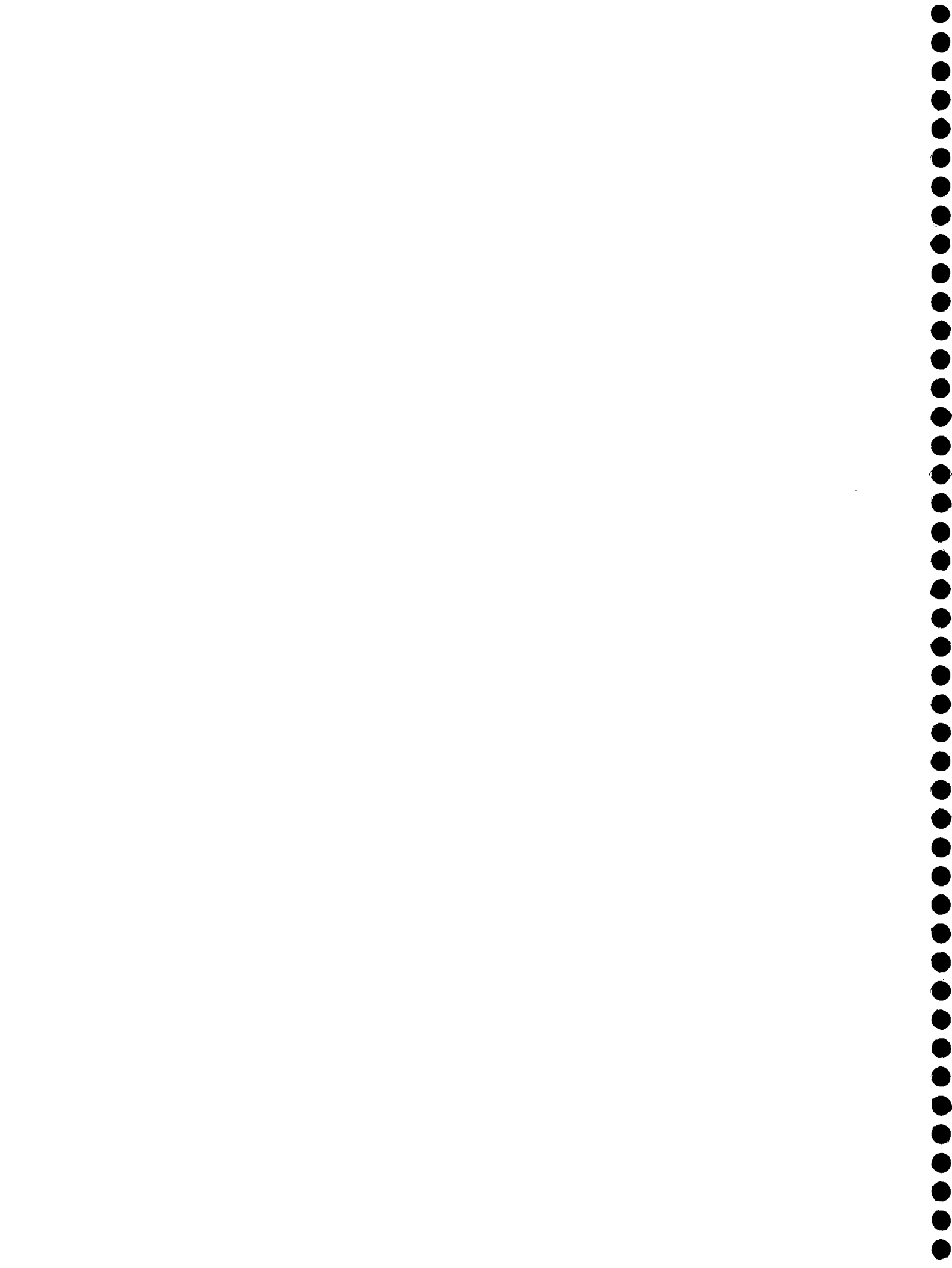
information for approximately 2.2 million people. RA 188 (Order at 12).

2. "[R]eady access to compiled personal information in the indexes maintained by the Registry would facilitate identity theft or other malicious uses in a manner that most individuals would consider an invasion of privacy." *Id.* (citing *Doe I*, 26 Mass. App. Ct. at 421-22).

3. The cumbersome nature of collecting the information from public sources other than the Registry supports a legitimate expectation of privacy on the part of persons whose birthdates and marriage information is at issue. RA 189 (Order at 13) (citing *Doe I*, 26 Mass. App. Ct. at 427 and *U.S. Dep't of Justice v. Reporters Committee*, 489 U.S. 749, 764 (1989)).

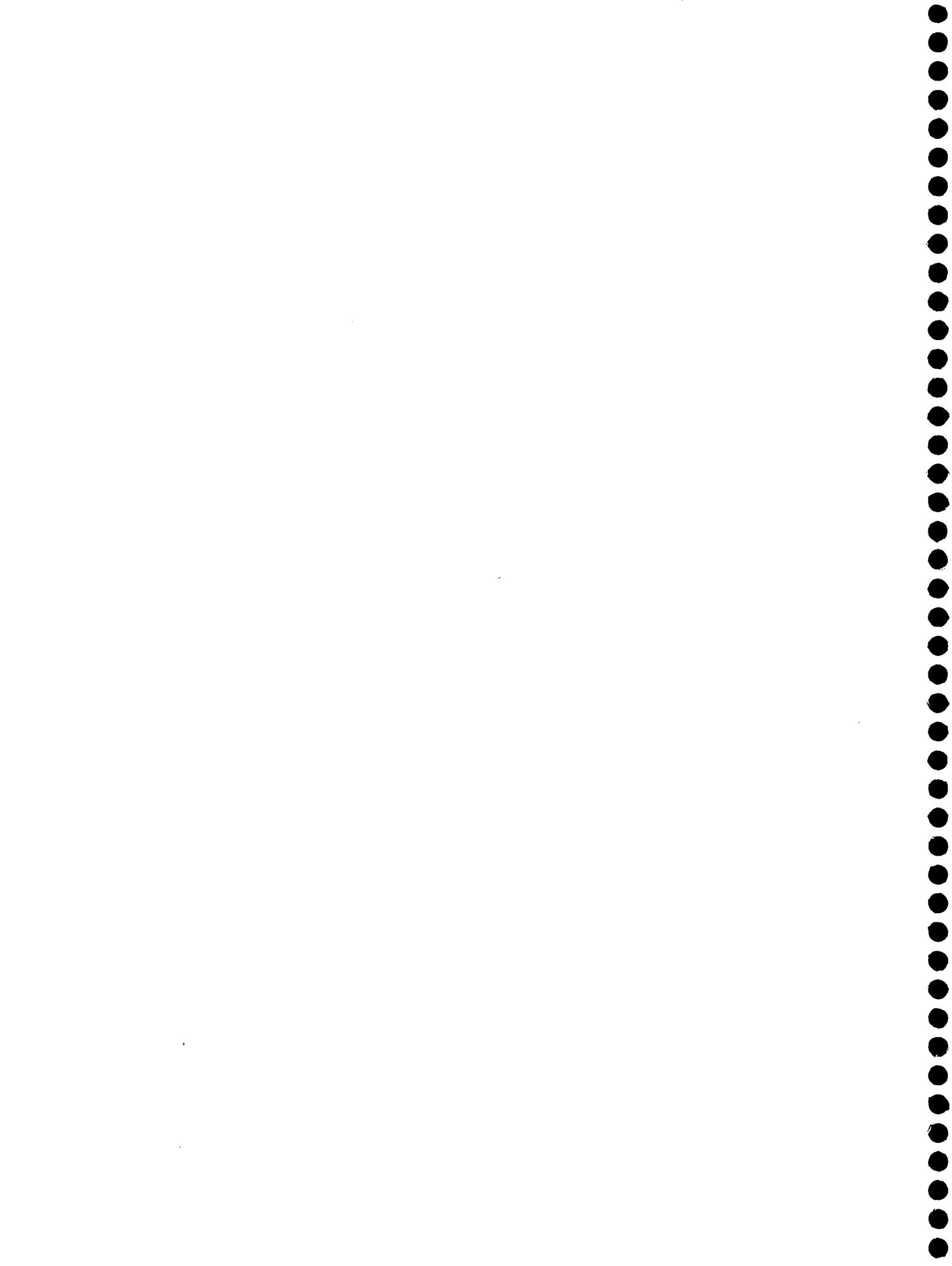
a. **The Superior Court's finding that disclosure would facilitate identity theft or other malicious uses was not supported by the summary judgment record.**

The summary judgment record does not support the Superior Court's conclusion that disclosure of birthdate and marriage indexes would "facilitate identity theft or other malicious uses." RA 188 (Order at 12). The evidence submitted by the DPH in support of its summary judgment motion (and in opposition to the Globe's



motion) did not contain any evidence that disclosure of birth and marriage indexes created a risk of identity theft. See RA 75-81. To the extent the DPH argued that "malicious uses" of the records might occur, its argument was based on the misperception that the Globe's request required the disclosure of restricted, non-public birth or marriage certificates (e.g., adoption and gender reassignment information). *Id.* at 75-81, 104-122. The Superior Court correctly rejected that argument on the ground that, by the DPH's own admission, the electronic files sought by the Globe were scrubbed on a daily basis of restricted birth and marriage data, and the Globe's request sought the records at a static period of time, precluding any comparison efforts after changes were made to the records. RA 185.

The Superior Court relied in part on this Court's decision in *Doe I* for the proposition that disclosure of the indexes would pose a risk of identity fraud or other malicious uses. RA 188 (Order at 12) (citing *Doe I*, 26 Mass. App. Ct. at 421-22). *Doe I* was a case brought under the Fair Information Practices Act ("FIPA"), G.L. c. 66A, involving the disclosure of Registry of Motor Vehicle records that contained not just birth dates but also the address, social security number, and height of





the driver applicants. *Id.* at 416. The Court's opinion made no mention of the risk of identity theft. Nor did the Court rule that the driver record information was exempt from the Public Records Law. Rather, it remanded the case to permit the Registrar to make an evidentiary showing that disclosure of social security number, date of birth, and height was warranted (and that the Registrar was in compliance with a federal privacy law). *Id.* at 418.<sup>7</sup> On remand, and after an evidentiary hearing, the Superior Court held that the disclosure of birth dates, height and social security numbers was not an unwarranted invasion of privacy. *Doe II*, 1993 WL 496590, at \*8.

The conclusion reached by the *Doe II* Court that the disclosure of birthdate information was *not* an unwarranted invasion of privacy is consistent with the approach taken by the Massachusetts legislature in the Privacy Data Act, G.L. c. 93H. Chapter 93H provided a remedy for breaches of personal data security, defined in relevant part as the "unauthorized acquisition or unauthorized use" of data that "creates a substantial

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<sup>7</sup> Because the case was brought under FIPA, the custodian bore the burden of proof on this issue. See *Torres v. Attorney Gen.*, 391 Mass. 1, 10-11 (1984).



risk of identity theft or fraud against a resident of the commonwealth." G.L. c. 93H, § 1(a) (emphasis added). Despite being "one of the country's most stringent statutory and regulatory schemes relating to data privacy and security," Alan M. Reisch, *Cyber/privacy Insurance: A Very Brief Primer*, Boston B.J., Fall 2015, at 5, c. 93H excludes birthdate and marriage information from its protections. The statute instead defines personal information as a "Massachusetts resident's first name and last name or first initial and last name "in combination with" any 1 or more of the following data elements that relate to the resident:

(a) Social Security number;

(b) driver's license number or state-issued identification card number; or

(c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

G.L. c. 93H, § 1(a). See also Supreme Judicial Court Rule 1:24: Protection of personal identifying information in publicly accessible court documents (defining "Personal identifying information" as "a



social security number, taxpayer identification number, driver's license number, state-issued identification card number, or passport number, a parent's birth surname if identified as such, a financial account number, or a credit or debit card number").

The decisions of the legislature and the Supreme Judicial Court to exclude birthdates from the definitions of "personal information" and "personal identifying information" underscore the lack of an evidentiary basis in this case for the Superior Court's summary judgment ruling that disclosure of birthdates and marriage information would be an unwarranted invasion of personal privacy due to the risk of identity theft or other malicious uses.

In sum, neither the summary judgment record submitted by the DPH nor this Court's decision in *Doe I* support the Superior Court's summary judgment ruling that the DPH met its burden of showing that the privacy exemption of G.L. c. 4, § 7, cl. 26(c) applied to the birth and marriage indexes. The Superior Court's judgment should be reversed either because the absence of supporting evidence warranted the entry of summary judgment in favor of the Globe or, at a bare minimum, required a trial on the merits.



- b. The birth and marriage indexes are not compilations of aggregate information about an individual sufficient to create a legitimate expectation of privacy.

The Superior Court ruled that the aggregate effect of disclosing birth and marriage indexes concerning millions of residents supported the conclusion that privacy interests outweighed the public interest in disclosure. RA 188-89 (Order at 12-13). The Globe respectfully submits that the Court's analysis conflated compilations that aggregate information about specific individuals (e.g., vertical compilations, such as criminal history record information) with compilations that provide a limited amount of information about many people (e.g., horizontal compilations, such as phone books). The former implicate privacy interests, while the latter do not.

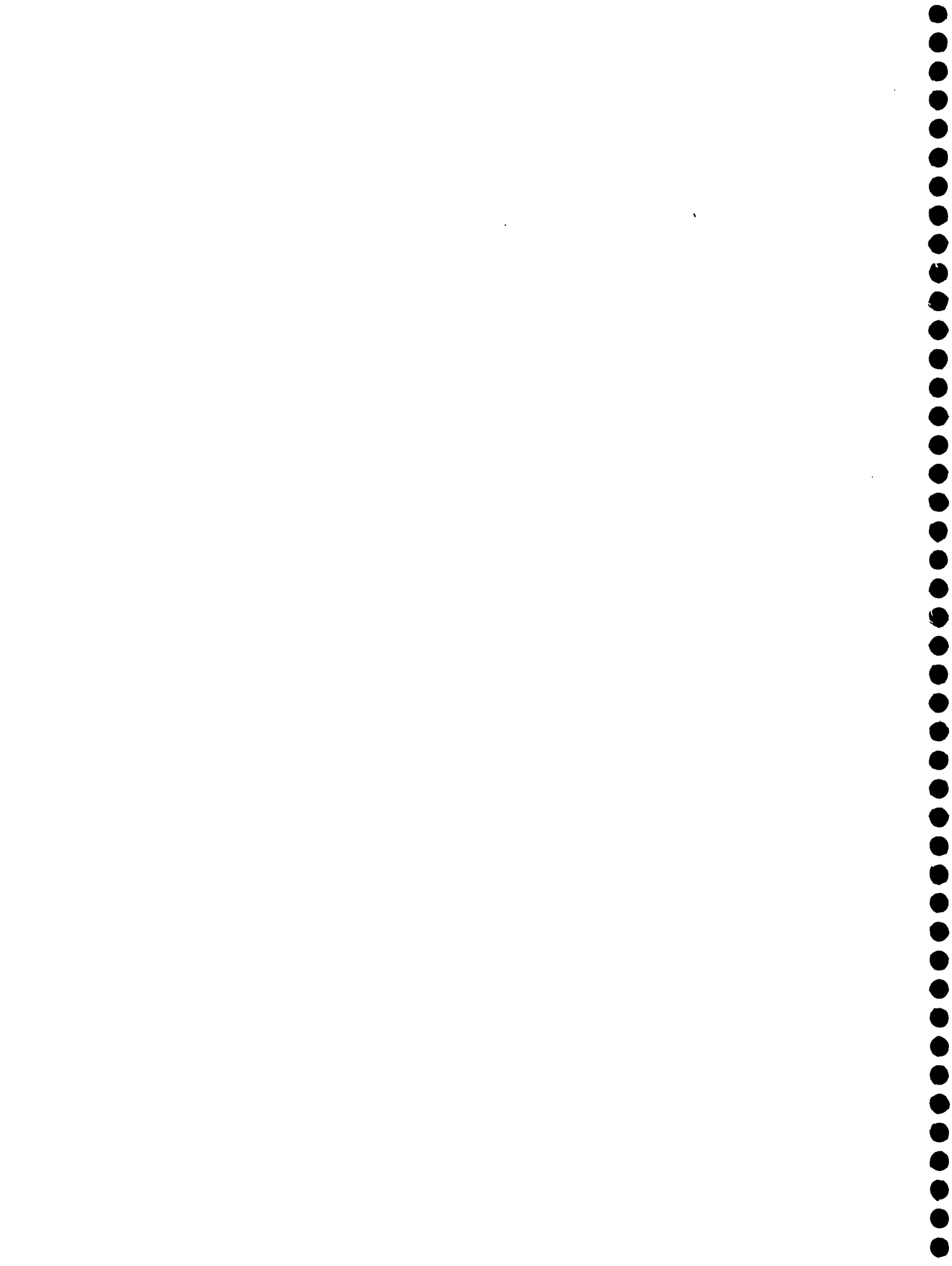
Compilations of publicly available information are not presumptively exempt from the Public Records Law. See, e.g., *Collector of Lynn*, 377 Mass. at 158 ("lists of real estate tax delinquents are public records"); *Pottle*, 395 Mass. at 862 (list of names, job classifications, and home addresses of all employees of the Braintree public schools); *Direct-Mail Serv., Inc. v. Registrar of Motor Vehicles*, 296 Mass. 353, 354-355





(1937) (commercial entities may make copies "of all certificates and licenses of motor vehicles" issued by the Registrar).

Courts have recognized circumstances in which an individual may have a legitimate privacy interest in compilations that aggregate sensitive pieces of public information *about that person* which otherwise only could be retrieved by a more cumbersome process of searching multiple public records repositories. In *Reporters Committee*, for example, the press made a request under the federal Freedom of Information Act for the "rap sheet" of an individual associated with organized crime. 489 U.S. at 757. The information at issue included a cumulative record of the individual's history of arrests, charges, convictions, and incarcerations. *Id.* at 757, 760. Although the rap sheet was an aggregation of public information, the Court held that the "practical obscurity" of the underlying information (*i.e.*, the effort it would take for the requestor to retrieve the information from original sources) warranted recognition of a privacy right on the part of the individual, particularly in light of the "web of federal statutory and regulatory provisions that limits the disclosure of rap-sheet information." *Id.* at 762-



66. See also *New Bedford Standard Times Pub. Co. v. Clerk of the Third District of Bristol*, 377 Mass. 404, 415 (1979) (alphabetical indexes that "aggregate information" concerning an individual's criminal history implicate legitimate privacy interests).

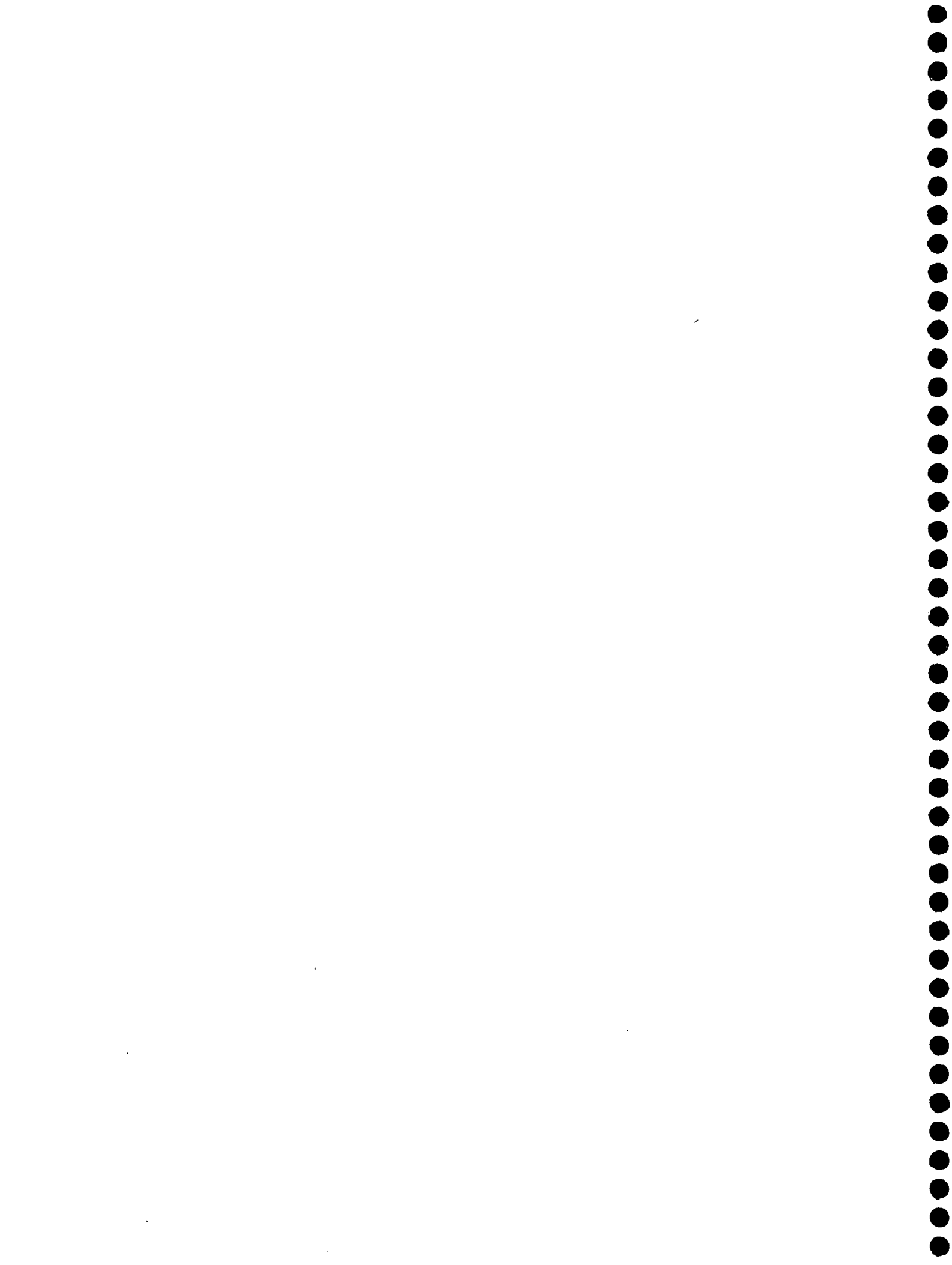
This Court applied an analogous analysis in *Georgiou v.*, 67 Mass. App. Ct. 428. *Georgiou* involved a request for information contained in reports of employee injuries filed pursuant to the worker's compensation statute, G.L. c. 152, § 6. The information at issue consisted of the employee's name and address; the date of injury; the employer's name and address; and the workers' compensation insurance carrier. *Id.* at 429-30. The records custodian agreed to produce the requested information with the exception of the employees' names and addresses, which were withheld under the privacy exemption. The trial court ruled that because the injured employees had no privacy interest in their names and addresses, the privacy exemption did not apply. *Id.* at 433.

The Appeals Court reversed, holding that a sufficient privacy interest existed to require the trial court to balance the public and private interests at issue, and remanded the case for a resolution of any



disputed issues of fact. *Id.* at 437. The Court acknowledged that the disclosure of names and addresses of adults does not, *per se*, establish an invasion of privacy, but also observed that "more than just the employees' names and addresses would be disclosed - also disclosed, of necessity, would be the fact that the identified employees are sufficiently disabled to be out of work five or more days." *Id.* at 434, 435. Because the request sought the employees' names and addresses "conjoined with their known disabled status" (information that had "at least a distant kinship" to medical and personnel files), the Court held that a privacy interest existed sufficient to trigger the balancing of interests required by the second part of the privacy exemption. *Id.* at 436, 437.

*Reporters' Committee*, *New Bedford Standard Times*, and *Georgiou* share one critical characteristic - in each case, the records at issue consisted of vertically aggregated information about specific individuals derived from multiple sources. In *Reporters Committee* and *New Bedford Standard Times*, the information consisted of criminal history record information about individuals derived from multiple sources; in *Georgiou*,

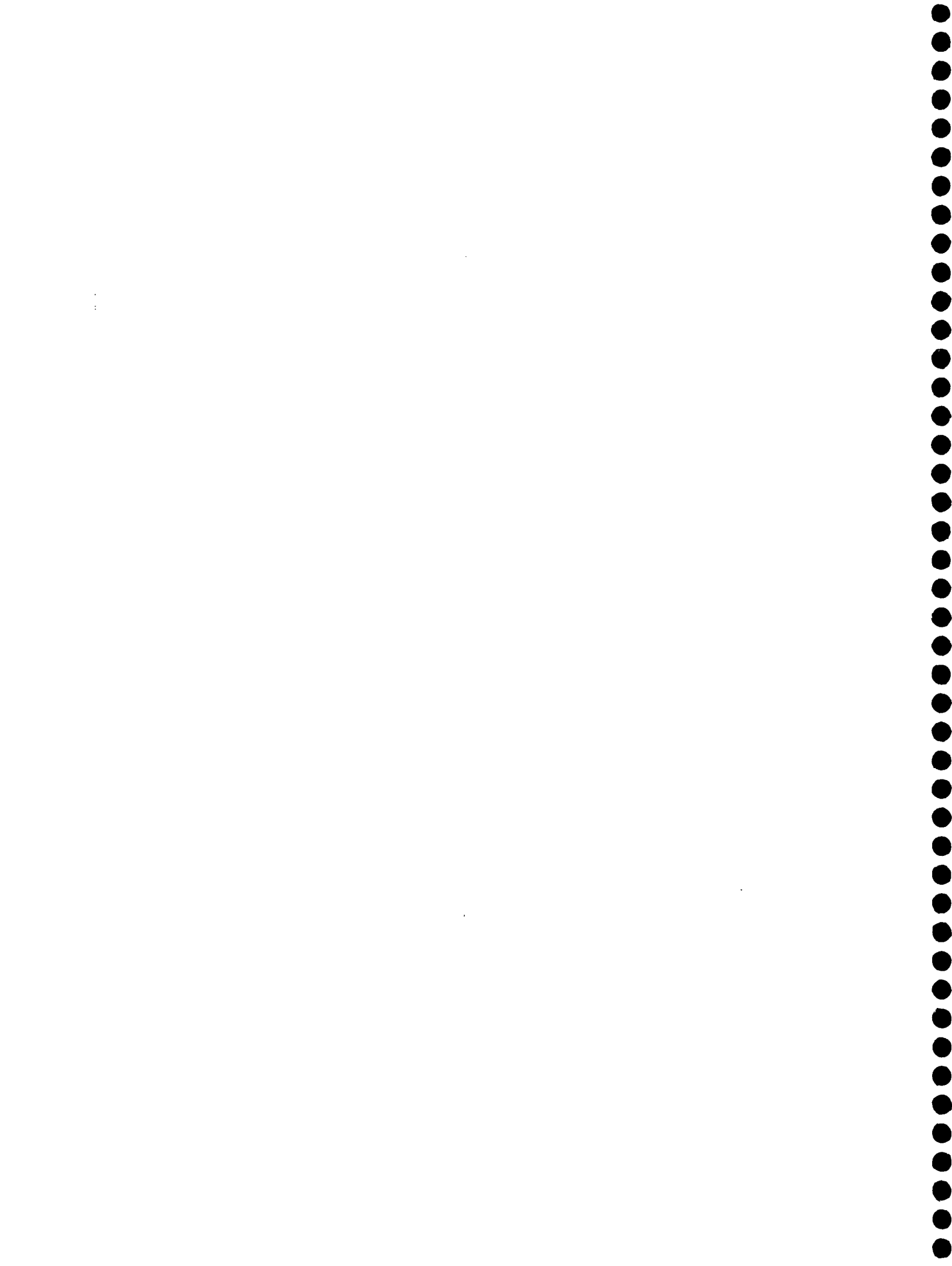


employees' names and addresses were "conjoined" with information about their disability.

In this case, in contrast, because the birthdate and marriage information is not conjoined with any other information (such as medical or criminal histories, social security numbers or financial data), the indexes are not compilations of vertically aggregated information about any individual sufficient to trigger the privacy exemption. Cases recognizing a privacy interest in compilations of aggregated data concerning specific individuals thus shed no light on whether the Globe's request implicates privacy interests protected by G.L. c. 4, § 7, cl. 26(c) and do not support the Superior Court's legal ruling that compilations of birth and marriage information disaggregated from other personal information are comparable to intimate details of a highly personal nature or otherwise trigger the privacy exemption. RA 188-89 (Order at 12-13).

**3. The Superior Court Committed Legal Error in Its Application of the Balancing Test.**

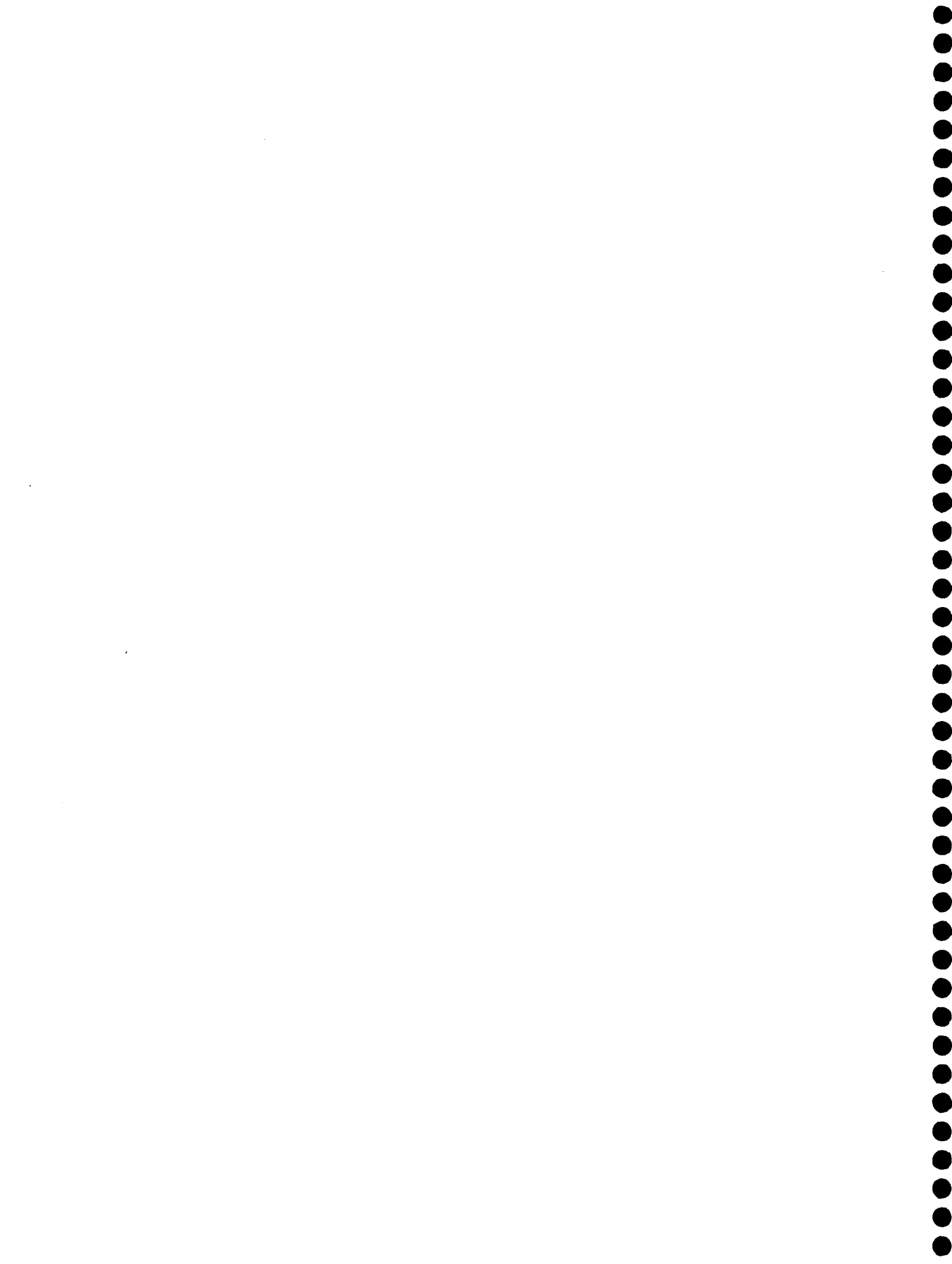
When a public records request seeks "intimate details" of a "highly personal nature," a court must proceed to determine whether the public interest in disclosure outweighs the asserted privacy interest. The Superior Court's application of this balancing analysis





contained two legal errors. The Court first erred by limiting its public interest inquiry to whether birthdate and marriage indexes shed light on the functioning of government, rather than making a broader inquiry into whether disclosure served the public interest. RA 189-90 (Order at 13-14). The Court also erred by balancing the asserted privacy interests against the "negative public interest" in disclosing personal data, thus placing the putative privacy interests on both sides of the scale. *Id.* Having so limited the relevant inquiry, the Court concluded that the public interest did not outweigh the asserted privacy interests at stake, "particularly given that the Globe admittedly could conduct its research using other available means." RA 190 (Order at 14).

There is no doubt that the "primary purpose of G. L. c. 66, § 10, is to give the public broad access to government documents." *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749 (2006). "The Legislature's definition of public records 'manifests a legislative intent to provide broad public access to government documents subject only to limited exemptions.'" *Cape Cod Times*, 443 Mass. at 592.



It also is true that the Public Records Law promotes the public interest in "knowing whether public servants are carrying out their duties in an efficient and law-abiding manner." *Collector of Lynn*, 377 Mass. at 158. But the statute imposes no requirement that a requester make a showing as to whether or how any particular request will shed light on what the government is "up to," or demonstrate that there are no alternative sources of the information it seeks from the government. SJ Order at 12-13.

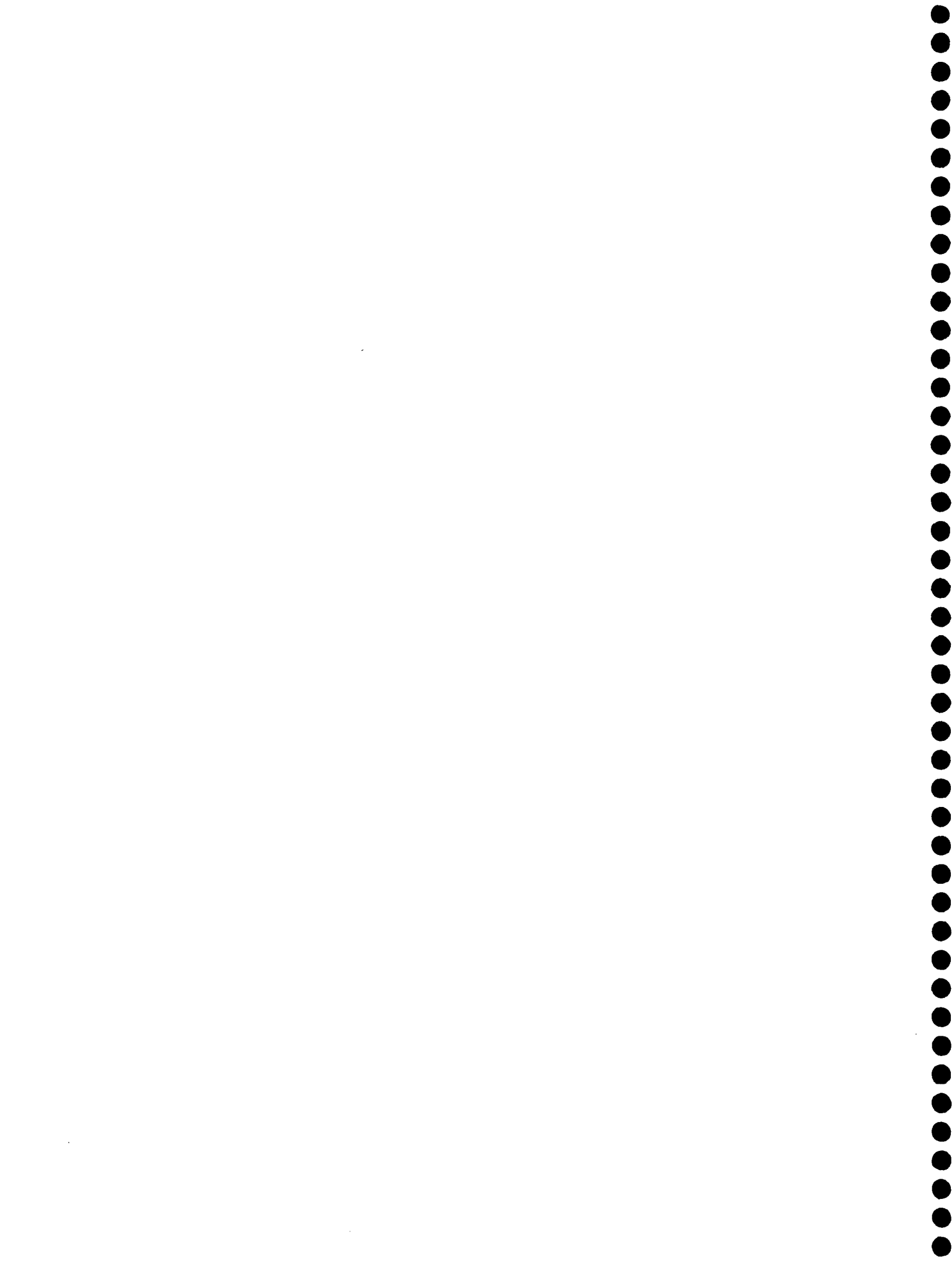
For example, the statute has no "'standing' requirement but extends the right to examine public records to 'any person' whether intimately involved with the subject matter of the records he seeks or merely motivated by idle curiosity." *Bougas v. Chief of Police of Lexington*, 371 Mass. 59, 64 (1976). See also 950 CMR 32.05(4) ("A custodian may not require the disclosure of the reasons for which a requester seeks access to or a copy of a public record.").

More specifically, in applying the balancing test called for by the privacy exemption, the Supreme Judicial Court never has held that the "public interest" in disclosure is limited to direct oversight of government officials. The statutory language certainly



evinces no such limitation, exempting only "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy[.]" G.L. c. 4, § 7, cl. 26(c).

Nor has the Supreme Judicial Court ever ruled that the only "public interest" recognized in cl. 26(c) is direct oversight of the government. To the contrary, the Court has framed the test far more broadly: "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." *Police Comm'r of Boston*, 419 Mass. at 858 (quoting *Collector of Lynn*, 377 Mass. at 156) (internal quotation marks omitted). See, e.g., *Doe II*, 1993 WL 496590, at \*5 (recognizing "vital importance to insurance companies and individuals involved in motor vehicle accidents" of obtaining Registry information about other persons involved in accidents or to locate potential witnesses); *Doe I*, 26 Mass. App. Ct. at 418 n.7 ("there is a clear public purpose in providing injured members of the public with accurate information as to the owners and



operators of automobiles and in making such data readily available").

In this case, the Globe sought access to birth and marriage certificates for a variety of legitimate journalistic purposes, all of which serve the public interest. There is no doubt that the public has a strong interest in access to vital records. "[A]t the basis of the vital registration system was the principle that the records are legal statements of fact that help assure the rights of individuals as conferred by organic laws. Machinery was set up to collect and preserve the records, not at first for statistical reasons, but because authentic evidence was essential to the just administration of law and the protection of individual rights." *Vital Statistics of the United States*, Volume I, 1950 at 3 (republished in Hetzel, A.M., *History and Organization of the Vital Statistics System* (National Center for Health Statistics 1997) (emphasis added)).

In proceedings below, the DPH disputed whether access to the indexes would shed light on the performance of its duties, and argued that public oversight was adequately served by its annual publications. RA 78. A similar argument was made in *Collector of Lynn*, where the government argued that the public interest in





disclosure was minimal "because a collector is required by statute eventually to publish his delinquent accounts[.]" 377 Mass. at 158 n.6. As in that case, so too here, "the public has an interest in knowing whether the [DPH] complies with the spirit and letter of these statutory requirements." *Id.*

Even if the public interest inquiry was limited in the manner the DPH suggests, the test is met here because access to the Registry's indexes would provide a check as to whether the registry and clerks are properly recording all the state's births and marriages. RA 82. As just one example, a 2010 State Audit found that the Massachusetts Registry of Vital Statistics lacked certain controls for its computer databases. RA 133, 173-74. Mass Document Retrieval, a document retrieval service, advises users that the department's "computer database is not always complete and errors do exist." *Id.*

Public access also would assist in identifying individuals in news reports, ferreting out voter fraud, and studying birth and marriage trends. *Id.* 132-36, 172-75. See also *Doe II*, 1993 WL 496590, at \*6 ("[N]ames and addresses are too often insufficient for purposes of accurately identifying the specific person sought. A

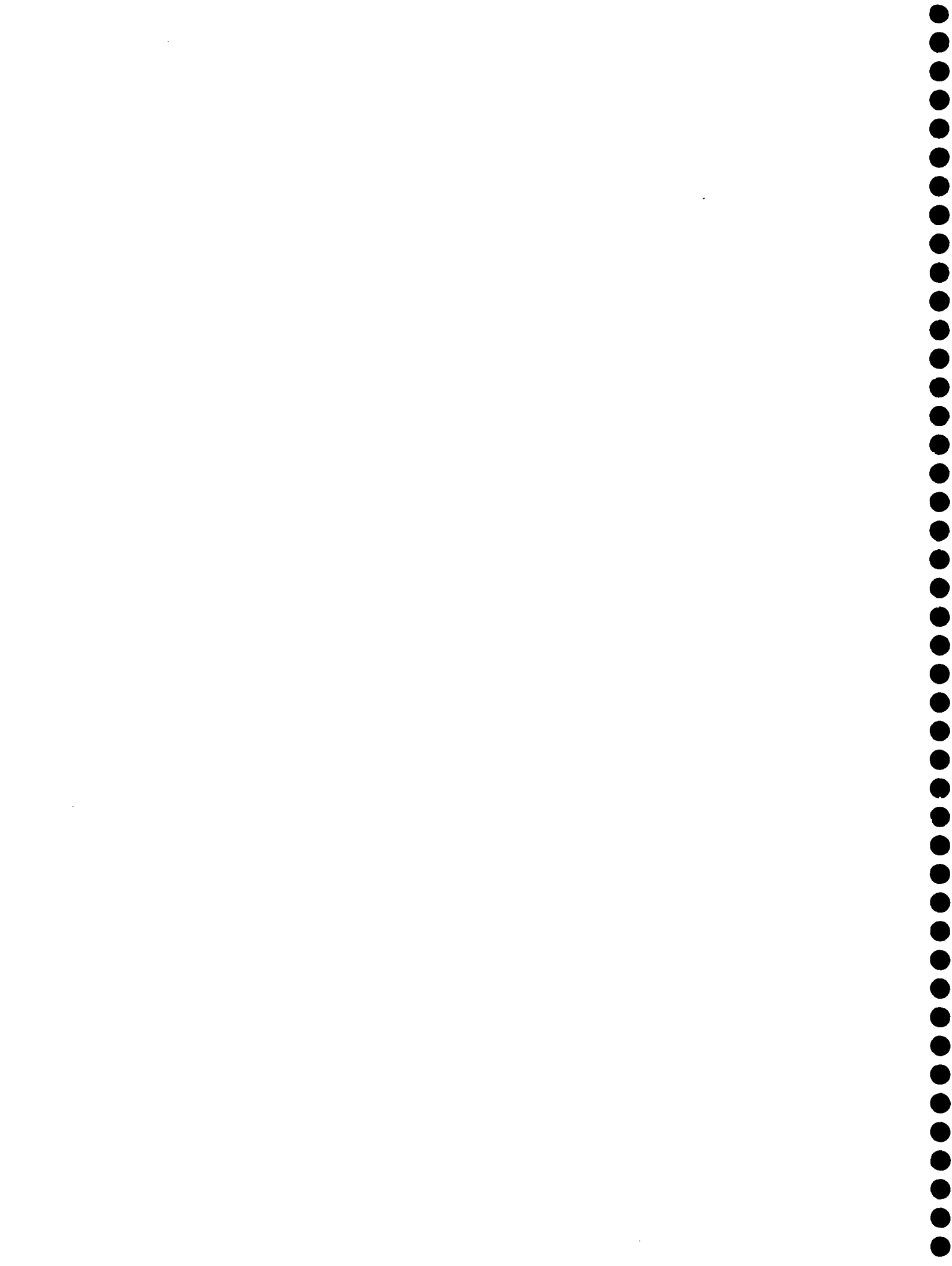


date of birth is very useful as an additional identifier." ). As illustrated by the pending litigation in *Boston Globe Media Partners, LLC v. Department of State Police*, Suffolk Civ. No. 15-3396-A, *rev'd*, 92 Mass. App. Ct. 1112, access to birthdate records can play a critical role in overseeing the performance of government officials, including determining whether law enforcement officers have been charged with criminal offenses.

The Superior Court's application of the balancing test failed to take into account the legitimate public interest in obtaining the birth and marriage indexes and essentially double counted the privacy interests at issue by placing them on both sides of the scale. Assuming that birth and marriage information is considered sufficiently private to trigger the balancing test, the case should be remanded to resolve the legal and factual issues involved in applying the balancing test.

**D. The Superior Court Correctly Ruled that the Electronic Indexes of Birth and Marriage Records Are Not Specifically or by Necessary Implication Exempted from Disclosure by Statute.**

G.L. c. 4, § 7, cl. 26(a) excludes from the definition of "public records" materials "specifically



or by necessary implication exempted from disclosure by statute." The Superior Court correctly ruled that the statutory exemption did not apply to this case. RA 182-86.

1. G.L. c. 46, § 33

G.L. c. 46, § 33 provides in relevant part:

The state registrar shall establish, maintain and operate a centralized, automated database for the system of vital records and statistics, subject to appropriation. The state registrar shall make such automated database available to town clerks who shall use it to (i) record all births and deaths by city or town of occurrence and all marriages by city or town that issued the license; and (ii) issue certified copies of vital records.

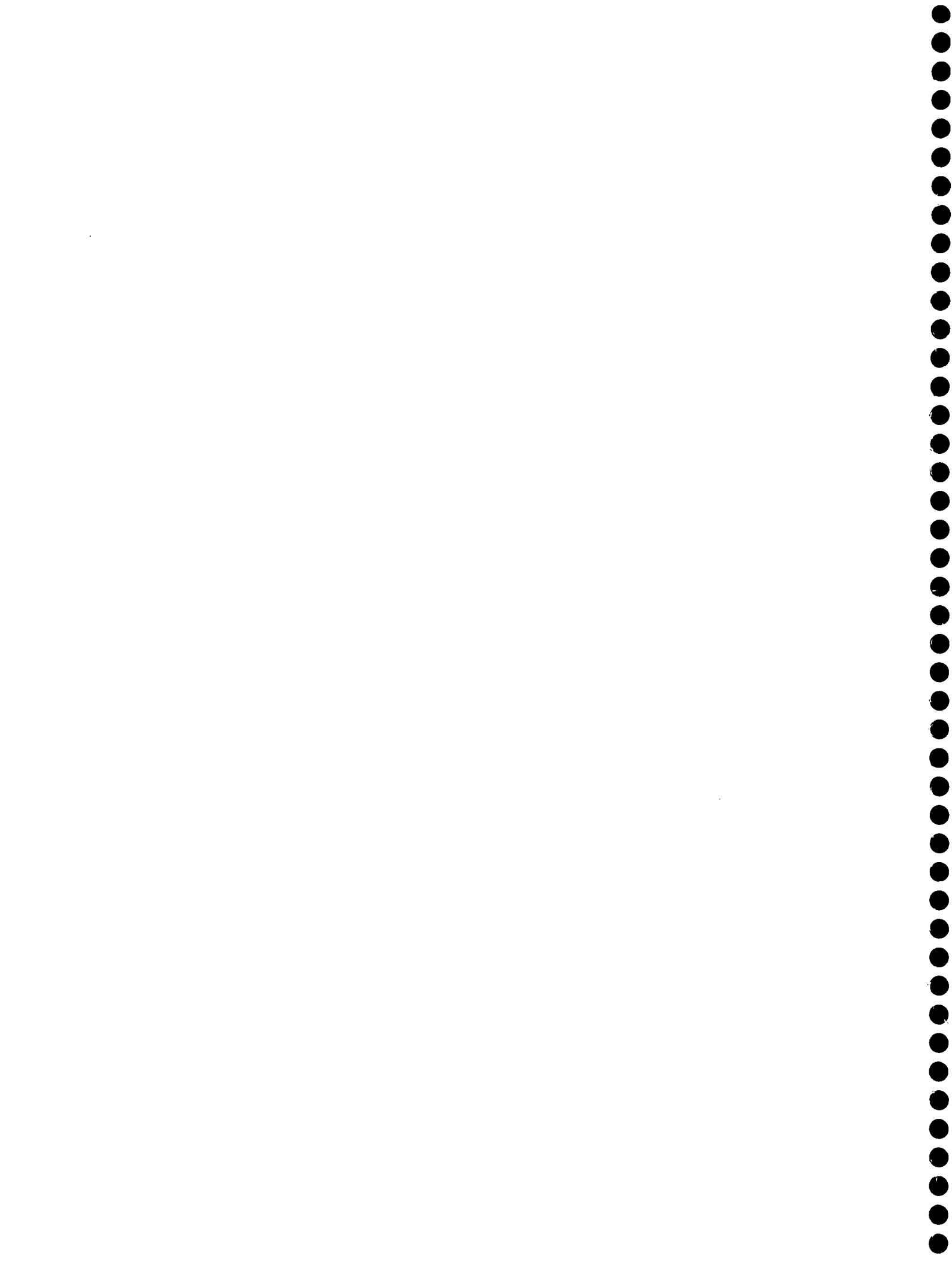
*Id.* 1st par. The statute also requires that the database "have the capacity for authorized users to enter information" into the database, including the chief medical examiner, licensed health professionals, licensed funeral directors, and the courts. *Id.* 3rd par.

As a threshold matter, § 33 does not even apply to the electronic indexes the Registry makes available to the public on its computer terminals. Rather, § 33 applies to the Registry's centralized, automated database into which authorized users such as town clerks, the medical examiner, funeral directors, and courts are authorized to enter information. *Id.* 1st and



3rd pars. Any contrary interpretation would mean that the Registry is violating § 33 every time it allows the public to access the indexes through its computer terminals -- an everyday occurrence for which the Registry charges the public \$9.00 an hour.

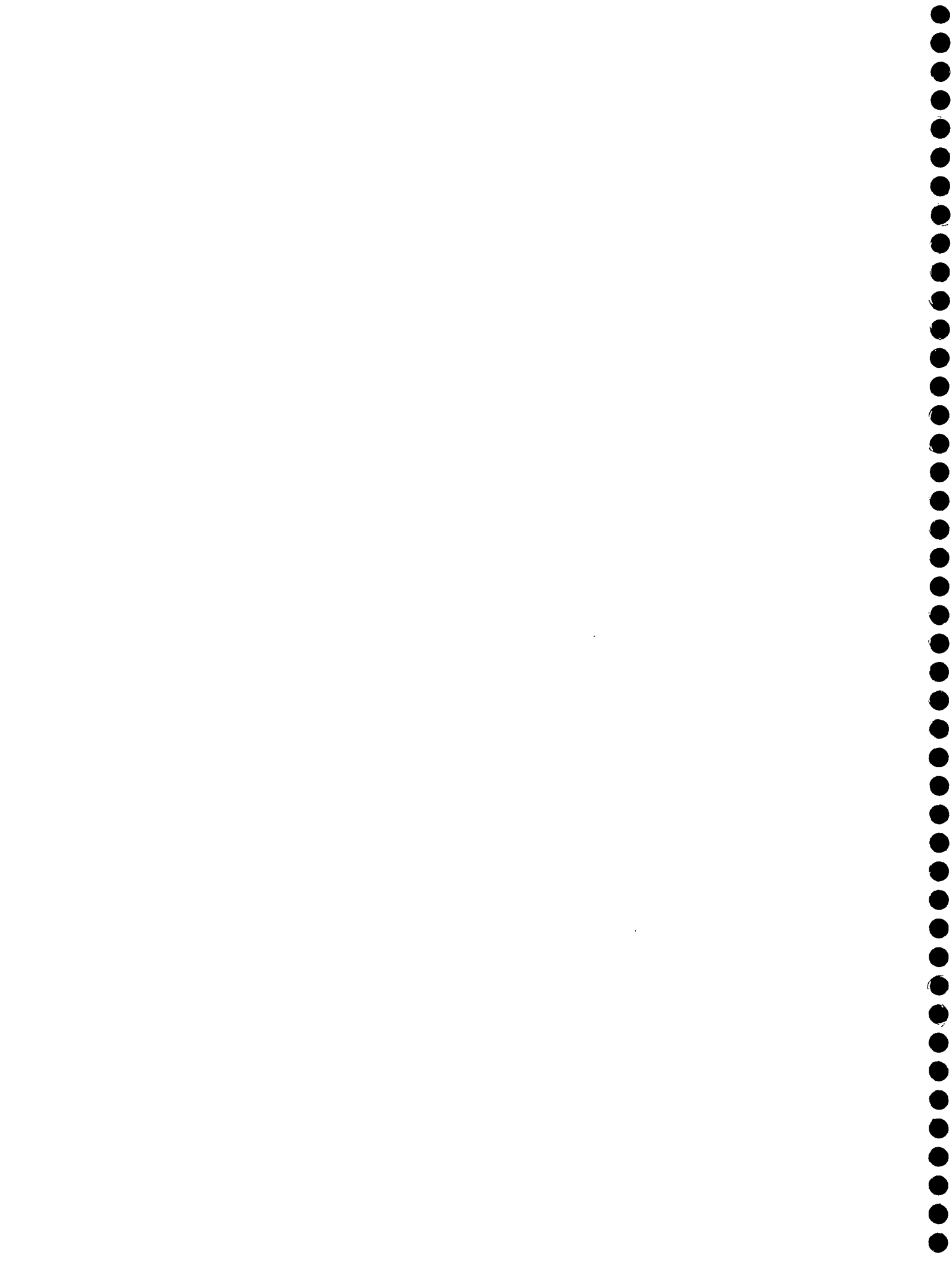
Even assuming, moreover, that § 33 somehow applies to electronic indexes of birth and marriage information, the statute does not "specifically" prohibit the public from inspecting and copying the indexes (any more than it prohibits the Registry from allowing the public to see the indexes on computer terminals). When the legislature wishes to prohibit public access to information, it knows how to say so. See, e.g., G.L. c. 6, § 168A (probation records "shall not be regarded as public records and shall not be open for public inspection"); G.L. c. 41, § 97D (reports of rape and sexual assault "shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality"); G.L. c. 9A § 6 (applications for address confidentiality program "shall not be a public record and shall be exempt from the mandatory disclosure requirements of clause Twenty-sixth of section 7 of chapter 4").





Section 33, in contrast, simply identifies those who are allowed to input information into the database and who may issue certified copies of vital records from the database. See G.L. c. 46, § 33, 1st par. (database "shall be available" to town clerks "who shall use it" to record events and issue records); *id.* 3rd par. (database "shall have the capacity for authorized users to enter information"). There is nothing unusual about distinguishing between persons authorized to make entries into public records and persons allowed to inspect those entries. For example, the authority of clerks to use the court's electronic docket system to enter information does not negatively affect the public's right to inspect and copy information so entered. Section 33 similarly contains no prohibitions on the right of *anyone* to inspect or copy the database, and does not speak at all to the more limited information available in the Registry's electronic birth and marriage indexes.

Nor does § 33 "by necessary implication" exempt electronic indexes of birth and marriage records from public disclosure. In order to prohibit public access by "necessary implication," a statute must "include language that restricts the release of specified records



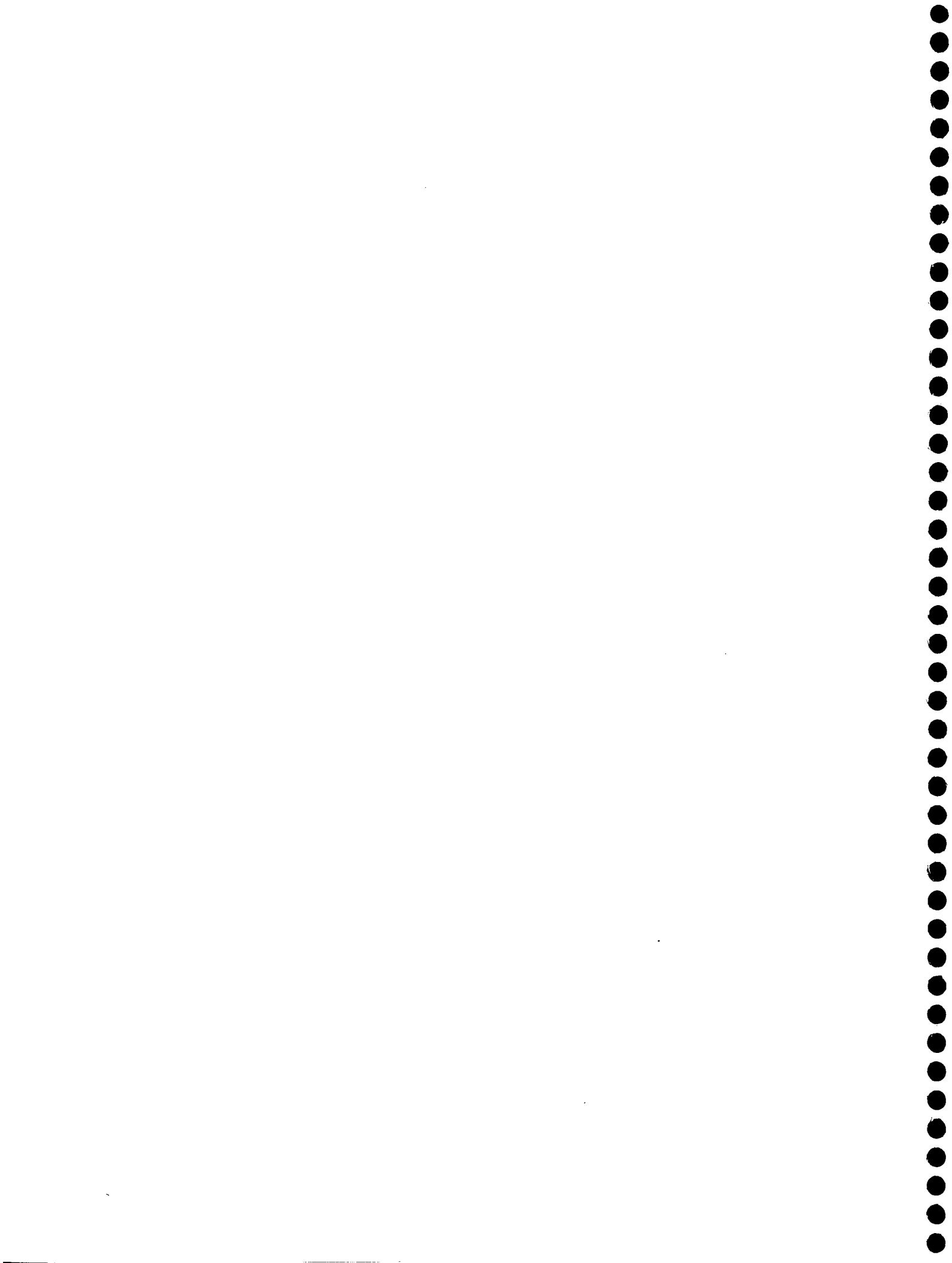
to a defined group of entities or individuals." Murray, *supra*, at 24. "If a statute only serves to list entities or individuals to whom the records could be provided, the statute will not be found to have exempt[ed] disclosure to nonlisted groups. *Id.* "The statute must explicitly restrict access to only the listed individuals or entities in order for the records to be withheld through the statute, operating through Exemption (a)." *Id.* See, e.g., *Collector of Lynn*, 377 Mass. at 154-55 (statutory requirement that tax collectors' records be made available to town auditors at reasonable times and upon demand by a mayor, aldermen or selectmen did not impose a restriction on the public's right to inspect same records).

The holding and rationale of the Supreme Judicial Court in *Collector of Lynn*, viewed in light of the statutory language of § 33, compels the same conclusion here. Assuming that § 33 even applies to the Registry's electronic index of birth and marriage records, the statutory language does not specifically or by necessary implication restrict public access to those records.

## 2. G.L. c. 46, § 34

Section 34 of c. 46 provides:

The state registrar may enter into agreements with state and federal agencies administering



public health and welfare programs, registrars of motor vehicles, passport agencies or the National Association for Public Health Statistics and Information Systems to verify the existence of a Massachusetts birth, marriage or death record as an alternative to issuance of a certified copy of the record either to streamline administration of programs and services or to minimize the potential for identity theft and fraud associated with birth and marriage records, drivers' licenses, state identification cards and passports.

G.L. c. 46, § 34.

Section 34 thus authorizes the state registrar to enter into agreements with certain government entities and the National Association for Public Health Statistics and Information Systems (a nonprofit organization) to verify birth, marriage and death records by means other than issuing a certified copy of a vital record. The purpose of such agreements is either to "streamline administration of programs and services" or to "minimize the potential for identity theft and fraud." The statute contains absolutely no language that reasonably could be interpreted -- "specifically" or "by necessary implication" -- as prohibiting public access to the Registry's electronic indexes or overriding in any way the requirements of the Public Records Law.

The Legislature could, of course, enact a law prohibiting the bulk collection of birth and marriage

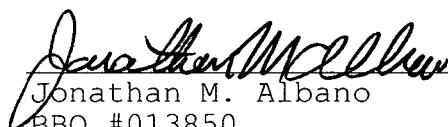


records. It just has not done so. Accordingly, the Superior Court correctly held that none of the statutes relied upon by the DPH specifically or by necessary implication require the DPH to provide birth and marriage information on no more than one person at a time.

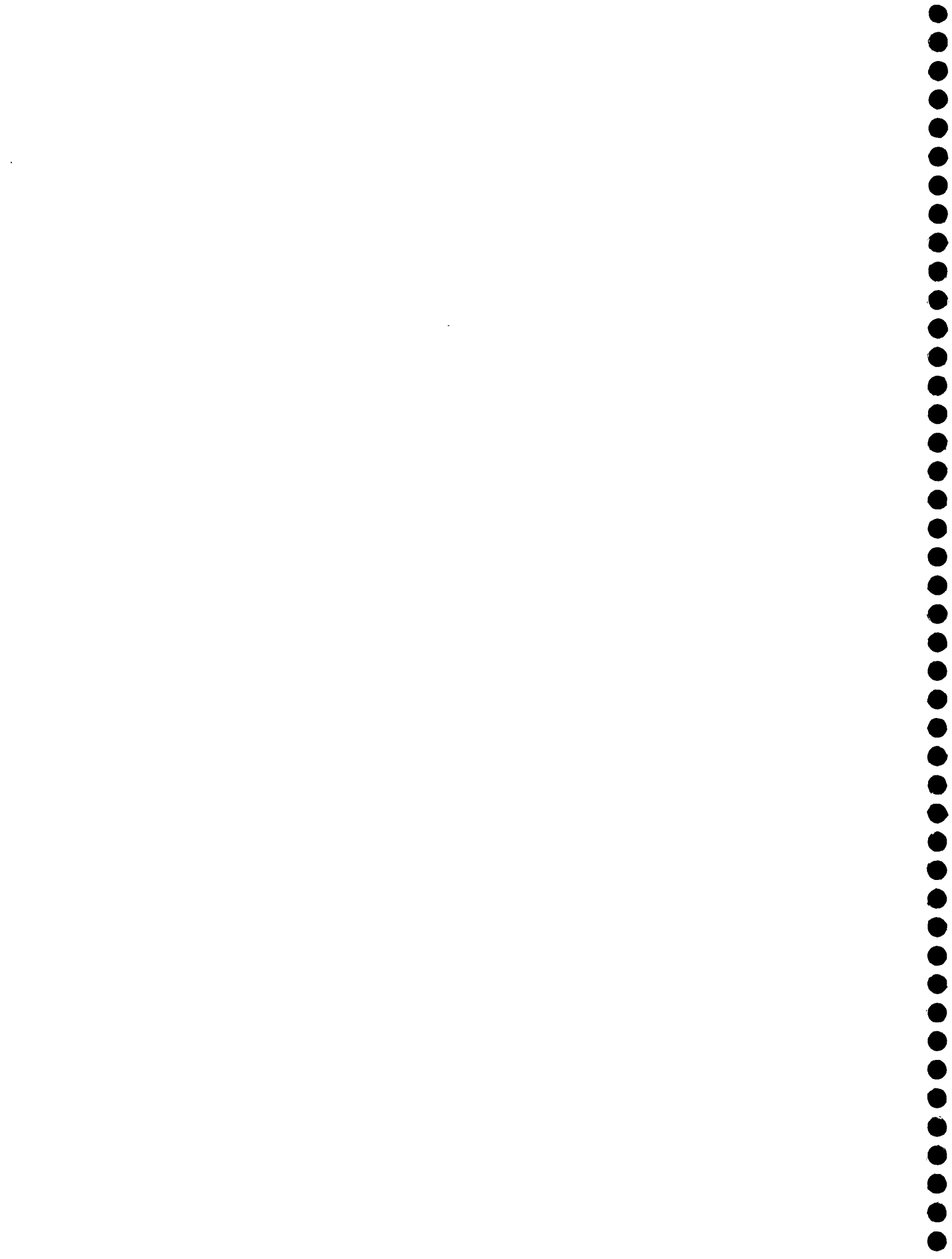
**V. CONCLUSION**

For the foregoing reasons, appellee Boston Globe Media Partners, LLC respectfully requests that the judgment of the Superior Court be reversed.

BOSTON GLOBE MEDIA PARTNERS,  
LLC,

  
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Dated: May 7, 2018





**RULE 16(K) CERTIFICATION**

The undersigned hereby certifies that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. App. P. 16(e) (references in briefs to the record); Mass. R. App. P. 16(f) (reproduction of statutes, rules and regulations), Mass. R. App. P. 16(h) (length of briefs); Mass. R. App. P. 18 (appendix to the briefs); and Mass. R. App. P. 20 (forms of briefs, appendices, and other papers).

  
Jonathan M. Albano



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

A.C. No. 2018-P-0255

BOSTON GLOBE MEDIA PARTNERS, LLC,

Appellant,

v.

DEPARTMENT OF PUBLIC HEALTH,

Appellee.

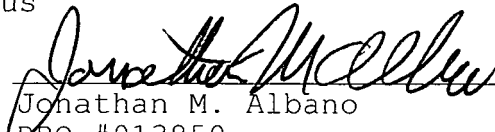
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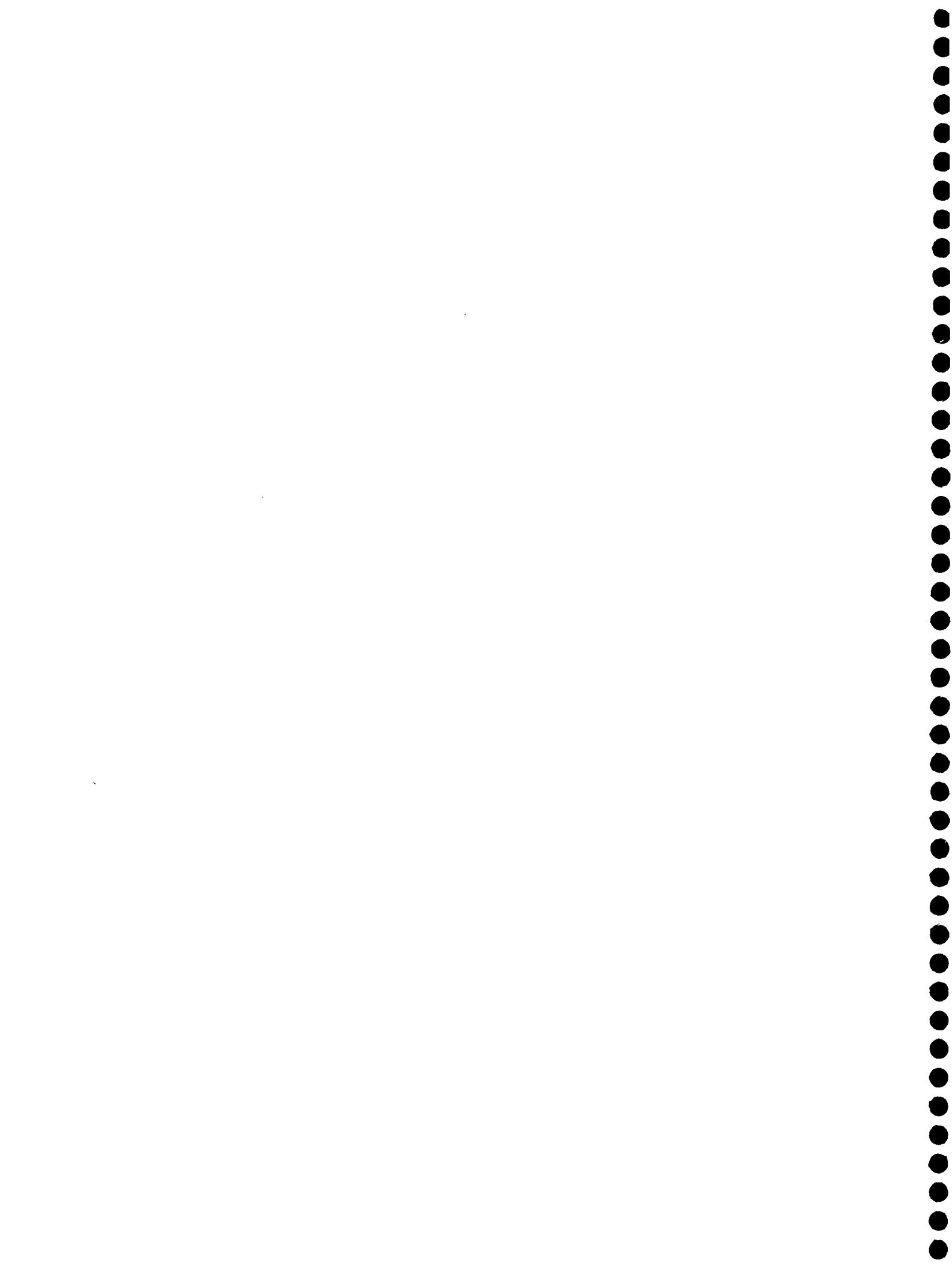
**CERTIFICATE OF SERVICE**

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I, Jonathan M. Albano, hereby certify that  
on May 7, 2018, I served the attached Brief of  
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# ADDENDUM



Notify

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2014-4074-E

BOSTON GLOBE MEDIA PARTNERS, LLC

v.

DEPARTMENT OF PUBLIC HEALTH

MEMORANDUM OF DECISION AND ORDER ON PARTIES'  
CROSS-MOTIONS FOR SUMMARY JUDGMENT

Pursuant to the Public Records Law, G. L. c. 66, § 10, the plaintiff Boston Globe Media Partners, LLC ("Globe"), requests that the court declare that electronic indexes listing all births that have occurred in Massachusetts from 1953 through January, 2011 and all marriages that have occurred in Massachusetts since 1983 are non-exempt public records, and order the defendant, the Department of Public Health ("DPH"), to produce them. The DPH argues that the indexes requested by the Globe are exempt from disclosure under Exemptions (a) and (c) of the Public Records Law.

The matter is before the court on the parties' cross-motions for summary judgment. For the reasons that follow, the DPH's motion for summary judgment is allowed and the Globe's motion for summary judgment is denied.

BACKGROUND

The following is taken from the parties' stipulated facts and exhibits.

The DPH operates the Registry of Vital Records and Statistics ("Registry"), which collects, processes, corrects, and issues copies of Massachusetts vital records such as birth, death, and marriage records. The Registry maintains paper birth and marriage records in a locked vault,

Notice sent

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M-L+B

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D-A-G

W-W-P

(UB)

which is not open to the public. The Registry has a supervised research room in Dorchester that is open during regular business hours and contains computer terminals ("public-facing terminals") through which the public can access birth and marriage information.

These terminals can search birth and marriage information using two databases: (1) a database created in 1987 that contains information regarding (a) births that occurred in the Commonwealth from 1987 through approximately January 2011, and (b) marriages that have occurred since 1983; and (2) a database created in 2008 that contains birth information from 1953 through 1986, as well as scanned images of birth certificates for this period. Neither of these databases contains content that is restricted from public examination by statute. See *e.g.*, G. L. c. 46, § 2A (prohibiting public from examining birth or marriage records of persons born out of wedlock); G. L. c. 46, § 2B (prohibiting public from examining preadoption birth certificates); G. L. c. 46, § 13 (h) (prohibiting public from examining original record after record has been amended to reflect adoption, paternity or nonpaternity determination, or sex reassignment).

The public-facing terminals cannot print and there are no photocopy machines in the research room. The public-facing terminals also do not display an index of all the records contained in the databases such that a visitor could scroll through a list of all entries in a database. Instead, for the first database, a visitor must input at least the first few letters of a last name to initiate a query and the terminal will display information related only to the specific query. For example, by typing the letters "AA," a visitor could scroll through a list of names of people whose last names begin with "AA" in the 1987-2011 birth certificate index as well as the 1983-to-present marriage certificate index. For the second database, visitors can search by additional criteria, such as last name, first name, middle name, gender, city/town of birth,



mother's first name, mother's last name, father's first name, and father's last name, and the terminal will display information related only to that specific query. For example, a visitor could search for all the births that occurred in the City of Somerville in a given year. Each entry contains a person's birth date, last name, first name, middle name, birth city, and mother's first name. A visitor can click on the file name to see a person's full birth certificate with more detailed information. To examine a physical record, a visitor must ask a Registry clerk to retrieve it from the locked vault.

Thus, the electronic birth certificate index available to the public through the public-facing terminals contains: last name, first name, date of birth, place of birth, mother's/parent's first name, father's/parent's first name, and the volume and page number where the birth certificate is recorded. For the years 1953-1986, the person's middle name is also listed. A certified copy of a birth certificate would contain: the person's first, middle, and last name, father's first, middle, and last name, mother's first, middle, and maiden name, mother's present first, middle, and last name, street and city address of both parents, place of birth of both parents, date of birth of both parents, parents' ages at the time of person's birth, parents' race, parents' occupations, and name and address of the attendant at birth.

Further, the electronic marriage certificate index available to the public through the public-facing terminals contains: first and last name, date of marriage, place where the license was filed, marriage certificate number, and location of the record in the vault. A certified copy of a marriage certificate would contain: spouses' maiden and married names, spouses' dates of birth, spouses' occupations, spouses' street and city addresses and zip codes, number of marriages for each spouse, maiden names of spouses' mothers, spouses' fathers' names, date and

place of marriage, including, if applicable, the church name, and the name of the person who performed the ceremony.

The Registry routinely updates the databases in real time to reflect amendment to any vital record. Once an amendment is made, the Registry removes the original information from the public-facing terminals if it has become restricted information, *e.g.*, biological parents' names after adoption, name and sex information after gender reassignment, etc.

In 2010, the Legislature enacted G. L. c. 46, § 33, requiring the Registry to "establish, maintain and operate a centralized, automated database for the system of vital records and statistics ... ." Pursuant to this mandate, the Registry launched an electronic birth registration system, Vitals Information Partnership ("VIP"). Any birth occurring after January 1, 2011 is recorded in VIP. In addition, the Registry has included birth data from 1953 to 2010 in VIP.<sup>1</sup> Members of the public cannot search the VIP database through the public-facing terminals or any other means. A visitor would have to ask a Registry employee to retrieve the physical birth record of a specified person born after January 1, 2011. The Registry and authorized users such as town clerks and medical facilities update the VIP database in real time to reflect amendments of any records. See G. L. c. 46, § 33 (database "shall have the capacity for authorized users to enter information" relating to, among other things, "acknowledgments of paternity" and "adoptions").

On May 10, 2013, the Globe requested, pursuant to G. L. c. 66, § 10, "an electronic copy of [the Registry's] computerized index of births [and] marriages ... for all years available in electronic form," which would cover "[b]irth[s] (1987 – present)" and "[m]arriage[s] (1983 to present)." The Globe has since clarified that its request does not encompass the VIP database.

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<sup>1</sup> The Registry plans to expand VIP to include marriage and other vital-event data.

The Globe's request amounts to birth information for approximately 4.6 million individuals and marriage information for approximately 2.2 million individuals. The DPH declined to turn over the indexes and argued that they fell within two Public Records Law exemptions: (1) Exemption (a), which covers materials or data "specifically or by necessary implication exempted from disclosure by statute," G. L. c. 4, § 7, Twenty-sixth (a) ("Exemption (a)"); and (2) Exemption (c), which covers "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of privacy." G. L. c. 4, § 7, Twenty-sixth (c) ("Exemption (c)"). Ultimately, the Supervisor of Public Records determined that Exemption (a) applied to electronic copies of the Registry's computerized indexes of birth and marriage records. Specifically, he reasoned that "[i]n restricting database access to a select group or [sic] individuals performing a specific function [G. L. c. 46, § 33] by implication identifies the purpose of the database as not to make its contents available to the public, but to be used as an administrative tool by government officials." He also stated that the DPH had made a "compelling argument" that Exemption (c) also applied to the records because disclosure "could conceivably permit an individual to identify modifications or changes made to certain birth and marriage records, disclosing information that could implicate significant privacy interests." Thereafter, the Globe filed this action.

### DISCUSSION

A motion for summary judgment should be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Miller v. Mooney*, 431 Mass. 57, 60 (2000).

The Public Records Law, G. L. c. 66, § 10, requires public access to various records and documents in the possession of public officials. See *Harvard Crimson, Inc. v. President &*

*Fellows of Harvard Coll.*, 445 Mass. 745, 749 (2006) (statute was enacted “to give the public broad access to government documents” to ensure that business of government is conducted in the open and is subject to public scrutiny). The class of records to which the public must be afforded access is defined in G. L. c. 4, § 7, Twenty-sixth. This section establishes a broad definition of public records but contains twenty exemptions. Records falling within the scope of an exemption are not subject to mandatory public disclosure under G. L. c. 66, § 10. Under the Public Records Law, there exists “a presumption that the record sought is public,” G. L. c. 66, § 10(c), and a government agency which refuses to comply with a request for disclosure has the burden of proving “with specificity” that the information requested is within one of twenty statutory exemptions to disclosure.<sup>2</sup> *Globe Newspaper Co. v. Police Comm’r of Boston*, 419 Mass. 852, 857 (1995); see *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980) (because of statute’s presumption in favor of disclosure, statutory exemptions “must be strictly construed”). The DPH relies on Exemptions (a) and (c).

#### **I. Exemption (a)**

General Laws c. 4, § 7, Twenty-sixth (a) excludes from the definition of “public record” materials or data “specifically or by necessary implication exempted from disclosure by statute.” The DPH argues that the indexes requested by the *Globe* are by necessary implication exempt

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<sup>2</sup> The Legislature revised G. L. c. 66, § 10 effective January 1, 2017. See St. 2016, c. 121, § 10. Relevant to this case, the Legislature removed the language in 10(c) that “In any court proceeding ... there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.” Further, the Legislature enacted G. L. c. 66, § 10A(d)(1)(iv) which states: “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.” See St. 2016, c. 121, § 10. The *Boston Globe* filed its records request on May 10, 2013. As the parties have not raised any issue with respect to the differences between the statutes, I will consider the request under the version of G. L. c. 66, § 10 that existed until January 1, 2017. See *People for the Ethical Treatment of Animals v. Department of Agricultural Resources*, 477 Mass. 280, 281 n.3 (2017).

from disclosure by G. L. c. 46, §§ 33 and 34 because these statutory provisions reflect that birth and marriage data should not be disseminated wholesale to the public. The DPH also contends that the indexes are specifically and by necessary implication exempt from disclosure under statutes that prohibit the public from examining information contained in certain birth and marriage records, *i.e.*, G. L. c. 46, §§ 2A, 2B, and 13.

#### **A. General Laws c. 46, §§ 33 and 34**

As discussed above, in 2010, the Legislature required the Registry to “establish, maintain and operate a centralized, automated database for the system of vital records and statistics ...”

G. L. c. 46, § 33. Section 33 further provides that the Registry “shall make such automated database available to town clerks who shall use it to (i) record all births and deaths by city or town of occurrence and all marriages by city or town that issued the license; and (ii) issue certified copies of vital records.” G. L. c. 46, § 33. Further,

[t]he database shall have the capacity for authorized users to enter information required for: (i) standard certificates of live birth and as required by the commissioner for administrative, research and statistical purposes under section 24B of chapter 111; (ii) acknowledgments of paternity; (iii) standard certificates of death; and (iv) fetal death reports. The database shall have the capacity for the chief medical examiner to enter information required for a medical examiner’s certificate of death and for licensed health professionals and licensed funeral directors to enter information required for standard certificates of death. The database shall also have the capacity for courts in the commonwealth to enter information required for amendment of birth records following adjudications of paternity under chapter 209C and adoptions under chapter 210.

G. L. c. 46, § 33. Finally, the statute states that “[a]ll certified copies issued from the database shall be identical in size and format and shall have security features that deter alteration, counterfeiting, duplication or simulation of vital records and shall meet applicable federal and state standards established for this purpose. ...” G. L. c. 46, § 33.

The parties dispute whether section 33 applies to all databases maintained by the Registry or just to the VIP database from which the Globe is not seeking information. In particular, the

DPH contends that section 33 reflects a policy against bulk dissemination of birth and marriage information, regardless where a discrete record happens to be registered at a particular time. More specifically, the DPH argues that the use of the phrase "authorized users" necessarily implies that the general public may not access information in the birth and marriage databases and that the public's access is limited to obtaining "certified copies of vital records." This argument is supposedly supported by language in G. L. c. 46, § 34 that the Registry may enter into agreements with certain agencies to verify the existence of birth, marriage, or death records by means other than a certified copy of the record "either to streamline administration of programs and services or to minimize the potential for identity theft and fraud associated with" birth and marriage records. I disagree.

The phrase "authorized users" is followed directly by the words "to enter information," indicating that the Legislature intended that only certain "users" are "authorized" "to enter information." This language does not imply that only certain "users" can have access to the information contained in the database. Nor do the statute's requirements regarding the issuance of certified copies of vital records imply that the public cannot have access to the information contained in the database; the statute simply specifies the requirements for any such certified copy. And while the Legislature has acknowledged that there is a potential for identity theft and fraud associated with "certified cop[ies]" of birth and marriage records, a "certified copy" of a birth or marriage record contains much more identifying information than the records included in the index available to the public through the public-facing terminals. That the Legislature was concerned with the potential release of certified copies of birth and marriage records in bulk to various agencies does not imply that it intended to restrict the public's right, under G. L. c. 66, § 10, to the indexes containing less identifying information. Compare *Chanpa v. Weston Public*

*Schools*, 473 Mass. 86, 91 n.8 (2015) (finding that although 20 U.S.C. § 1232g does not expressly prohibit disclosure of “education records,” it was sufficient to satisfy requirement that statute exempt data or information “by necessary implication” because it conditions receipt of Federal funds on nondisclosure of education records). To the extent that there is any ambiguity in § 34, that ambiguity must be resolved in favor of disclosure. *Globe Newspaper Co. v. District Attorney for the Middle Dist.*, 439 Mass. 374, 383 (2003).

**B. General Laws c. 46, §§ 2A, 2B, and 13**

As stated above, these statutes restrict the public from examining certain content in birth certificates. The Registry updates its databases regularly to reflect when a vital record has been amended. When information becomes restricted, the Registry removes it from its databases accessible to the public. Because an index produced at a certain time could contain information that later becomes restricted, the DPH argues that these statutes specifically and by necessary implication exempt the indexes from disclosure. For example, if a person has been adopted, the Registry changes the birth record to reflect the adoptive parents’ names and removes the biological parents’ names. But birth indexes from prior years would list the names of the biological parents. Thus, if indexes are created at different points in time, someone could compare these indexes to glean information that has been deemed not public by the Legislature, *e.g.*, the names of one’s biological parents after adoption.

I do not disagree with the DPH, but the issue is not presented here because the Globe has clarified that it is not seeking indexes created at different periods of time; it is seeking the indexes “in the form in which they currently are available to the public on the Registry’s public

facing terminals.”<sup>3</sup> My decision is expressly limited to the request presented and does not extend to any future request that may be made.

I conclude that the DPH has not met its burden of proving that the indexes sought by the Globe are exempt from disclosure under Exemption (a).

## II. Exemption (c)

General Laws c. 4, § 7, Twenty-sixth (c) excludes from the definition of “public record” “any ... materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of privacy.” G. L. c. 4, § 7, Twenty-sixth (c). In determining whether this exemption applies, the court must “balance[e] any claimed invasion of privacy and the interest of the public in disclosure.” *Globe Newspaper Co.*, 419 Mass. at 858. “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.” *Attorney Gen. v. Collector of Lynn*, 377 Mass. 151, 156 (1979). In identifying the existence of privacy interests, courts consider whether disclosure would “result in personal embarrassment to an individual of normal sensibilities, whether the materials sought contain intimate details of a highly personal nature, and whether the same information is available from other sources.” *Globe Newspaper Co.*, 419 Mass. at 858 (citations and quotations omitted). The court then weighs the public’s interest in disclosure, including its interest “in knowing whether public

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<sup>3</sup> The same reasoning applies to the DPH’s argument regarding a person’s sex reassignment potentially being released in violation of G. L. c. 4, § 7, Twenty-sixth (c). See *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 438 (1983) (“[M]edical ... information” is “absolutely exempt from mandatory disclosure” so long as the “information [is] of a personal nature and relate[s] to a particular individual”). Because the Globe has not requested indexes created at different periods of time, it would not have access to information that would enable it to determine that an individual has completed sex reassignment.



servants are carrying out their duties in an efficient and law-abiding manner," against the private interest. *Attorney Gen.*, 377 Mass. at 158.

The electronic birth certificate index requested by the Globe contains the following information: last name, first name, date of birth, place of birth, mother's/parent's first name, father's/parent's first name, and for the years 1953-1986, the person's middle name. The Globe's request amounts to birth information for approximately 4.6 million individuals. The electronic marriage certificate index requested by the Globe contains the following information: first and last name, date of marriage, place where the license was filed, and marriage certificate number. The Globe's request amounts to marriage information for approximately 2.2 million individuals. The requested birth and marriage information is publicly available on the public-facing terminals, albeit not in the bulk form requested by the Globe.

The disclosure of information regarding a person's birth and/or marriage, in most cases, would not result in personal embarrassment to an individual of normal sensibilities. Compare *Attorney Gen.*, 377 Mass. at 157 (publication of one's name on list of tax delinquents would "certainly result in personal embarrassment to an individual of normal sensibilities").

It is a closer question whether the information requested contains intimate details of a highly personal nature. See *Attorney Gen.*, 380 Mass. at 626 n.2 (citations omitted) (under Federal law, "intimate details" may include "marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights [and] reputation"). Whether a piece of information is considered an "intimate detail" is to be determined in light of "community mores and sensibilities." *Doe v. Registrar of Motor Vehicles*, 26 Mass. App. Ct. 415, 424 (1988) (citations and quotations omitted). Discrete pieces of information such as an individual's name, birth date, place of birth, and date of marriage are

usually not intimate details of a highly personal nature especially considering their availability through other sources. See *Department of State v. Washington Post Co.*, 456 U.S. 595, 601 (1982) (“Information such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal ...”); *Doe v. Registrar of Motor Vehicles*, 1 Mass. L. Rptr. 156, \*7 (June 8, 1993) (Gershengorn, J.) (date of birth is not information that person of “normal sensibilities” would go to great lengths to keep private and it also can be gleaned from other sources).

Even if discrete pieces of the information the Globe seeks are not considered intimate details of a highly personal nature, however, the aggregate effect of other disclosed information on the privacy of the total number of persons whose data would be disseminated weighs against disclosure here. See *Doe*, 26 Mass. App. Ct. at 425; see also *Georgiou v. Commissioner of the Dep’t of Industrial Accidents*, 67 Mass. App. Ct. 428, 434-435 (2006) (while disclosure of names and addresses does not, per se, establish invasion of privacy, aggregate effect of other disclosed information “may intensify the invasion of privacy and weigh against disclosure”). As noted above, the Globe’s request amounts to birth information for approximately 4.6 million individuals and marriage information of approximately 2.2 million individuals. Moreover, ready access to compiled personal information in the indexes maintained by the Registry would facilitate identity theft or other malicious uses in a manner that most individuals would consider an invasion of privacy. See *Doe*, 26 Mass. App. Ct. 421-422 (citation and quotations omitted) (noting advent of modern data processing technology which permits aggregation of pieces of personal information into large central data banks). Although the Globe has stated that this is not the purpose of its request, a ruling that the aggregated information must be made publicly available upon request would not allow differentiation among requesting parties. See *National*

*Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D. C. Cir. 1989) (because court cannot limit disclosure of records to particular parties or for particular uses, it would be illogical and unfair to person whose privacy is at stake for court not to consider impact on personal privacy of the more general disclosure; "[i]n this context, the privacy interest of an individual in avoiding the unlimited disclosure of his or her name and address is significant ...").

Finally, that the information requested may be derived elsewhere reduces the expectation of privacy, but is not dispositive. *Doe*, 26 Mass. App. Ct. at 427, citing *Attorney Gen.*, 377 Mass. at 158. Although the material is available here through the public-facing terminals, "[u]sing that route to obtain the data would require ... a far more cumbersome procedure." *Doe*, 26 Mass. App. Ct. at 427; see also *US Dep't of Justice v. Reporters Committee*, 489 U.S. 749, 764 (1989) (issue was whether compilation of otherwise hard-to-obtain information alters privacy interest implicated by its disclosure; "[p]lainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information").

After weighing these factors, I conclude that the release of the electronic birth and marriage indexes would result in the invasion of privacy of a substantial number of individuals.

I next must weigh the public's interest in disclosure. The public's interest is usually limited to its interest "in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner." *Attorney Gen.*, 377 Mass. at 158; *US Dep't of Defense v. Federal Labor Relations Authy.*, 510 U.S. 487, 497 (1994) (quotations and citation omitted) public interest analysis under Federal law is limited to "the extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties"). In the

circumstances of this case, however, the public's interest in disclosure also includes "the negative public interest" in making the compiled personal data of so many individuals available electronically for public scrutiny. *Doe*, 26 Mass. App. Ct. at 425 ("Consideration of privacy interests on both sides of the balance cannot be avoided because the vast numbers of persons [affected] are themselves a significant part of the public. In large part, theirs is the public interest which is being weighed.").

The only reason given by the Globe that potentially affects the public's interest<sup>4</sup> is its contention that access would provide a check on whether the Registry is properly recording births and marriages; more specifically, the Globe could calculate the number of certificates recorded each year and in each town and compare that with Census data and other records to search for discrepancies. The Globe has agreed, however, that the DPH publishes (1) an annual birth report that presents detailed data on the number and characteristics of Massachusetts births recorded in the Registry and (2) a Vital Statistics Annual Report, which includes marriage and divorce counts, and also makes aggregate marriage data available by request. I conclude that the public's interest in disclosure here does not outweigh the invasion of privacy of the substantial number of people discussed above, particularly given that the Globe admittedly could conduct its research using other available means.

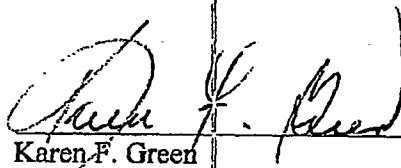
Thus, I conclude that the DPH has met its burden of proving that disclosure of the indexes the Globe seeks may constitute an unwarranted invasion of the personal privacy of the individuals specifically named therein.

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<sup>4</sup> For example, enabling the Globe to identify individuals in news reports does not affect the public interest.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that Boston Globe Media Partners, LLC's Motion for Summary Judgment is **DENIED** and the Department of Public Health's Motion for Summary Judgment is **ALLOWED**. The Court declares that electronic indexes listing all births that have occurred in Massachusetts from 1953 through January, 2011 and all marriages that have occurred since 1983 are not public records pursuant to G. L. c. 4, § 7, Twenty-sixth (c).

  
Karen F. Green  
Associate Justice of the Superior Court

**DATED:** August 23, 2017

*Notify*

✓ 8/29

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2014-4074-E

BOSTON GLOBE MEDIA PARTNERS, LLC

vs.

DEPARTMENT OF PUBLIC HEALTH

JUDGMENT ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

After hearing before Karen F. Green, presiding justice, it is hereby **ORDERED** that Boston Globe Media Partners, LLC's Motion for Summary Judgment is **DENIED** and the Department of Public Health's Motion for Summary Judgment is **ALLOWED**. The Court declares that electronic indexes listing all births that have occurred in Massachusetts since 1953 through January, 2011 and all marriages that have occurred since 1983 are not public records pursuant to G. L. c. 4 sec. 7, Twenty-sixth (c).

By the Court,

(Green, J.)

Attest:

*Margaret M. Buckley*  
Margaret M. Buckley  
Assistant Clerk

*Noted  
8/31/17  
JMA  
EDH  
WMP*

Date: August 28, 2017

JUDGMENT ENTERED ON DOCKET *Aug 31 2017*  
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 77(d)  
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-  
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS



