

# A Guide to the Massachusetts Public Records Law

*Updated March 2020*



Published by  
William Francis Galvin  
Secretary of the Commonwealth

For additional educational resources regarding the Public Records Law, please contact the Public Records Division at:

Division of Public Records  
One Ashburton Place, Room 1719  
Boston, MA 02108  
Telephone: (617) 727-2832  
Fax: (617) 727-5914  
Email: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)  
[www.sec.state.ma.us/pre/preidx.htm](http://www.sec.state.ma.us/pre/preidx.htm)



The founding fathers of our nation strove to develop an open government formed on the principles of democracy and public participation. An informed citizen is better equipped to participate in that process.

Laws mandating the disclosure of public records have existed in the Commonwealth of Massachusetts since 1851. The federal Freedom of Information Act was signed into law in 1966 by President Lyndon B. Johnson. In 1974, Congress amended the federal Freedom of Information Act in order to make government records more accessible to the public.

The Massachusetts Public Records Law parallels federal law, with some variation. Every government record in Massachusetts is presumed to be public unless it may be withheld under a specifically stated exemption.

As Secretary of the Commonwealth and chief public information officer for the Commonwealth, I am pleased to publish this guide explaining the Public Records Law. The full text of the law is provided, as well as a brief description of each of the exemptions to the law.

Also included is a section of frequently asked questions about a requestor's right to access public records, as well as a government records custodian's duty to respond to those requests.

Any additional questions regarding the Public Records Law should be directed to the Division of Public Records at (617) 727-2832 during regular business hours.

You may access Division of Public Records publications and other information at [www.sec.state.ma.us/pre/preidx.htm](http://www.sec.state.ma.us/pre/preidx.htm).

A handwritten signature in cursive script that reads "William Francis Galvin". The signature is written in dark ink and is positioned above the printed name and title.

William Francis Galvin  
Secretary of the Commonwealth

# Table of Contents

Overview.....	4
Definitions.....	4
The Request .....	6
The Response .....	7
Fees .....	10
Remedies for Requestors .....	12
RAO Petitions.....	13
Agency RAO Reporting Requirement.....	14
Exemptions to the Public Records Law .....	14
Exemption (a) .....	14
Exemption (b) .....	15
Exemption (c).....	16
Exemption (d) .....	19
Exemption (e).....	20
Exemption (f) .....	21
Exemption (g) .....	22
Exemption (h) .....	23
Exemption (i) .....	24
Exemption (j) .....	25
Exemption (k). Repealed, 1988 Mass Acts 180, § 2.....	26
Exemption (l) .....	26
Exemption (m) .....	27
Exemption (n) .....	28
Exemption (o) .....	29
Exemption (p) .....	29
Exemption (q) .....	29
Exemption (r).....	30
Exemption (s).....	30
Exemption (t) .....	31
Exemption (u) .....	31
Exemption (v) .....	31
Attorney-Client Communications.....	32
Geographic Information Systems (GIS) .....	32
Records Management.....	34
Records Retention.....	34
Electronic Records Storage.....	35
Maintenance and Storage of Public Records .....	36
Frequently Asked Questions .....	38
Appendix.....	44
Public Records Law .....	44
Public Inspection and Copies of Records .....	49
Public Records Regulations .....	58
Examples of Exemption (a) Statutes .....	78

## Overview

The Massachusetts Public Records Law (Public Records Law) and its Regulations provide that each person has a right of access to public information.<sup>1</sup> This right of access includes the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.<sup>2</sup>

The Public Records Law broadly defines “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee” of any Massachusetts governmental entity.<sup>3</sup>

There are strictly and narrowly construed exemptions and common law privileges to the broad definition of “public records.”<sup>4</sup> This guide will briefly review the application of these exemptions as well as explore some of the other issues that arise when a request is made for access to government records.

## Definitions

The following are definitions of terms that are commonly used in matters involving the Public Records Law:

Agency. Any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth that is identified in G. L. c. 66, § 6A and c. 4, § 7(26) and makes or receives "public records", as defined in 950 C.M.R. 32.02. Agency includes any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in G. L. c. 32, § 1.

Business Day. Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

Commercial Purpose. The sale or resale of any portion of the public record or the use of information from the public record to advance the requestor's strategic business interests in a manner that the requestor can reasonably expect to make a profit. This could include obtaining names and addresses from the public record for the purpose of solicitation. It does not include

---

<sup>1</sup> G. L. c. 66, § 10(a).

<sup>2</sup> Id.; 950 C.M.R. 32.07.

<sup>3</sup> G. L. c. 4, § 7(26).

<sup>4</sup> Id., see also Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980) (the statutory exemptions are to be strictly and narrowly construed).

gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or for academic, scientific, journalistic, or public research or education.

Custodian. Any governmental entity that makes or receives public records.

Division. Division of Public Records, Office of the Secretary of the Commonwealth of Massachusetts.

Governmental Entity. Any agency or municipality as defined in 950 C.M.R. 32.02. It includes any quasi-governmental agency that is considered a body politic and corporate or public instrumentality. It does not include the legislature and the judiciary.

Municipality. Cities and towns, local housing, redevelopment or similar authorities. A consortium, consolidation or combination of entities within a single political subdivision of the commonwealth or among multiple political subdivisions of the commonwealth shall be deemed a municipality. This office has found that regional school districts and local fire districts should be considered municipalities for the purposes of this definition.

Public Record. All books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by a governmental entity unless such materials or data fall within one or more of the exemptions found within G. L. c. 4, § 7(26) or other legally applicable privileges.

Records Access Officer. The employee designated within a governmental entity to perform duties described in 950 C.M.R. 32.00 including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requestors to make informed requests regarding the availability of such public records electronically or otherwise.

Requestor. Any person or entity seeking to inspect or obtain copies of public records.

Redact. To delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.

Search Time. The time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record.

Secretary. The Secretary of the Commonwealth of Massachusetts.

Segregation Time. The time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.

Supervisor. Supervisor of Public Records or Supervisor of Records.

Withhold. To not disclose a record under G. L. c. 4, § 7(26) or other legally applicable privileges.<sup>5</sup>

## **Updated Public Records Law**

The Public Records Law and its Regulations were updated with changes effective January 1, 2017. Among other things, the updated law sets limits on fees, provides deadlines for the provision of records, and requires the designation of a “Records Access Officer” (RAO). The updated law also distinguishes between “agencies” and “municipalities” and assigns certain duties to each entity.

For the purposes of this Guide, the terms “RAO,” “custodian,” “municipality,” and “agency” represent various ways to describe the roles and obligations of entities that are subject to the Public Records Law.

## **The Request**

There are no strict rules that govern the manner in which requests for public information should be made. Requests may be made in person or in writing. Written requests may be submitted in person, by mail, facsimile or email.<sup>6</sup> A requestor must provide the RAO with a reasonable description of the desired information.<sup>7</sup>

The requestor is not required to provide any reason for making a request and, generally, the purpose of the request has no bearing on the public status of the record. All requestors must be treated the same with respect to the response to their requests. Given this, the requestor may not be required to identify himself or herself as a condition of obtaining access to the requested records. The limited exception to this general rule will be discussed below in relation to determining whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver.<sup>8</sup>

---

<sup>5</sup> 950 C.M.R. 32.02.

<sup>6</sup> 950 C.M.R. 32.06(1)(c).

<sup>7</sup> 950 C.M.R. 32.06(1)(b).

<sup>8</sup> G. L. c. 66, § 10(d)(viii).

## The Response

If the RAO intends to produce records and is able to do so within 10 business days, it must “at reasonable times and without unreasonable delay” permit inspection or furnish a copy of any public record not later than 10 business days following the receipt of the request.<sup>9</sup> The RAO must do so provided that:

- (i) the request reasonably describes the public record sought;
- (ii) the public record is within the possession, custody or control of the agency or municipality that the records access officer serves; and
- (iii) the records access officer receives payment of a reasonable fee as set forth in subsection (d) of G. L. c. 66, § 10.<sup>10</sup>

If the agency or municipality does not intend to produce records, or if it is unable to produce records within 10 business days because the magnitude or difficulty of the request or if multiple requests from the same requestor unduly burdens the other responsibilities of the agency or municipality, the agency or municipality must provide a written response to the requestor within 10 business days of receiving the request.<sup>11</sup>

The written response may be provided in person or sent via first class or electronic mail, and must include the following, to the extent applicable:

- (i) confirm receipt of the request;
- (ii) identify any public records or categories of public records sought that are not within the possession, custody, or control of the agency or municipality that the records access officer serves;
- (iii) identify the agency or municipality that may be in possession, custody or control of the public record sought, if known;
- (iv) identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based, provided that nothing in the written response shall limit an agency’s or municipality’s ability to redact or withhold information in accordance with state or federal law;
- (v) identify any public records, categories of records, or portions of records that the agency or municipality intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly

---

<sup>9</sup> G. L. c. 66, § 10(a).

<sup>10</sup> G. L. c. 66, § 10(a)(i-iii).

<sup>11</sup> G. L. c. 66, § 10(b).

burdens the other responsibilities of the agency or municipality and therefore requires additional time to produce the public records sought;

(vi) identify a reasonable timeframe in which the agency or municipality shall produce the public records sought; provided, that for an agency, the timeframe shall not exceed 15 business days following the initial receipt of the request for public records and for a municipality the timeframe shall not exceed 25 business days following the initial receipt of the request for public records; and provided further, that the requestor may voluntarily agree to a response date beyond the timeframes set forth herein;

(vii) suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably;

(viii) include an itemized, good faith estimate of any fees that may be charged to produce the records; and

(ix) include a statement informing the requestor of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.<sup>12</sup>

A denial must detail the specific basis for withholding the requested materials.<sup>13</sup> The denial must include a citation to one of the statutory or common law exemptions upon which the records custodian relies, and must explain with specificity why the exemption applies.<sup>14</sup>

A denial must also advise the requestor of the right to seek redress through the administrative process provided by the Supervisor of Records as well as the judicial remedy available in superior court.<sup>15</sup>

The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received.<sup>16</sup> Consequently, there is no obligation to create a record for a requestor or to honor prospective requests; however, the Regulations do not prohibit an RAO from responding to such requests.

---

<sup>12</sup> G. L. c. 66, § 10(b)(i)-(ix).

<sup>13</sup> G. L. c. 66, § 10(a-b).

<sup>14</sup> G. L. c. 66, § 10(b)(iv).

<sup>15</sup> 950 C.M.R. 32.06(3)(c).

<sup>16</sup> G. L. c. 4, § 7(26) (defining “public records” as materials which have already been “made or received” by a public entity); see also 32 Op. Att’y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information).

Furnishing a segregable portion of a public record shall not be deemed to be creation of a new record.<sup>17</sup> It is also important to note that furnishing an extract of existing data is not considered creation of a new record, as such data exists at the time of the request and is segregable from nonresponsive and exempt data.<sup>18</sup>

## Providing Records Electronically

The statutory definition of “public records” does not distinguish between paper records and electronically stored information.<sup>19</sup> Rather, the law provides that all information made or received by a public entity, regardless of the manner in which it exists, constitutes “public records.”

Access to a record requested pursuant to the Public Records Law rests on the content of the record. Public records, including emails made or received in an individual’s capacity as a government employee, must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request.<sup>20</sup> Whenever original public records are created outside the government offices, they shall be transferred on a regular and frequent basis to secure storage by the entity.

The updated Public Records Law emphasizes producing records efficiently and electronically. As a result, an RAO must provide the public records to a requestor by electronic means unless the record is not available in electronic form or the requestor does not have the ability to receive or access the records in a usable electronic form. If a requestor provides a preferred format for the production of records, the RAO must provide the record in that format, to the extent feasible. If no preferred format is mentioned, then the RAO must provide the record in a searchable, machine readable format.<sup>21</sup>

Agency RAOs must post commonly available public records on its website. Examples of such records include final opinions; decisions; orders; votes from proceedings; annual reports; notices of hearings; winning bids for public contracts; awards of federal, state and municipal government grants; minutes of open meetings; budgets; or any public record information of significant interest that the RAO deems appropriate to post.<sup>22</sup>

A municipal RAO shall post this same information on its website, to the extent feasible.<sup>23</sup>

---

<sup>17</sup> G. L. c. 66, § 6A(d).

<sup>18</sup> See 950 C.M.R. 32.07(1)(f).

<sup>19</sup> G. L. c. 4, § 7(26).

<sup>20</sup> G. L. c. 66, § 10(a); see also Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979).

<sup>21</sup> G. L. c. 66, § 6A(d).

<sup>22</sup> G. L. c. 66, § 19(b).

<sup>23</sup> 950 C.M.R. 32.04(5)(g).

If the public record requested is available on an appropriately indexed and searchable public website, the RAO may furnish the public record by providing reasonable assistance in locating the requested record on the public website.<sup>24</sup>

## Fees

A records custodian may charge a reasonable fee to recover the costs of complying with a public records request.<sup>25</sup> However, it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b), described above.<sup>26</sup>

The updated Public Records Law and its Regulations provide for the following with respect to fees to access public records:

### *Fees for segregating and redacting*

An agency or municipality shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor of Records (Supervisor) through a petition discussed below.<sup>27</sup>

As described in the Definitions section, “segregation time” means the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. Segregation time shall not include time expended to review a record for accuracy and correct errors.<sup>28</sup>

“Redact” means to delete, or otherwise expurgate that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.<sup>29</sup>

The Supervisor’s office has found that information that is “required by law” to be segregated or redacted is found in statutes that explicitly indicate that certain records or information are not public records. Some common examples are the student record statute (G. L. c. 71, § 34D), the Criminal Offender Record Information (CORI) Act (G. L. c. 6, § 167), and laws regarding the confidentiality of domestic violence records (G. L. c. 41, § 97D; G. L. c. 41, § 98F; G. L. c. 209A, § 8). These statutes operate through Exemption (a) of the Public Records Law as further described below. Segregation or redaction

---

<sup>24</sup> G. L. c. 66, § 6A(d).

<sup>25</sup> G. L. c. 66, § 10(a); see also 950 C.M.R. 32.07.

<sup>26</sup> G. L. c. 66, § 10(e).

<sup>27</sup> G. L. c. 66, § 10(d); 950 C.M.R. 32.07(2)(d).

<sup>28</sup> 950 C.M.R. 32.02.

<sup>29</sup> Id.

under the attorney-client privilege has also been found to be “require by law.”

### *Fees for Copies*

In addition to the search and segregation fees, records custodians may charge \$0.05 for either single and double-sided black and white paper copies or printouts.<sup>30</sup> When the request is for materials that are not susceptible to ordinary means of reproduction, such as photographs or computer tapes, the actual cost of reproduction may be assessed to the requestor.<sup>31</sup> There are also specific statutes that establish fees for copies of public records.<sup>32</sup>

### *Agencies*

Agencies may not assess a fee for the first 4 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Agencies may not assess a fee of more than \$25 per hour for the cost to comply with a request for public records.<sup>33</sup>

### *Municipalities*

Municipalities with a population of over 20,000 may not assess a fee for the first 2 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of 20,000 and under may assess a fee, including the first 2 hours, for time spent searching for, compiling, segregating, redacting and reproducing a requested record.<sup>34</sup>

Population data shall be determined by the decennial US. Census and it shall be the burden of the RAO to provide population data information when responding to a request.<sup>35</sup>

A municipality may not assess a fee of more than \$25 per hour for the cost to comply with a request for public records unless approved by the Supervisor through a petition discussed below.<sup>36</sup>

---

<sup>30</sup> 950 C.M.R. 32.07(2)(e).

<sup>31</sup> 950 C.M.R. 32.07(2)(h).

<sup>32</sup> See e.g., G. L. c. 262, § 38 (copies of records at the Registry of Deeds).

<sup>33</sup> 950 C.M.R. 32.07(2)(l).

<sup>34</sup> 950 C.M.R. 32.07(2)(m).

<sup>35</sup> Id.

<sup>36</sup> Id.

## Remedies for Requestors

### *Supervisor of Records*

If a records custodian denies access to, or cannot produce requested records in 10 business days, a records custodian is required by statute to inform the requestor of the right of appeal to the Supervisor under G. L. c. 66, § 10(A)(a).<sup>37</sup> A requestor who is denied access to any requested information may petition the Supervisor for an appeal of the response, or lack thereof, within 90 days.<sup>38</sup>

The Supervisor, assisted by Public Records Division staff, then reviews the written request, the custodian's written response, and provides a written ruling on the status of the records or the reasonableness of a fee estimate.

The Supervisor must issue a determination within 10 business days of receipt of the appeal.<sup>39</sup> If a custodian does not comply with an order, the Supervisor may notify the Office of the Attorney General for enforcement.<sup>40</sup>

The Supervisor and the Public Records Division staff provide training by request to public entities and associations of public employees seeking information on the proper application of the Public Records Law to its records. Public Records Division staff will answer questions on the phone informally, both from requestors and from government entities.

You may view determinations issued by the Supervisor since 2014 on the Public Records Division website at:

<http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>.

### *Superior Court*

Notwithstanding the ability to appeal to the Supervisor, a requestor may initiate a civil action to enforce the requirements of the Public Records Law. Under the updated Public Records Law, the superior court may award reasonable attorney fees and costs in certain circumstances.<sup>41</sup>

## RAO Petitions

RAOs may petition the Supervisor with respect to assessing fees and seeking an extension of time to produce public records.<sup>42</sup>

---

<sup>37</sup> See G. L. c. 66, § 10(b)(ix).

<sup>38</sup> 950 C.M.R. § 32.08(1)(d)-(e).

<sup>39</sup> G. L. c. 66, § 10(A)(a).

<sup>40</sup> G. L. c. 66, § 10(A)(b).

<sup>41</sup> G. L. c. 66, § 10(A)(c)-(d).

<sup>42</sup> G. L. c. 66, § 10(c), (d)(iv); 950 C.M.R. 32.06(4).

### *Fee petitions*

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor under a petition under G. L. c. 66, § 10(d)(iv).<sup>43</sup> A fee petition must be made within 10 business days after receipt of a request for public records.<sup>44</sup>

A municipal RAO may also petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of \$25 per hour for time required to comply with a request.<sup>45</sup>

Filing a petition does not affect the requirement that an RAO shall provide an initial response to a requestor within 10 business days after receipt of a request for public records.<sup>46</sup>

### *Time petitions*

If a custodian is unable to complete the request within the time provided in G. L. c. 66, § 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested record that the custodian intends to provide. A petition for an extension of time must be submitted within 20 business days of receipt of request or within 10 business days after receipt of a determination by the Supervisor that the requested record constitutes a public record.<sup>47</sup>

Upon a showing of good cause, the Supervisor may grant an extension of 20 business days to an agency and 30 business days to a municipality, or longer depending on the circumstances.<sup>48</sup>

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought.<sup>49</sup>

---

<sup>43</sup> See G. L. c. 66, § 10(d)(ii)-(iii); 950 C.M.R. 32.06(4).

<sup>44</sup> 950 C.M.R. 32.06(4)(g).

<sup>45</sup> G. L. c. 66, § 10(d)(iv).

<sup>46</sup> 950 C.M.R. 32.06(4)(b).

<sup>47</sup> G. L. c. 66, § 10(c).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

For more information about petitions, please refer to SPR Bulletin 03-17 at <https://www.sec.state.ma.us/pre/prepra/significant-interest/SPR-Bulletin-03-17-Petitions-Bulletin.htm>.

## Agency RAO Reporting Requirement

Agency RAOs are required to report to the Secretary of the Commonwealth (Secretary) certain information pertaining to requests for public records. This information includes, among other things, the nature of the request, the date of the request and response, the amount of fees assessed, and information regarding the use of administrative and judicial remedies.<sup>50</sup>

Agency RAOs must report this information by using an online form provided on the Secretary's website. This website serves as the form prescribed by the Secretary to accomplish this task as required by G. L. c. 66, § 6A(e). Agency RAOs may complete the online form using the following link: [www.sec.state.ma.us/AgencyRAOWeb/RAOAccounts/Welcome.aspx](http://www.sec.state.ma.us/AgencyRAOWeb/RAOAccounts/Welcome.aspx).

The public may search the Agency Public Records Request Database website at: [www.sec.state.ma.us/RequestSearchWeb/Webpages/Welcome.aspx](http://www.sec.state.ma.us/RequestSearchWeb/Webpages/Welcome.aspx).

## Exemptions to the Public Records Law

The statutory definition of “public records” contains exemptions providing the basis for withholding records completely or in part.<sup>51</sup> The exemptions are strictly and narrowly construed.<sup>52</sup> Where exempt information is intertwined with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are deleted.<sup>53</sup> A review of the appropriate applications of the exemptions follows.

### Exemption (a) – The Statutory Exemption

Exemption (a) applies to records that are:

*specifically or by necessary implication exempted from disclosure by statute.*<sup>54</sup>

A government entity may use the statutory exemption as a basis for withholding requested materials where the exempting statute expressly states

---

<sup>50</sup> G. L. c. 66, § 6A(e).

<sup>51</sup> G. L. c. 4, § 7(26).

<sup>52</sup> Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. at 625.

<sup>53</sup> G. L. c. 66, § 10(a); Reinstein, 378 Mass. at 289-90 (the statutory exemptions are not blanket in nature).

<sup>54</sup> G. L. c. 4, § 7(26)(a).

or necessarily implies that the public's right to inspect records under the Public Records Law is restricted.<sup>55</sup>

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either "shall not be a public record," "shall be kept confidential" or "shall not be subject to the disclosure provision of the Public Records Law."<sup>56</sup>

The second category under the exemption includes records deemed exempt under statute by necessary implication.<sup>57</sup> Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities.<sup>58</sup> A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

***For example:*** Can a requestor have access to reports of rape and sexual assault or attempts to commit such offenses, or abuse perpetrated by family or household members?

G. L. c. 41, § 97D provides that these records, along with all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality. However, this statute also lists groups of people and entities that may access these records, including victims and their attorneys, victim-witness advocates, and law enforcement.

Please reference the Appendix of this Guide for other examples of statutes that specifically exempt records from disclosure.

## **Exemption (b)**

Exemption (b) applies to records that are:

*related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.*<sup>59</sup>

---

<sup>55</sup> Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

<sup>56</sup> See, e.g., G. L. c. 41, § 97D (all reports of rape or sexual assault "shall not be public reports").

<sup>57</sup> G. L. c. 4, § 7(26)(a).

<sup>58</sup> See, e.g., G. L. c. 71, §§ 34D and 34E.

<sup>59</sup> G. L. c. 4, § 7(26)(b).

There are no authoritative Massachusetts decisions interpreting Exemption (b). The general purpose of the cognate federal exemption, however, is to relieve agencies of the burden of assembling and maintaining for public inspection matters in which the public cannot reasonably be expected to have a legitimate interest.<sup>60</sup>

The language of the federal provision is duplicated in the first clause of Exemption (b). The addition of the qualifying second clause of Exemption (b) evidences a legislative intent to create an exemption that is narrower in scope than the previously enacted, parallel federal exemption.<sup>61</sup>

For Exemption (b) to apply in Massachusetts, a records custodian must demonstrate not only that the records relate solely to the internal personnel practices of the government entity, but also that proper performance of necessary government functions will be inhibited by disclosure.

***For example:*** Are certain Department of Correction (DOC) security policies and procedures public?

One of the DOC's primary functions is to maintain secure penal institutions. Information regarding certain procedures used by correctional officers during law enforcement activities may relate solely to the internal workings of the DOC. Moreover, disclosure of this information could prove detrimental to the DOC's law enforcement efforts, as knowledge of the DOC's security response procedures could enable an inmate to circumvent such procedures. Accordingly, Exemption (b) will allow the DOC to withhold portions of the these policies.

### **Exemption (c) – The Privacy Exemption**

Exemption (c), the privacy exemption, is the most frequently invoked exemption. The language of the exemption limits its application to:

*personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.*<sup>62</sup>

*First clause of Exemption (c)*

Exemption (c) is made up of two separate clauses, the first of which exempts

---

<sup>60</sup> Dep't of the Air Force v. Rose, 425 U.S. 352, 362-70 (1976).

<sup>61</sup> See Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983) (where the language of a parallel state statute differs in material respects from a previously enacted federal statute, a rejection or expansion of the legal principles embodied in the federal statute may be inferred).

<sup>62</sup> G. L. c. 4, § 7(26)(c).

personnel and medical files. As a general rule, medical information related to an identifiable individual will always be of a sufficiently personal nature to warrant exemption.<sup>63</sup>

While statutorily exempting personnel information from the expansive definition of public records, the legislature did not explicitly define personnel information.<sup>64</sup> However, judicial decisions acknowledge that the term is neither rigid, nor exact, and that the determination is case-specific.<sup>65</sup> The custodian's classification of materials as "personnel information" is not conclusive.<sup>66</sup> Instead, the nature or character of the documents, as opposed to the documents' label, is crucial to the analysis.<sup>67</sup>

Generally, the first clause applies to "core categories of personnel information that are 'useful in making employment decisions regarding an employee.'"<sup>68</sup> For example, "employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee," may be withheld pursuant to the first clause of Exemption (c).<sup>69</sup>

However, a record is not exempt if it "does not permit the identification of any individual" and is "wholly unrelated to any individual's privacy interest, such as a generic job description or generic qualification requirement for a particular [job]."<sup>70</sup>

### *Police Internal Affairs Records*

The Appeals Court of Massachusetts distinguished "personnel records" from "internal affairs" records. The Appeals Court held that materials in a police internal affairs investigation are different in kind from the ordinary evaluations, performance assessments and disciplinary determinations encompassed in the public records exemption for personnel files or information.<sup>71</sup> The Appeals Court held that officers' reports, witness interview summaries, and the internal affairs report itself do not fall within the personnel information exemption, as these documents relate to the workings and determinations of the internal affairs process whose quintessential purpose is to inspire public confidence.<sup>72</sup>

<sup>63</sup> Boston Retirement Bd., 388 Mass. at 442; see also Globe Newspaper Co. v. Chief Med. Examiner, 404 Mass. 132 (1989) (autopsy reports constitute exempt medical information).

<sup>64</sup> G. L. c. 4, § 7(26)(c).

<sup>65</sup> Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass App Ct 1, 5 (2003).

<sup>66</sup> Wakefield Teacher's Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000).

<sup>67</sup> See Worcester Telegram & Gazette Corp., 436 Mass. 378, 386 (2002).

<sup>68</sup> Id. at 5.

<sup>69</sup> Wakefield Teachers Ass'n, 431 Mass. at 798.

<sup>70</sup> Id. at 800.

<sup>71</sup> Id. at 799.

<sup>72</sup> Worcester Telegram & Gazette Corp. 58 Mass. App. Ct. at 8-9.

*Second clause of Exemption (c)*

The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake.<sup>73</sup> Therefore, determinations must be made on a case by case basis.

This clause does not protect all data relating to specifically named individuals. Rather, there are factors to consider when 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.<sup>74</sup>

Examples of the types of personal information which the second clause of this exemption is designed to protect include: marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcohol consumption, family fights, and reputation.<sup>75</sup>

This clause requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield.<sup>76</sup> The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner.<sup>77</sup> The SJC has also found that a public interest, even one unrelated to government operations, may be a factor in determining the weight of the public interest in disclosure.<sup>78</sup>

Public employees have a diminished expectation of privacy in matters relating to their public employment.<sup>79</sup> Consequently, the public will have greater access to information that relates to an individual's public employment than to the same individual's private activities.<sup>80</sup> For example, an individual's public employment salary is a public record, but the source or amount of private income generally is not public information.<sup>81</sup>

---

<sup>73</sup> Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Assistant Comm'r of Real Property Dep't, 380 Mass. at 625.

<sup>74</sup> See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

<sup>75</sup> Boston Globe Media Partners, LLC v. Dep't of Pub. Health, 482 Mass. 427, 443 n.17 (2019).

<sup>76</sup> PETA, 477 Mass. at 291.

<sup>77</sup> Id. at 292.

<sup>78</sup> Boston Globe Media Partners, LLC, 482 Mass. at 451.

<sup>79</sup> Brogan v. School Comm. of Westport, 401 Mass. 306, 308 (1987).

<sup>80</sup> Hastings & Sons Publ'g. Co. v. City Treasurer of Lynn, 374 Mass. 812, 818 (1978).

<sup>81</sup> Collector of Lynn, 377 Mass. at 156.

***For example:*** Can a public employee’s employment application and work evaluation be disclosed?

Under the first clause of Exemption (c), certain personnel records may be withheld, therefore, the records custodian may properly withhold certain employment applications and work evaluations under Exemption (c). However, it may be possible to provide a redacted version of these records if such redactions are made in a manner to avoid identifying the subject of the record.

Candidates for state employment must provide prospective employers with written disclosure of any relative who is also a state employee. The content of this disclosure is considered public under the Public Records Law.<sup>82</sup>

***For example:*** Are settlement agreements exempt under the Public Records Law?

The public interest in the financial information of a public employee outweighs the privacy interest where the financial compensation in question is drawn on an account held by a government entity and comprised of taxpayer funds. Additionally, the disclosure of the settlement amount would assist the public in monitoring government operations. Therefore, exemptions to the Public Records Law will not operate to allow for the withholding of settlement agreements as a whole. However, portions of the agreements, and related responsive records, may be redacted pursuant to specifically-cited exemptions to the Public Records Law.<sup>83</sup>

***For example:*** Are cell phone numbers and personal email addresses of private citizens public?

A private citizen whose cell phone number and personal email address is unpublished may have a reasonable expectation of privacy in this information. Any public interest in the disclosure of cell phone numbers and personal email addresses of citizens likely does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. Therefore, this information can likely be withheld under the second clause of Exemption (c).

## **Exemption (d) – The Deliberative Process Exemption**

Exemption (d) applies to:

*inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not*

---

<sup>82</sup> See G. L. c. 268A, § 6B.

<sup>83</sup> See Globe Newspaper Co. v. Exec. Office of Admin. and Fin., Suffolk Sup. No. 11-01184-A (June 14, 2013).

*apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.*<sup>84</sup>

The exemption is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed. Its application is limited to recommendations on legal and policy matters found within an ongoing deliberative process that are contained within inter-agency or intra-agency memoranda or letters.<sup>85</sup>

Factual reports which are reasonably complete and inferences which can be drawn from factual investigations, even if labeled as opinions or conclusions, are not exempt as deliberative or policy making materials.<sup>86</sup> Only portions of records that possess a deliberative or policymaking character and relate to an ongoing deliberative process are exempt from mandatory disclosure.

The Supreme Judicial Court (SJC) opined on the status of attorney work product under Exemption (d) in *DaRosa v. City of New Bedford*, 471 Mass. 446 (2015). In *DaRosa*, the SJC concluded that “opinion” work product that was prepared in anticipation of litigation or for trial by or for a party or its representative falls within the scope of Exemption (d).<sup>87</sup> It also concluded that “fact” work product under Mass. R. Civ. P. 26(b)(3) that was prepared in anticipation of litigation or trial falls within the scope of Exemption (d) where it is not a reasonably completed study or report or, if it is reasonably completed, where it is interwoven with opinions or analysis leading to opinions.<sup>88</sup>

***For example:*** Are drafts of a strategic plan being developed public?

To the extent that the deliberation remains ongoing, drafts of a strategic plan may be withheld under Exemption (d). However, a records custodian should look to see whether it can release purely factual matters during the deliberation. It should be noted that a change in the status of the deliberation would impact the applicability of this exemption.

## **Exemption (e)**

Exemption (e) allows the withholding of:

*notebooks and other materials prepared by an employee of the*

---

<sup>84</sup> G. L. c. 4, § 7(26)(d).

<sup>85</sup> *Babets v. Sec’y of the Exec. Office of Human Servs.*, 403 Mass. 230, 237 n.8 (1988); see *Boston Globe Media Partners, LLC v. Dep’t of Public Health*, Suffolk Sup. No. 19-02387 (October 21, 2019) (finding that data files do not fall within Exemption (d), in part, because they are not part of inter-agency or intra-agency memoranda or letters).

<sup>86</sup> *Moore-McCormack Lines, Inc. v. I.T.O. Corp. of Baltimore*, 508 F.2d 945, 948 (1974) (construing cognate federal provision).

<sup>87</sup> *DaRosa v. City of New Bedford*, 471 Mass. 446, 448 (2015).

<sup>88</sup> *Id.*

*commonwealth which are personal to him and not maintained as part of the files of the governmental unit.*<sup>89</sup>

The application of Exemption (e) is limited to records that are work-related but can be characterized as personal to an employee. Materials covered by the exemption include personal reflections on work-related activities and notes created by an employee to assist them in preparing reports. The exemption may not be used to withhold any materials that are shared with other employees or are being maintained as part of the files of a governmental unit.<sup>90</sup>

**For example:** A requestor sought all documents from a government entity related to a particular issue. The responsive records included personal notes of the government entity's employee. Are these notes public?

Notes are not public if they are personal in nature, kept by the employee merely to assist them, are not shared with anyone in the department and are not maintained as part of the department's files.

### **Exemption (f) - The Investigatory Exemption**

Exemption (f), the investigatory exemption, provides custodians a basis for withholding:

*investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.*<sup>91</sup>

The exemption allows investigative officials to withhold materials that could compromise investigative efforts if disclosed. Exemption (f) does not, however, create a blanket exemption for all records that investigative officials create or maintain.<sup>92</sup> A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities.<sup>93</sup>

---

<sup>89</sup> G. L. c. 4, § 7(26)(e).

<sup>90</sup> *Id.*

<sup>91</sup> G. L. c. 4, § 7(26)(f).

<sup>92</sup> *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 512 (1995); *WBZ-TV4 v. Dist. Attorney for the Suffolk Dist.*, 408 Mass. 595, 603 (1990).

<sup>93</sup> *Bougas v. Chief of Police of Lexington*, 371 Mass 59, 62 (1976).

Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses.<sup>94</sup> Exemption (f) invites a “case-by-case consideration” of whether disclosure “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.”<sup>95</sup>

**For example:** If a requested incident report contains witness identities, can a police department use Exemption (f) to withhold the requested report in its entirety?

Generally, a police incident report may be released to a requestor after the records custodian has redacted the exempt portions from the record, such as, medical information and information that may identify a voluntary witness.

### **Exemption (g)**

Exemption (g) applies to:

*trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit.*<sup>96</sup>

To properly claim Exemption (g), a custodian must meet all six criteria contained in the exemption: (1) trade secrets or commercial or financial information; (2) voluntarily provided to a government entity; (3) for use in developing government policy; (4) upon an assurance of confidentiality; (5) information not submitted by law; and (6) information not submitted as a condition of receiving a governmental benefit. Consequently, this exemption does not apply to information that companies provide to the government in connection with a contract bid or in compliance with a filing requirement.<sup>97</sup>

**For example:** Is a Memorandum submitted as an exhibit in an enforcement hearing before an administrative agency a public record?

Although the first criterion may have been met if the Memorandum contained commercial information, the remaining criteria likely cannot be met. This is because the Memorandum was not voluntarily submitted, was not provided for use in developing government policy, and was not submitted upon a promise of confidentiality.

---

<sup>94</sup> Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein, 378 Mass. at 290 n.18.

<sup>95</sup> See Reinstein, 378 Mass. at 289-90.

<sup>96</sup> G. L. c. 4, § 7(26)(g).

<sup>97</sup> Id.

## Exemption (h)

Exemption (h) serves to protect the integrity of the bidding processes used by the government to procure goods and services by allowing a records custodian to withhold the proposals of early bidders from other interested parties.<sup>98</sup>

Competitive bidding ensures full publicity of the contract and encourages the guarding of the public welfare.<sup>99</sup> Although the competitive bidding process does not have the advantages of more flexible purchasing policies, the legislature has mandated the process to foster honesty and accountability in government.<sup>100</sup> Specifically, Exemption (h) applies to:

*proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.*<sup>101</sup>

The exemption addresses two types of records held by an awarding authority (records custodian), each with its own time frame. Proposals may be withheld until the time for the receipt of proposals has expired. Bids may be withheld until such time as the bids are publicly opened and read by the awarding authority. This allows the proposals of early bidders to be kept in confidence so that subsequent bidders do not gain an unfair advantage, thus, keeping all on equal footing. The limitation on the duration of the exemption provides the public with an opportunity to review the rejected proposals to ensure that taxpayer dollars are wisely spent.

The second clause of the exemption is similar to Exemption (d) in its application.<sup>102</sup> It allows government officials to withhold any inter-agency or intra-agency communications regarding the evaluations of the bids or proposals until the records custodian renders a decision to enter into negotiations with the successful bidder or awards the contract.

***For example:*** May the records custodian withhold proposal and bid documents until the records custodian has finalized a contract with the construction company or developer?

---

<sup>98</sup> Datatrol Inc. v. State Purchasing Agent, 379 Mass. 679, 691 (1980) (the purposes of competitive bidding go beyond economy and efficient administration to the prevention of favoritism in the awarding of government contracts).

<sup>99</sup> Id. at 699.

<sup>100</sup> Id. at 701.

<sup>101</sup> G. L. c. 4, § 7(26)(h).

<sup>102</sup> G. L. c. 4, § 7(26)(d).

The *first clause* of Exemption (h) allows the records custodian to withhold proposals and bids from disclosure until the time for the opening bids or until the time for receipt of proposals has expired. Once that occurs, the proposals and bids no longer fall under the protection of Exemption (h) and can no longer be withheld.

***For example:*** May the records custodian withhold any records concerning the evaluations of the bidders and the awarding process, and at what point do the records become public?

The *second clause* of Exemption (h) allows the records custodian to withhold any inter-agency or intra-agency communications that are made in the process of reviewing the bids and proposals, prior to entering into negotiations with, or to award the contract to, a particular person. The records custodian may withhold the records pursuant to Exemption (h) only until the contract has been awarded. Once a decision has been made to enter into negotiations the records custodian can no longer withhold the records.

## **Exemption (i)**

The purpose of Exemption (i) is to provide governmental entities engaged in the acquisition of real property, either through a purchase or an eminent domain proceeding, the same degree of confidentiality that is afforded to private parties. The exemption ensures that the government will not be at a bargaining disadvantage by allowing the other party to use the Public Records Law to gain access to an appraisal prior to completion of negotiations or litigation. Exemption (i) applies to:

*appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.*<sup>103</sup>

Application of Exemption (i) is limited to situations in which a governmental entity is concerned that disclosure of the subject appraisal will compromise its ability to effectively negotiate a fair purchase or sale price for the property. The legislature defined “appraisal” as any written analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate.<sup>104</sup>

The language of the statute is clear that the three provisions are alternative rather than requisite conditions. Therefore, once one of the three alternatives has occurred, Exemption (i) will no longer serve as a means to withhold the subject appraisal.

---

<sup>103</sup> G. L. c. 4, § 7(26)(i).

<sup>104</sup> G. L. c. 112, § 173 (definition of appraisal).

**For example:** May a housing authority (records custodian) withhold appraisals pursuant to Exemption (i) where the records custodian has entered into a final agreement with the property owner and the property owner has agreed to forgo all possible eminent domain claims against the housing authority?

Once one of the three provisions of the exemption has occurred, Exemption (i) cannot be used to withhold the subject appraisal. In this case, the parties reached a final agreement regarding the property, therefore, the exemption no longer applied and the records custodian could not continue to withhold the appraisals.

**For example:** Where a requestor seeks appraisal documents on a parcel for which a negotiated final settlement has been reached, may the records custodian withhold the appraisals on all the parcels of land being acquired for the project until it reaches final agreement on all the parcels and the litigation on the parcels is finalized?

Exemption (i) is parcel specific and the records custodian may only withhold an appraisal until an agreement has been reached, litigation relative to the appraisal has been terminated, or the time within which to commence such litigation has expired. In this situation, the appraisal sought by the requestor pertained to a parcel that had already been acquired, and the records custodian was ordered to produce the appraisal documents for that specific parcel.<sup>105</sup>

## Exemption (j)

Exemption (j) allows records custodians of firearm records to withhold:

*the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.*<sup>106</sup>

Exemption (j) allows the identifying data, in particular, the name and address of the licensee to be deleted from the record prior to disclosure. In addition to Exemption (j), there are other statutes that govern the release of firearms records.<sup>107</sup>

<sup>105</sup> Coleman v. Boston Redevelopment Auth., 61 Mass. App. Ct. 239 (2004).

<sup>106</sup> G. L. c. 4, § 7(26)(j).

<sup>107</sup> G. L. c. 66, § 10B (discussing the confidentiality of records divulging or tending to divulge the names and addresses of persons who own or possess firearms); G. L. c. 140, §§ 121-131P (discussing sale of firearms).

**For example:** What if the records custodian receives a request for firearm records of a specifically named individual, such as, “I request all gun permits issued to John Smith”?

Here, the records custodian may withhold the entire record, because even if the name and address are redacted, the requestor knows with certainty that this particular record pertains to John Smith.

### **Exemption (k).** Repealed, 1988 Mass Acts 180, § 2.

Although Exemption (k) was repealed, the legislature retained the substance of the exemption, incorporating the language into another section of the General Laws. It reads: “...[T]hat part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record as defined by clause Twenty-sixth of section seven of chapter four.”<sup>108</sup>

G. L. c. 78, § 7 operates through Exemption (a) of the Public Records Law to provide a basis for denying access to library circulation records.<sup>109</sup>

### **Exemption (l)**

Exemption (l) provides a basis for withholding from disclosure:

*questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument.*<sup>110</sup>

The purpose of Exemption (l) is to prevent individuals from gaining an unfair advantage by using the Public Records Law to access test questions and answers prior to the administration of an examination.

As long as the same materials are used to administer subsequent examinations, the custodian of records may continue to withhold the materials pursuant to Exemption (l). The action to withhold the testing materials ensures that the integrity of future testing is not jeopardized.

**For example:** May a records custodian withhold a copy of a middle school mid-term examination, when the request is made by a parent of one of the school’s students?

Where the school has proven that the test questions administered to this student on this mid-term examination will be used for future examinations, the school may properly withhold the testing materials pursuant to Exemption (l).

---

<sup>108</sup> G. L. c. 78, § 7 (discussing Public Libraries).

<sup>109</sup> G. L. c. 4, § 7(26)(a).

<sup>110</sup> G. L. c. 4, § 7(26)(l).

**For example:** May a records custodian withhold testing materials, when a request is made for all documents related to the issue of discrimination in the Massachusetts Comprehensive Assessment System (MCAS)?

Pursuant to Exemption (l), the records custodian may properly withhold the test questions and answers, and any other testing materials that are currently used or may be used to administer subsequent MCAS examinations.

### **Exemption (m)**

Exemption (m) applies to:

*contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.*<sup>111</sup>

Although Exemption (m) has yet to be interpreted by any Massachusetts court, the language of the exemption is clear. The exemption pertains to contracts for hospital or healthcare services between a government-operated healthcare facility and a health maintenance organization or health insurance corporation.

To properly claim Exemption (m), the records custodian must meet all four criteria contained in the exemption: (1) the record must be a contract; (2) the contract must be for hospital or related health care services; (3) one of the contracting parties must be a government-operated medical facility; and (4) the party providing services must be one of the entities described by the exemption. If the requested record satisfies all of the criteria, the records custodian may withhold the record pursuant to Exemption (m).

**For example:** May a city or town withhold records pertaining to the health insurance plans and the costs of providing these health insurance benefits to employees of the city or town pursuant to Exemption (m)?

Exemption (m) specifically applies only to records that are contracts for hospital or related health care services. Additionally, one of the contracting parties must be a government operated medical facility, such as a hospital or clinic, and the party providing the services must be one of the entities described by the exemption. The requested records do not satisfy the criteria of the exemption; therefore, the list of health insurance plans and the costs of

---

<sup>111</sup> G. L. c. 4, § 7(26)(m).

providing these as employee benefits may not be withheld pursuant to Exemption (m).

## Exemption (n)

Exemption (n) applies to:

*records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.*<sup>112</sup>

This exemption allows for the withholding of certain records which, if released, will likely jeopardize public safety or cyber security. When analyzing the applicability of Exemption (n), the SJC determined that the first prong of this exemption examines “whether, and to what degree, the record sought resembles the records listed as examples in the statute;” specifically, the “inquiry is whether, and to what degree, the record is one a terrorist ‘would find useful to maximize damage.’”<sup>113</sup>

The second prong of Exemption (n) examines “the factual and contextual support for the proposition that disclosure of the record is ‘likely to jeopardize public safety.’”<sup>114</sup> The SJC further provides that “[b]ecause the records custodian must exercise ‘reasonable judgment’ in making that determination, the primary focus on review is whether the custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian’s determination given the context of the particular case.” *Id.*

**For example:** Can a copy of a municipal blast design plan be withheld under Exemption (n)?

Although the requested record may be contemplated by Exemption (n) because a terrorist could use the information on the plan to inflict damage, a records custodian would also need to provide “sufficient factual heft” to establish how disclosure of the information in the plan is likely to jeopardize public safety or cyber security. If the records custodian provides this factual support, portions of this type of record can likely be withheld under Exemption (n).

---

<sup>112</sup> G. L. c. 4, § 7 (26)(n).

<sup>113</sup> *PETA*, 477 Mass. at 289-90.

<sup>114</sup> *Id.*

## Exemption (o)

Exemption (o) applies to:

*the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.<sup>115</sup>*

**For example:** Would the address of a government employee found in payroll records be public?

Exemption (o) applies to the home address, personal email address or home telephone number of government employees. For example, this information could be redacted from records such as government payroll records and/or emails.

## Exemption (p)

Exemption (p) applies to:

*the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).<sup>116</sup>*

Similar to Exemption (o), this exemption allows the name, home address, personal email address, and home telephone number of a family member of a Commonwealth employee to be redacted.

## Exemption (q)

Exemption (q) allows for the withholding of:

---

<sup>115</sup> G. L. c. 4, § 7 (26)(o).

<sup>116</sup> G. L. c. 4, § 7 (26)(p).

*Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.*<sup>117</sup>

The registry of vital records and statistics maintains a voluntary adoption contact information registry for the purpose of connecting parents listed on the initial birth certificate to any of their children who were adopted by others.<sup>118</sup>

The adoption contact registry contains the addresses and other information supplied by parents and adoptees necessary for one to contact the other. Any contact information contained in the adoption contact registry, as well as indices created from this registry, may be withheld under Exemption (q).

### **Exemption (r)**

Exemption (r) applies to:

*Information and records acquired under chapter 18C by the office of the child advocate.*<sup>119</sup>

The records created and received by the Office of the Child Advocate pursuant to Chapter 18C may be withheld under this exemption.<sup>120</sup>

### **Exemption (s)**

Exemption (s) applies to:

*trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.*<sup>121</sup>

Exemption (s) relates to certain records of public utility providers.

---

<sup>117</sup> G. L. c. 4, § 7 (26)(q).

<sup>118</sup> G. L. c. 46, § 31.

<sup>119</sup> G. L. c. 4, § 7 (26)(r).

<sup>120</sup> G. L. c. 18(c).

<sup>121</sup> G. L. c. 4, § 7 (26)(s).

### **Exemption (t)**

Exemption (t) applies to:

*statements filed under section 20C of chapter 32.*<sup>122</sup>

Members of public retirement boards are required by statute to file a statement of financial interest with the Public Employee Retirement Administration Commission. The statement of financial interest document is exempt from disclosure under Exemption (t).<sup>123</sup>

### **Exemption (u)**

Exemption (u) applies to:

*trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.*<sup>124</sup>

This exemption applies to certain records in the possession of the University of Massachusetts.

### **Exemption (v)**

Exemption (v) applies to:

*records disclosed to the health policy commission under subsections (b) and (e) of section 8A of chapter 6D.*<sup>125</sup>

This exemption applies to certain records disclosed to the Health Policy Commission.

---

<sup>122</sup> G. L. c. 4, § 7 (26)(t).

<sup>123</sup> See G. L. c. 32, § 20C.

<sup>124</sup> G. L. c. 4, § 7 (26)(u).

<sup>125</sup> G. L. c. 4, § 7 (26)(v).

## Attorney-Client Communications

In *Suffolk Constr. Co. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 449-50 (2007), the Supreme Judicial Court (SJC) held that confidential communications between governmental entities and their legal counsel undertaken for the purpose of obtaining legal advice or assistance are protected under the normal rules of the attorney-client privilege.

A custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived.<sup>126</sup> Disclosing attorney-client communications to a third party generally undermines the privilege.<sup>127</sup>

In assessing whether a custodian has properly withheld records based on the claim of attorney-client privilege, the Supervisor of Records "shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed."<sup>128</sup>

## Geographic Information Systems (GIS)

A GIS is a computer system designed to store, capture, analyze and display geographically referenced information. Often, the information that comprises Commonwealth or municipal GIS databases is submitted by private surveyors and engineers who exercise intellectual property rights over nonfactual portions of the materials.

While there are no Massachusetts court cases interpreting this issue, it is clear that the legislature did not carve out specific exemptions from the Massachusetts Public Records Law allowing protected intellectual property in the custody of a governmental entity to be withheld from public dissemination. The Public Records Law does not serve to preempt federal intellectual property law, nor does the Public Records Law exonerate those who violate intellectual property rights validly held by private individuals or governmental entities once the public GIS records have been released. As a precaution, records custodians of GIS records are encouraged to indicate on

---

<sup>126</sup> *Suffolk Constr. Co. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 450 n.9 (2007); see also *Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs.*, 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies).

<sup>127</sup> *Comm'r of Revenue v. Comcast Corp.*, 453 Mass. 293, 306 (2009).

<sup>128</sup> G. L. c. 66, § 10A(a).

released GIS records that the information contained in the records may be subject to intellectual property protections.

## Records Management

As the chief information officer for the Commonwealth, Secretary of the Commonwealth William F. Galvin recognizes the importance of maintaining records properly. With this understanding, the Secretary strongly encourages the creation, adoption and implementation of a formal, written records management program that includes specific standards for both paper and electronic records.

The Records Management Unit (RMU) was created to provide records management services and outreach to all state agencies and municipalities to help them meet state record-keeping standards and requirements. The RMU can provide agencies with retention schedules for specific records, as well as information on proper disposal and destruction of records. If you need additional information or assistance in creating a Records Management Program, please contact the RMU at 617-727-2816.

## Records Retention

It is the responsibility of government employees who create, receive and maintain public records to ensure their safekeeping and availability to the public until the retention period for the specific records series has expired.

There are two retention schedules: the Municipal Records Retention Schedule, which applies to all records of municipal government in Massachusetts, and the Statewide Schedule, which applies to all records of state agencies including those of executive departments, constitutional offices, authorities, independent agencies, and state records being managed by contracted service providers.

State agencies must obtain the written permission of the Records Conservation Board (RCB) prior to destroying certain records.<sup>129</sup> The RCB is empowered “to require all departments of the Commonwealth to report to it what series of records they hold, to set standards for the management and preservation of such records, and to establish schedules for the destruction, in whole, or in part, and transfer to the archives or another appropriate division within the office of the state secretary, in whole, or in part, of records no longer needed for current business.”<sup>130</sup>

Municipalities must obtain the written permission of the Supervisor of Records prior to destroying certain records.<sup>131</sup>

Retention schedules for state agencies and municipalities, as well as information on records management, including permission forms for disposal

---

<sup>129</sup> G. L. c. 30, § 42.

<sup>130</sup> *Id.*

<sup>131</sup> G. L. c. 66, §§ 1, 8.

of records, may be accessed through the Secretary of the Commonwealth's website. For the most up-to-date schedules and forms, please visit the RMU website at <http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm>.

The RCB requires that each agency of the Commonwealth submit Form RCB-4 on an annual basis. Similarly, municipalities must submit Form RMU-4. These forms state the name and title of each agency's or municipality's designated records management officer or Records Liaison Officer. These forms are available online at [www.sec.state.ma.us/arc/arcrmu/rmuidx.htm](http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm).

## Electronic Records Storage

Records must be maintained according to the retention schedules, based on the content of the record. Records creators are responsible for maintaining an accurate, reliable, trustworthy, and accessible record for the complete required retention period, regardless of format.

If a custodian chooses to digitize a paper record, it must ensure it can maintain the digital file and provide appropriate access to it until the retention period is met. Once digitized, provided there are no statutory requirements to retain the record in a paper format, a custodian may destroy the paper record without requesting permission from the RCB or Supervisor of Records. A custodian will need permission to destroy or delete the final, digitized copy of the record. Please note, some paper records may have inherent evidentiary or historical value that a custodian may want to retain them even after digitization.<sup>132</sup>

The RCB implemented *Electronic Records Management Guidelines* to assist records custodians in maintaining electronic records.<sup>133</sup> Records custodians are encouraged to review the *Statewide Records Retention Schedule* or the *Municipal Records Retention Manual* for more information on retention periods for records. If you have any questions regarding electronic records and storage, please do not hesitate to contact the RMU at 617-727-2816.

---

<sup>132</sup> See Massachusetts Archives, [https://www.sec.state.ma.us/arc/arcpdf/Frequently\\_Asked\\_Questions\\_Digital.pdf](https://www.sec.state.ma.us/arc/arcpdf/Frequently_Asked_Questions_Digital.pdf) (last visited April 11, 2019).

<sup>133</sup> See Massachusetts Archives, [www.sec.state.ma.us/arc/arcpdf/Electronic\\_Records\\_Guidelines.pdf](http://www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf) (last visited April 11, 2019).

## **Maintenance and Storage of Public Records**

Public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request.<sup>134</sup>

The Supervisor of Records is responsible for ensuring that the records of the Commonwealth and municipalities are maintained and stored as required by law.<sup>135</sup> In accordance with this duty, the following procedures have been established to ensure security of and access to public records.

### **1. Records Access Officers (RAOs)**

RAOs shall assist the custodian in preserving public records in accordance with all applicable laws, rules, regulations and retention schedules.<sup>136</sup>

### **2. Original Records Removed from Municipal Offices**

- a. Whenever original public records are removed from municipal offices for use in the regular course of business to a private office or home, they shall be stored in fire-resistant devices and safes provided by the municipality.<sup>137</sup>
- b. If fire-resistant storage outside of the municipal building cannot be ensured, then no original records may be removed. However, the RAO may create copies of records for use in a private office or home.

### **3. Original Records Created Outside of Municipal Offices**

- a. Whenever original public records are created outside the municipal offices, they shall be transferred on a regular and frequent basis to secure storage in the municipal building.
- b. If secure storage is available in an individual's private office or home, then copies of the records shall be maintained in the municipal building, with the originals stored in secure storage at the records custodian's private office or home.

### **4. Availability of RAO**

Whenever it is necessary to work, or to keep original public records, in a location other than the municipal building, RAOs shall be available

---

<sup>134</sup> G. L. c. 66, § 10(a); see also Reinstein, 378 Mass. at 289-90.

<sup>135</sup> See G. L. c. 66, § 1.

<sup>136</sup> G. L. c. 66, §6A(b); 950 C.M.R. 32.04(5).

<sup>137</sup> G. L. c. 66, § 11.

during regular posted office hours, at a location convenient to the general public, for inspection and copying of the public records.

*Please note that in such situations, copies of the public records must also be maintained in the municipal building, in accordance with paragraph 2(b), above.*

In those instances in which the governmental entity does not have regular business hours, a written notice must be posted in a conspicuous location, listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.<sup>138</sup>

## **5. Transfer of Public Records upon Termination of Duties as Government Employee**

- a. Whenever a government employee relinquishes his office or terminates his duties, he must deliver over to his successor all such public records that he is not authorized by law to retain.<sup>139</sup>

These procedures are designed to ensure the safekeeping of public records so that compliance with the Massachusetts Public Records Law by governmental entities is best accomplished.

---

<sup>138</sup> 950 C.M.R. 32.04(4).

<sup>139</sup> See G. L. c. 66, § 14.

## Frequently Asked Questions

Below are answers to Frequently Asked Questions regarding the Public Records Law. For additional legal and practical considerations, please refer to prior portions of this guide that discuss these matters.

### ***What is the difference between the federal Freedom of Information Act and the Massachusetts Public Records Law?***

The federal Freedom of Information Act is a statute that applies to federal records. The Massachusetts Public Records Law applies to records created by or in the custody of a state or local agency, board or other government entity.

### ***Who can help me with questions regarding the Public Records Law?***

The Division of Public Records (Division) provides an “attorney of the day” to assist any person seeking information regarding the Public Records Law.

The hours of operation for the Division are Monday-Friday, with the exception of holidays, from 8:45 a.m. to 5:00 p.m. The telephone number for the Division is (617) 727-2832, and the email address is [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

### ***What is a “public record?”***

Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part.

The legislature created specific statutory exemptions and the courts have recognized common law exemptions, such as the attorney-client privilege. These exemptions permit the agency or municipality to withhold a record from the public. The exemptions to the Public Records Law are described in this guide.

### ***How do I find the records I seek?***

A person seeking access to government records must request them directly from the municipality or agency that is the custodian of the requested records.

The Division of Public Records is not a warehouse for government records. The only records kept in the Division are those that are essential to the business operations of the Division or those that are provided to the Division as required by statute.

***Does the Public Records Law apply to court, legislative or federal records?***

The Public Records Law does not apply to records held by federal agencies, the legislature or the courts of the Commonwealth. Accordingly, the Supervisor of Records is unable to assist requestors seeking such records.

***What is a Records Access Officer?***

A Records Access Officer (RAO) is the person responsible for responding to requests for public records. Information on how to contact an RAO is usually available on the website for the applicable municipal or state entity holding the records sought by requestors.

***What is a records custodian?***

A records custodian means any governmental entity that makes or receives public records.

***How do I obtain copies of public records?***

To obtain a copy of a record, you must make a request to the RAO for the municipal or state agency that you believe has records you are seeking.

***What do I do if my request is denied?***

An RAO must respond to your request as determined by the Public Records Law. If the RAO fails to respond or denies a request, a requestor may appeal the matter to the Supervisor of Records (Supervisor) within ninety days.

Under the Public Records Access Regulations, all appeals to the Supervisor must include a copy of the original request, any response by the RAO and a statement indicating the reason for the appeal. The requestor must also provide a copy of the appeal petition to the RAO.

***May I also go to court to seek public records?***

A requestor may also commence a civil action in superior court to enforce the requirements of the Public Records Law. Where applicable, the superior court may award reasonable attorney's fees and costs in cases where the requestor obtains relief.

***My appeal was closed because I did not provide the necessary information. What do I do now?***

The Supervisor may close an appeal without a finding if a requestor fails to provide a copy of the original request, the response from the RAO, does not provide a copy of the petition for appeal to the RAO, or fails to provide a detailed description of the basis of the appeal.

In such cases, a requestor may re-submit the appeal once the above requirements have been met.

***What are the requirements for an RAO's response to a public records request?***

An RAO must respond to a request within 10 business days. This response must be in writing and include a variety of components depending on the circumstances; for example, the response can offer to provide records, include a fee estimate for the provision of records, or deny access to records.

If an RAO is denying access to a record, it must identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based. Any denial must include instructions on how to appeal to the Supervisor of Records.

***Must my request be in writing, and do I need to use a specific form?***

A written request is not required but is strongly recommended. An oral request made in person is permitted. An RAO is not permitted to require a written request, but may write an oral request on its own form to assist in prompt response. An RAO may not require a requestor to use a specific form, however, it may suggest one.

To appeal an RAO's response to the Supervisor, however, a request must be in writing.

***May I appeal a failure to answer a question?***

The Public Records Law only applies to records. An RAO is not required by the Public Records Law to answer questions or create a record in response to a request; however, an RAO must provide any records that exist that respond to a question.

***May an RAO charge a fee for producing public records?***

An RAO may charge and recover a reasonable fee for producing a requested record. If a fee is being assessed to produce records, the Public Records Regulations require that an RAO provides a detailed, written, good faith estimate for the cost of complying with a public record request.

Agencies shall not assess a fee for the first 4 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of over 20,000 shall not assess a fee for the first 2 hours of time spent searching for, compiling, segregating, redacting and

reproducing a requested record. Municipalities with a population of 20,000 and under are permitted to charge for the first 2 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record.

The hourly rate may not be greater than the prorated hourly wage of the lowest paid employee who is capable of performing the task. Generally, an RAO is not permitted to charge an hourly rate in excess of \$25.00 per hour to search for records. Municipal RAOs may petition the Supervisor for permission to charge a fee in excess of \$25.00 per hour.

Agency and municipal RAOs may petition the Supervisor for permission to assess a fee for time spent segregating and redacting.

The fee estimate must provide the hourly rate and the number of hours required for each portion of the task. An RAO may not recover fees associated with record organization.

If a requestor wishes to review records in the records custodian's office but does not require copies, a records custodian may charge and recover a fee for his or her time spent searching for and redacting the records, provided the redactions are required by law or approved by the Supervisor.

An agency or municipality is permitted to require payment of the estimated fee before commencing work.

All agencies and municipalities are strongly urged to waive the fees associated with access to public records, but are not required to do so under the law.

***What is the cost for copies of public records; what about electronic records?***

Absent a specifically identified statute or regulation, an RAO may charge no more than \$0.05 per page for single and double-sided black and white paper copies or computer printouts.

The Public Records Law and its Regulations apply to all Massachusetts government records, regardless of form, and regardless of the location of the records.

Provision of public records in electronic form is preferred, where available. An RAO is not permitted to assess a copying fee for electronic records. The \$0.05 fee applies only to paper copies of records.

***When must minutes of an open meeting be made available to the public?***

The Open Meeting Law, applicable to public bodies such as select boards for towns, is enforced by the Office of the Attorney General, Division of Open

Government.<sup>140</sup> Any questions regarding the content of minutes, requirements to keep minutes or any procedural aspects of the Open Meeting Law should be addressed to the Division of Open Government.<sup>141</sup>

***Does a requestor have greater right of access to records if he is the subject of a record?***

Under the Public Records Law, every requestor is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person. Access to a record requested pursuant to the Public Records Law rests on the content of the record.

Some statutes and regulations allow requestors to obtain records in a manner that does not require a request under the Public Records Law.

A list of statutes limiting access to public records is found in the back of this guide. This list includes student records, criminal offender record information, and other records the access to which is limited by law.

***Is a requestor required to disclose the intended use of the public record requested?***

With the possible exception of situations where the RAO is determining whether the records are being requested for a commercial purpose or determining whether to grant a fee waiver, a records custodian may not ask a requestor the reason for the request or the intended use of the requested records.<sup>142</sup>

***How should an RAO respond to an unclear request?***

RAOs must help the requestor to determine the precise record or records responsive to a request; however, a requestor must provide a reasonable description of the requested records. If a request is unclear the RAO is expected to seek clarification from the requestor.

***Are RAOs required to forward a request for records not in their possession?***

A government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party.

---

<sup>140</sup> G. L. c. 30A, §§ 18-25.

<sup>141</sup> [www.mass.gov/ago/bureaus/government/the-division-of-open-government/](http://www.mass.gov/ago/bureaus/government/the-division-of-open-government/).

Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

If the records are not within the possession, custody, or control of the agency or municipality that the RAO serves, the RAO must identify the agency or municipality that may have the public records sought, if known.

## Appendix

The provisions in this book are not the official versions of the Massachusetts General Laws (M.G.L.) or Code of Massachusetts Regulations (C.M.R.). Reasonable efforts have been undertaken to assure the validity of the information provided at the time of publishing; however, do not rely on this information without first consulting an official edition of the M.G.L. or C.M.R.

### Public Records Law

#### G. L. c. 4, § 7(26)

Twenty-sixth, “Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, or any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in section 1 of chapter 32, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

(k) [Stricken.]

(l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

(o) the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

(q) Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) Information and records acquired under chapter 18C by the office of the child advocate.

(s) trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.

(t) statements filed under section 20C of chapter 32.

(u) trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.

Any person denied access to public records may pursue the remedy provided for in section 10A of chapter sixty-six.

## **Records Access Officers**

### **G. L. c. 66, § 6A**

(a) Each agency and municipality shall designate 1 or more employees as records access officers. In a municipality, the municipal clerk, or the clerk's designees, or any designee of a municipality that the chief executive officer of the municipality may appoint, shall serve as records access officers. For the purposes of this chapter the term "agency" shall mean any entity, other than a municipality, that is identified in clause twenty-sixth of section 7 of chapter 4 as possessing "public records," as defined therein.

(b) A records access officer shall coordinate an agency's or a municipality's response to requests for access to public records and shall facilitate the resolution of such requests by the timely and thorough production of public records. Each records access officer shall:

(i) assist persons seeking public records to identify the records sought;

(ii) assist the custodian of records in preserving public records in accordance with all applicable laws, rules, regulations and schedules; and

(iii) prepare guidelines that enable a person seeking access to public records in the custody of the agency or municipality to make informed requests regarding the availability of such public records electronically or otherwise.

Guidelines shall be updated periodically and shall include a list of categories of public records maintained by the agency or municipality. Each agency and municipality that maintains a website shall post the guidelines on its website.

(c) Each agency and municipality shall post in a conspicuous location at its offices and on its website, if any, the name, title, business address, business telephone number, and business email address of each records access officer. The designation of 1 or more records access officers shall not be construed to prohibit employees who have been previously authorized to make public records or information available to the public from continuing to do so. Any

employee responsible for making public records available shall provide the records in accordance with this chapter.

(d) The records access officer shall provide the public records to a requestor by electronic means unless the record is not available in electronic form or the requestor does not have the ability to receive or access the records in a usable electronic form. The records access officer shall, to the extent feasible, provide the public record in the requestor's preferred format or, in the absence of a preferred format, in a searchable, machine readable format. The records access officer shall not be required to create a new public record in order to comply with a request, provided that furnishing a segregable portion of a public record shall not be deemed to be creation of a new record. If the public record requested is available on a public website pursuant to subsection (b) of section 19 of this chapter, section 14C of chapter 7 or any other appropriately indexed and searchable public website, the records access officer may furnish the public record by providing reasonable assistance in locating the requested record on the public website. An electronically produced document submitted to an agency or municipality for use in deliberations by a public body shall be provided in an electronic format at the time of submission.

(e) Each records access officer of an agency shall document each request for public records submitted to the records access officer. The records access officer shall document:

- (i) the nature of the request and the date on which the request was received;
- (ii) the date on which a response is provided to the requestor;
- (iii) the date on which a public record is provided to the requestor;
- (iv) the number of hours required to fulfill the request;
- (v) fees charged to the person making the request, if any;
- (vi) petitions submitted under clause (iv) of subsection (d) of section 10;
- (vii) requests appealed under section 10A;
- (viii) the time required to comply with supervisor of records orders under said section 10A; and
- (ix) the final adjudication of any court proceedings under subsection (d) of said section 10A.

Nothing in this subsection shall require a records access officer to disclose information otherwise protected from public access. The secretary of the commonwealth shall prescribe a form for recording such information and shall annually collect the information from the records access officers, post the information on a website maintained by the secretary and report the same to the clerks of the House of Representatives and Senate.

(f) The supervisor of records shall document appeals filed under section 10A, including:

- (i) the date the request was submitted to the records access officer;
- (ii) the date the records access officer responded;
- (iii) the amount of fees charged to the requestor, if any;
- (iv) petitions made pursuant to clause (iv) of subsection (d) of section 10;
- (v) the time required to comply with supervisor of records orders under said section 10A; and
- (vi) the final adjudication of any court proceedings under subsection (d) of said section 10A.

Nothing in this subsection shall require the supervisor to disclose information otherwise protected from public access. The secretary of the commonwealth shall prescribe a form for recording such information and shall post the information on a website maintained by the secretary.

## **Public Inspection and Copies of Records**

### **G. L. c. 66, § 10**

(a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request, provided that:

- (i) the request reasonably describes the public record sought;
- (ii) the public record is within the possession, custody or control of the agency or municipality that the records access officer serves; and

(iii) the records access officer receives payment of a reasonable fee as set forth in subsection (d).

A request for public records may be delivered to the records access officer by hand or via first class mail at the record officer's business address, or via electronic mail to the address posted by the agency or municipality that the records access officer serves.

(b) If the agency or municipality does not intend to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request, or of multiple requests from the same requestor, unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality is unable to do so within the timeframe established in subsection (a), the agency or municipality shall inform the requestor in writing not later than 10 business days after the initial receipt of the request for public records. The written response shall be made via first class or electronic mail and shall:

(i) confirm receipt of the request;

(ii) identify any public records or categories of public records sought that are not within the possession, custody, or control of the agency or municipality that the records access officer serves;

(iii) identify the agency or municipality that may be in possession, custody or control of the public record sought, if known;

(iv) identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based, provided that nothing in the written response shall limit an agency's or municipality's ability to redact or withhold information in accordance with state or federal law;

(v) identify any public records, categories of records, or portions of records that the agency or municipality intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or municipality and therefore requires additional time to produce the public records sought;

(vi) identify a reasonable timeframe in which the agency or municipality shall produce the public records sought; provided, that for an agency, the timeframe shall not exceed 15 business days following the initial receipt of the request for public records and for a municipality the timeframe shall not exceed 25 business

days following the initial receipt of the request for public records; and provided further, that the requestor may voluntarily agree to a response date beyond the timeframes set forth herein;

(vii) suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably;

(viii) include an itemized, good faith estimate of any fees that may be charged to produce the records; and

(ix) include a statement informing the requestor of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

(c) If the magnitude or difficulty of a request, or the receipt of multiple requests from the same requestor, unduly burdens the other responsibilities of the agency or municipality such that an agency or municipality is unable to complete the request within the time provided in clause (vi) of subsection (b), a records access officer may, as soon as practical and within 20 business days after initial receipt of the request, or within 10 business days after receipt of a determination by the supervisor of public records that the requested record constitutes a public record, petition the supervisor of records for an extension of the time for the agency or municipality to furnish copies of the requested record, or any portion of the requested record, that the agency or municipality has within its possession, custody or control and intends to furnish. The records access officer shall, upon submitting the petition to the supervisor of records, furnish a copy of the petition to the requestor. Upon a showing of good cause, the supervisor of records may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days. In determining whether the agency or municipality has established good cause, the supervisor of records shall consider, but shall not be limited to considering:

(i) the need to search for, collect, segregate or examine records;

(ii) the scope of redaction required to prevent unlawful disclosure;

(iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;

(iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;

(v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and

(vi) the public interest served by expeditious disclosure.

If the supervisor of records determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the supervisor of records may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. The supervisor of records shall issue a written decision regarding a petition submitted by a records access officer under this subsection within 5 business days following receipt of the petition. The supervisor of records shall provide the decision to the agency or municipality and the requestor and shall inform the requestor of the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court.

(d) A records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. The reasonable fee shall not exceed the actual cost of reproducing the record. Unless expressly provided for otherwise, the fee shall be determined in accordance with the following:

(i) the actual cost of any storage device or material provided to a person in response to a request for public records under subsection (a) may be included as part of the fee, but the fee assessed for standard black and white paper copies or printouts of records shall not exceed 5 cents per page, for both single and double-sided black and white copies or printouts;

(ii) if an agency is required to devote more than 4 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested, the records access officer may also include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee (A) shall not be more than \$25 per hour; (B) shall not be assessed for the first 4 hours of work performed; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iii) if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access

officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;
2. an agency or municipality, upon submitting a petition under this clause, shall furnish a copy of the petition to the requestor;
3. the supervisor of records shall issue a written determination with findings regarding any such petition within 5 business days following receipt of the petition by the supervisor of public records; and
4. the supervisor of records shall provide the determination to the agency or municipality and the requestor and shall inform the requestor of the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court;

(v) the records access officer may waive or reduce the amount of any fee charged under this subsection upon a showing that disclosure of a requested record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor, or upon a showing that the requestor lacks the financial ability to pay the full amount of the reasonable fee;

(vi) the records access officer may deny public records requests from a requester who has failed to compensate the agency or municipality for previously produced public records;

(vii) the records access officer shall provide a written notification to the requester detailing the reasons behind the denial, including an itemized list of any balances attributed to previously produced records;

(viii) a records access officer may not require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver; and

(ix) as used in this section “commercial purpose” shall mean the sale or resale of any portion of the public record or the use of information from the public record to advance the requester’s strategic business interests in a manner that the requester can reasonably expect to make a profit, and shall not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or or academic, scientific, journalistic or public research or education

(e) A records access officer shall not charge a fee for a public record unless the records access officer responded to the requestor within 10 business days under subsection (b).

(f) As used in this section, “employee time” means time required by employees or necessary vendors, including outside legal counsel, technology and payroll consultants or others as needed by the municipality.

## Administrative and Judicial Remedies

### G. L. c. 66, § 10A

(a) If an agency or municipality fails to comply with a requirement of section 10 or issues a response the requestor believes in violation of section 10, the person who submitted the initial request for public records may petition the supervisor of records for a determination as to whether a violation has occurred. In assessing whether a violation has occurred, the supervisor of records may inspect any record or copy of a record in camera; provided, however, that where a record has been withheld on the basis of a claim of the attorney-client privilege, the supervisor of records shall not inspect the record but shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed. If an agency or municipality elects to provide a record, claimed to be subject to the attorney-client privilege, to the supervisor of records for in camera inspection, said inspection shall not waive any legally applicable privileges, including without limitation, the attorney-client privilege and the attorney work product privilege. The supervisor of records shall issue a written determination regarding any petition submitted in accordance with this section not later than 10 business days following receipt of the petition by the supervisor of records. Upon a determination by the supervisor of records that a violation has occurred, the supervisor of records shall order timely and appropriate relief. A requestor, aggrieved by an order issued by the supervisor of records or upon the failure of the supervisor of records to issue a timely determination, may obtain judicial review only through an action in superior court seeking relief in the nature of certiorari under section 4 of chapter 249 and as prescribed in subsection (d).

(b) If an agency or municipality refuses or fails to comply with an order issued by the supervisor of records, the supervisor of records may notify the attorney general who, after consultation with the supervisor of records, may take whatever measures the attorney general considers necessary to ensure compliance. If the attorney general files an action to compel compliance, the action shall be filed in Suffolk superior court with respect to state agencies and, with respect to municipalities, in the superior court in the county in which the municipality is located. The attorney general shall designate an individual within the office of the attorney general to serve as a primary point of contact for the supervisor of records. In addition to any other duties the attorney general may impose, the designee shall serve as a primary point of contact within the office of the attorney general regarding notice from the supervisor of records that an agency or municipality has refused or failed to comply with an order issued by the supervisor of records.

(c) Notwithstanding the procedure in subsections (a) or (b), a requestor may initiate a civil action to enforce the requirements of this chapter. Any action under this subsection shall be filed in Suffolk superior court with respect to agencies and, with respect to municipalities, in the superior court in the county in which the municipality is located. The superior court shall have available all remedies at law or in equity; provided, however, that any damages awarded shall be consistent with subsection (d).

(d)(1) In any action filed by a requestor pursuant to this section:

(i) the superior court shall have jurisdiction to enjoin agency or municipal action;

(ii) the superior court shall determine the propriety of any agency or municipal action de novo and may inspect the contents of any defendant agency or municipality record in camera, provided, however, that the in camera review shall not waive any legally applicable privileges, including without limitation, the attorney-client privilege and the attorney work product privilege;

(iii) the superior court shall, when feasible, expedite the proceeding;

(iv) 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.

(2) The superior court may award reasonable attorney fees and costs in any case in which the requester obtains relief through a judicial order, consent decree, or the provision of requested documents after the filing of a complaint. There shall be a presumption in favor of an award of fees and costs unless the agency or municipality establishes that:

(i) the supervisor found that the agency or municipality did not violate this chapter;

(ii) the agency or municipality reasonably relied upon a published opinion of an appellate court of the commonwealth based on substantially similar facts;

(iii) the agency or municipality reasonably relied upon a published opinion by the attorney general based on substantially similar facts;

(iv) the request was designed or intended to harass or intimidate; or

(v) the request was not in the public interest and made for a commercial purpose unrelated to disseminating information to the public about actual or alleged government activity.

If the superior court determines that an award of reasonable attorney fees or costs is not warranted, the judge shall issue written findings specifying the reasons for the denial.

(3) If the superior court awards reasonable attorneys' fees and other litigation costs reasonably incurred to the requestor, it shall order the agency or municipality to waive any fee assessed under subsection (d) of section 10. If the superior court does not award reasonable attorneys' fees and other litigation costs reasonably incurred to the requestor, it may order the agency or municipality to waive any fee assessed under said subsection (d) of said section 10. Whether the superior court determines to waive any fee assessed under said subsection (d) of said section 10, it shall issue findings specifying the basis for such decision.

(4) If a requestor has obtained judgment in superior court in a case under this section and has demonstrated that the defendant agency or municipality, in withholding or failing to timely furnish the requested record or any portion of the record or in assessing an unreasonable fee, did not act in good faith, the superior court may assess punitive damages against the defendant agency or municipality in an amount not less than \$1,000 nor more than \$5,000, to be deposited into the Public Records Assistance Fund established in section 35DDD of chapter 10.

(e) Notwithstanding any other provision of this chapter, the attorney general may, at any time, file a complaint in Suffolk superior court with respect to agencies and, with respect to municipalities, in the superior court in the county in which the municipality is located, to ensure compliance with this chapter and may further intervene as of right in any action filed in accordance with this section. In any action filed or in which the attorney general has intervened under this subsection, paragraphs (1) and (4) of subsection (d) shall apply and any public records the court orders produced shall be provided without a fee.

## Public Records Regulations

### 950 CMR 32.00: PUBLIC RECORDS ACCESS

#### Section

- 32.01: Scope and Purpose
- 32.02: Definitions
- 32.03: General Provisions
- 32.04: Records Access Officers
- 32.05: Additional Records Access Officer Responsibilities
- 32.06: Rights of Access
- 32.07: Copies of Records; Fees
- 32.08: Appeals
- 32.09: Enforcement of Orders
- 32.10: Advisory Opinions

#### 32.01: Scope and Purpose

(1) 950 CMR 32.00 describes the practices and procedures of the Division of Public Records relative to the requirements of governmental entities or political subdivisions of the Commonwealth with respect to disclosure of public records, reporting requirements for certain records access officers and ensuring that disputes regarding access to particular records are resolved expeditiously and fairly. 950 CMR 32.00 shall not limit the availability of other remedies provided by law.

(2) The Division of Public Records is under the supervision of the Supervisor of Public Records. The Supervisor may amend and rescind such rules, forms and orders as are contemplated by the provisions of the Massachusetts General Laws and as are necessary to carry out their purposes.

(3) The Supervisor of Public Records may authorize exceptions to 950 CMR 32.00 with respect to any specific requirement provided that such exceptions to 950 CMR 32.00 are in conformity with the provisions of the Massachusetts General Laws.

#### 32.02: Definitions

For the purposes of 950 CMR 32.00 unless the context otherwise requires, the following terms shall have the meanings indicated:

Advisory Opinion. An opinion issued by the Supervisor of

Public Records intended to provide guidance on issues related to public records access and retention.

Agency. Any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth that is identified in M.G.L. c. 66, § 6A and c. 4, § 7, clause Twenty-sixth and makes or receives "public records", as defined in 950 CMR 32.02. Agency includes any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in M.G.L. c. 32, § 1.

Business Day. Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

Commercial Purpose. The sale or resale of any portion of the public record or the use of information from the public record to advance the requester's strategic business interests in a manner that the requester can reasonably expect to make a profit including in addition to the foregoing, obtaining names and addresses from the public record for the purpose of solicitation. It does not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or for academic, scientific, journalistic, or public research or education.

Custodian. Any governmental entity that makes or receives public records.

Division. Division of Public Records, Office of the Secretary of the Commonwealth of Massachusetts.

Governmental Entity. Any agency or municipality as defined in 950 CMR 32.02. It includes any quasi-governmental agency that is considered a body politic and corporate or public instrumentality. It does not include the legislature and the judiciary.

Municipality. Cities and towns, local housing, redevelopment or similar authorities. A consortium, consolidation or combination of entities within a single political subdivision of the commonwealth or among multiple political subdivisions of the commonwealth shall be deemed a municipality.

Public Record. All books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by a governmental entity unless such materials or data fall within one or more of the exemptions found within M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges.

Records Access Officer. The employee designated within a governmental entity to perform duties described in 950 CMR 32.00 including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requesters to make informed requests regarding the availability of such public records electronically or otherwise.

Requester. Any person or entity seeking to inspect or obtain copies of public records.

Redact. To delete, or otherwise expurgate that part of a public record that is exempt from disclosure under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges from non-exempt material.

Search Time. The time needed to locate and identify, pull from the files, copy and reshelve or refile a public record. However, it shall not include the time expended to create the original record.

Secretary. The Secretary of the Commonwealth of Massachusetts.

Segregation Time. The time used to review records to determine what portions are subject to redaction or withholding under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.

Supervisor. Supervisor of Public Records or Supervisor of Records.

Withhold. To hold back from disclosure a record under M.G. L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges.

### 32.03: General Provisions

- (1) Division Mailing Address and Electronic Mail Address. All communications shall be addressed or delivered to:

Supervisor of Records  
Division of Public Records  
Office of the Secretary of the Commonwealth  
One Ashburton Place, Room 1719  
Boston, Massachusetts 02108  
or: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)

Electronic communication is strongly encouraged and is the preferred method of correspondence.

- (2) Division Business Hours. The regular hours of the Division

are from 8:45 A.M. to 5:00 P.M. each business day.

(3) Computation of Time. Unless otherwise provided, the computation of time referred to in 950 CMR 32.00 shall begin with the first business day following the date of receipt of any request, regardless of physical form. The computation of time for an oral request shall begin with the day the oral request was made to the custodian.

(4) Presumptions. In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.

#### 32.04: Records Access Officers

(1) Each agency and municipality shall designate one or more employees as records access officer(s).

(2) In a municipality, the municipal clerk, or the clerk's designees, or any designee of a municipality that the chief executive officer of the municipality may appoint, shall serve as records access officers.

(3) The designation of a records access officer shall not be construed to prohibit employees who have been previously authorized by the agency or municipality to make public records or information available to the public from continuing to do so in accordance with 950 CMR 32.00.

(4) Each agency and municipality shall post in a conspicuous location at its offices and on its website, if any, the name, title, business address, business telephone number, and business email address of each records access officer.

(5) A records access officer shall:

(a) coordinate the custodian's response to requests for access to public records and shall facilitate the resolution of such requests by the timely and thorough production of public records;

(b) assist persons seeking public records to identify the records sought;

(c) assist the custodian in preserving public records in accordance with all applicable laws, rules, regulations and retention schedules;

(d) to the extent feasible, provide public records to a requester in electronic format unless the record is not available in electronic form or the requester does not have the ability to receive or access the records in electronic format and if feasible, in the requesters preferred format. In the absence of a preferred format, the records shall be

provided in a searchable machine-readable form;

Where the requester is an individual held in custody in any correctional facility, as defined in M.G.L. c. 125, § 1(d), the records access officer shall presume that the requester does not have the ability to receive or access records in usable electronic form;

(e) to the extent feasible, furnish the public records by providing reasonable assistance in locating the records on an appropriately indexed and searchable public website;

(f) prepare guidelines of the agency or municipality that enable the person seeking access to public records in the custody of the agency or municipality to make informed requests regarding the availability of such public records electronically or otherwise. The guidelines shall include a list of categories of public records maintained by the agency or municipality and such list shall be updated periodically; each agency or municipality that maintains a website shall post the guidelines on its website;

(g) a municipal records access officer shall, to the extent feasible, post commonly available public record documents on a website maintained by the municipality. The website copy shall not be deemed the record copy for retention purposes.

### 32.05: Additional Records Access Officer Responsibilities

(1) Agency Records Access Officers. The requirements of 950 CMR 32.05(1) shall apply only to agency records access officers.

(a) agency designation of primary and secondary records access officers; reporting requirements:

1. each agency shall designate one primary records access officer responsible for reporting information to the Secretary pursuant to M.G.L. c. 66, § 6A(e) and 950 CMR 32.05(1)(c).

2. a primary records access officer shall submit a notification of such designation to the Division electronically in a manner determined by the Division.

3. the primary records access officer may notify the secondary record access officers to facilitate reporting such information.

4. the primary records access officer shall electronically notify the Secretary of the designation of secondary records access officers electronically in a manner determined by the Division.

5. the agency shall maintain and update information regarding primary and secondary records access officers electronically, including changes in personnel identified as primary and secondary records access officers, in a manner determined by the Division.

(b) agency records access officers shall electronically report to the Secretary the information described in 950 CMR 32.05(1)(c)1. through 9. in a manner determined by the Secretary.

(c) an agency records access officer shall report to the Secretary with respect to written requests for public records and responses to these requests for each calendar year ending December 31<sup>st</sup>:

1. the nature of each request and the date on which each request was received;
2. the date on which a response is provided to the requester;
3. the date on which a public record is provided to the requester;
4. the number of hours required to fulfill the request;
5. fees charged to the requester, if any;
6. records access officer petitions to the Supervisor submitted under M.G.L. c. 66, § 10(d)(iv) and 950 CMR 32.06(4)(g) and (h);
7. requests appealed to the Supervisor under M.G.L. c. 66, § 10A and 950 CMR 32.08(1);
8. the time required to comply with the Supervisor's orders under M.G.L. c. 66, § 10A; and
9. the final adjudication of any associated court proceedings under M.G.L. c. 66, § 10A(d).

(d) the Supervisor may make exceptions to the reporting requirement

in 950 CMR 32.05(1)(c) for particular classes of records, such as:

1. certified copies of records;
2. registry of deeds records;
3. incorporation records;
4. vital records;
5. criminal offender record information requested by the offender, representative, or other authorized recipient.

(e) all information must be provided in accordance with 950 CMR 32.05(1) within ten business days of the last day of the calendar year.

(f) an agency shall provide on a searchable website electronic copies, accessible in a commonly available electronic format, of the following types of records, provided that any agency may withhold any record or portion thereof in accordance with state or federal law:

1. final opinions, decisions, orders, or votes from agency proceedings;
2. annual reports;
3. notices of regulations proposed under M.G.L. c. 30A;
4. notices of hearings;
5. winning bids for public contracts;
6. awards of federal, state and municipal government grants;
7. minutes of open meetings;
8. agency budgets; and
9. any public record information of significant interest that the agency deems appropriate to post, such determination to be made by each agency on a case-by-case basis.

(g) an agency shall post records online pursuant to 950 CMR

32.05(1)(f) as soon as practicable on a website maintained by the agency. The website copy shall not be deemed the record copy for retention purposes. 950 CMR 32.05(1)(f) and (g) shall apply only to records made or received on or after January 1, 2017.

(h) an agency may fulfill the requirements of 950 CMR 32.05(1)(f) and (g) by providing links to other agency websites that provide access to the categories of records described in 950 CMR 32.05(1)(f)1. through 9.; provided, however, that the website is searchable and provides electronic copies, accessible in a commonly available electronic format.

### 32.06: Rights of Access

#### (1) Requests for Public Records.

(a) requests for public records may be made orally in person to a records access officer or custodian or may be written. Telephone requests may be accepted at the discretion of the records access officer.

(b) requests for public records shall include a reasonable description of the requested record to the records access officer so that he or she can identify and locate it promptly.

(c) written requests may be delivered by a requester to the business address or designated website or email address of a records access officer or custodian:

1. by hand;
2. by mail;
3. by electronic mail; or
4. by facsimile, if custodian has facsimile access.

(d) a records access officer shall not require a particular form be used by requesters, but may make forms available for requesters.

(e) a person shall not be required to make a personal inspection of the record prior to receiving a copy.

(f) calculation of time will commence only for requests that are made in accordance with 950 CMR 32.06(1).

(g) a request for records in which an individual, or representative of the individual has a unique right of access by statutory, regulatory, judicial or other applicable means, shall not be considered a request for public records.

(2) Records Access Officer Response to Requests for Records.

(a) a records access officer or designee shall permit inspection or provide or furnish a copy of all public records within the custody and control of the custodian at reasonable times and without unreasonable delay under M.G.L. c. 66, § 10(a).

(b) if applicable, a records access officer shall provide a written response under M.G.L. c. 66, § 10(b) to a request for public records no later than the tenth business day following the receipt of a request notwithstanding the applicability of any petition filed pursuant to 950 CMR 32.06(4).

(c) a records access officer shall not charge a fee for the provision of a public record unless the records access officer responded to the requester within ten business days under M.G.L. c. 66, § 10(b).

(d) if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request, unless an extension of time is permitted in a manner consistent with 950 CMR 32.06(2)(i) and (4).

(e) a written request for records, regardless of the form of delivery, will be deemed received on the first business day following receipt the request by the records access officer; an oral request will be deemed received on the day it was made.

(f) a records access officer may delay provision of records until all fees related to such requests are paid in full by the person seeking access to the requested records in accordance with 950 CMR 32.07.

(g) a records access officer shall, when appropriate, suggest a reasonable modification of the scope of the request or offer to assist the requester to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably.

(h) a records access officer may not require the requester to specify the purpose for a request except:

1. when the requested records concern information which may be exempt from disclosure pursuant to M.G.L. c. 4, § 7(26)(n);

2. to determine whether the records are requested for a commercial purpose; or

3. to determine whether to grant a request for a fee waiver.

(i) a records access officer shall identify a reasonable timeframe in which it shall produce the public records sought in a manner consistent with M.G.L. c. 66, § 10(b)(vi), provided that the requester may voluntarily agree to a response date beyond these timeframes.

(3) Denial by Records Access Officer.

(a) a records access officer shall provide written notice by first class mail or electronic mail to a requester of any denial of access to records.

(b) a records access officer shall provide such written notice of denial of access within ten business days of its receipt of a request for public records in accordance with 950 CMR 32.06(2)(b).

(c) such written notice of denial shall include:

1. the date of the request;

2. identification of any records sought that are not within the possession, custody, or control of the agency or municipality the records access officer serves;

3. identification of the agency or municipality that may be in possession, custody or control of the public record sought, if known to the records access officer;

4. identification of any records, categories of records or portions of records that the agency or municipality intends to withhold;

5. identification of any specific exemption to the Public Records Law or common law privilege that applies to the withheld record or records;

6. identification of the applicability of each cited exemption or privilege to each portion of the withheld record or records;

7. identification of any portions of responsive records that the

agency or municipality intends to produce; and

8. a statement informing the requester of the right of administrative appeal to the Supervisor under 950 CMR 32.08(1) and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court.

(d) where a record has been withheld based on a claim of the attorney-client privilege the records access officer shall provide in its written denial a detailed description of the record, including the names of the author and recipients, and in general terms, the subject matter of the withheld information.

(4) Petition for Modification or Waiver by a Records Access Officer to the Supervisor.

(a) petitions requesting an extension of time to furnish copies of the requested records or waive statutory limits to fees from a records access officer to the Supervisor shall be in writing and delivered to the Supervisor in accordance with 950 CMR 32.03(1). A copy of the petition shall be provided by the records access officer to the requester. The Supervisor shall issue a written determination with findings regarding any such petition within five business days following receipt of a records access officer petition.

(b) petitions filed under 950 CMR 32.06(4) do not affect the requirement that a records access officer shall provide an initial response to a requester within ten business days after receipt of a request for public records, pursuant to 950 CMR 32.06(2)(a) or (b). Failure to comply with 950 CMR 32.06(4) will result in a waiver of the right to assess fees for public records.

(c) all such petitions shall be considered public records both in the custody of the records access officer and the Supervisor.

(d) petitions seeking an extension of time to furnish copies of the requested records must be made by a records access officer within 20 business days after receipt of a request for public records, or within ten business days after the records access officer's receipt of a determination by the Supervisor that a requested record constitutes a public record.

(e) a petition for extension of time described in 950 CMR 32.06(4)(d) shall include a brief narrative detailing why an

extension of time is necessary. Upon a showing of good cause, the Supervisor may grant a single extension. For an agency, such extension may not exceed 20 business days from the date of the grant of the extension by the Supervisor. For a municipality, such extension may not exceed 30 business days from the date of the grant of the extension by the Supervisor.

(f) if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought.

(g) petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days after receipt of a request for public records.

(h) a petition seeking a waiver of statutory limits to fees described in 950 CMR 32.06(4)(g) must be made in accordance with the following:

1. any records access officer may petition the Supervisor to charge for time spent segregating or redacting records.
2. only a municipal records access officer may petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of \$25 per hour for time required to comply with a request.
3. records access officers shall not petition the Supervisor seeking a waiver associated with the provisions of 950 CMR 32.07(2)(l)1. and (m)1.
4. a records access officer shall respond to a request within five business days of receipt of the Supervisor's determination regarding a petition submitted under 950 CMR 32.06(4)(g).

### 32.07: Copies of Records; Fees

#### (1) Copies of Paper and Electronic Records.

(a) upon request, a requester shall be entitled to receive in hand, by mail, by facsimile or electronically one copy of a public record

or any desired portion of a public record.

(b) as an alternative to obtaining copies of records from a records access officer a requester shall be permitted, to the extent feasible, and at reasonable times:

1. view and inspect records prior to obtaining copies; or
2. use a personal device such as a camera or portable scanner to copy records.

(c) the records access officer shall presume that a requester prefers copies provided in machine-readable electronic form, when electronic form is available, unless the requester specifies an alternative preference.

(d) the records access officer must provide electronic records in native form when possible.

(e) when designing or acquiring an electronic record keeping system or database the records access officer in cooperation with the custodian shall ensure, to the extent feasible that:

1. newly acquired or implemented electronic record keeping systems or databases are capable of providing data in a commonly available electronic, machine readable format; and
2. the newly acquired or implemented electronic record keeping system allows for information storage and retrieval methods permitting retrieval of public portions of records to provide maximum public access.

(f) furnishing a segregable portion of a public record shall not be deemed to be creation of a new record. This applies to a responsive record in the form of an extract of existing data, as such data exists at the time of the request and is segregable from nonresponsive and exempt data.

(2) Fees.

(a) a records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection, subject to the provisions of 950 CMR 32.04(5)(d). A records access officer is encouraged to inform a requester of the availability of records online to avoid delays and fees associated with the provision

of public records.

(b) if fees are being assessed, a records access officer shall provide a written, itemized, good faith estimate of any fees that may be charged to produce the records prior to complying with a public records request within ten business days.

(c) the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record.

(d) a fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

(e) the charge for black and white paper copies or printouts of records of any size susceptible to ordinary means of production shall not exceed .05¢ per page, for both single and double-sided black and white copies or printouts.

(f) a records access officer shall not assess a copying fee for electronic copies or copies of public records transmitted *via* facsimile.

(g) the actual cost of any storage device or material provided to a person in response to a request for public records may be included as part of the fee.

(h) for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing a copy may be assessed.

(i) a records access officer shall assess no fee greater than the lowest hourly rate of a person capable of compiling, segregating, redacting and reproducing a requested record, subject to the requirements of 950 CMR 32.07.

(j) a records access officer may assess the actual cost of postage to mail copies of public records, provided:

1. the requester specifically requests that records be mailed or is unable to receive copies in person; and
2. the records access officer shall charge the lowest cost available for such mailings, at the discretion of the requester.

(k) Waiver of Fees. Records access officers may waive or reduce the amount of any assessed fee upon a showing that:

1. disclosure of a requested record is in the public interest;
2. the request for records is not primarily in the commercial interest of the requester; or
3. the requester lacks the financial ability to pay the full amount of the reasonable fee.

(l) Agency Records Access Officers.

1. an agency records access officer shall not assess a fee for the first four hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record.
2. an agency records access officer shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).
3. an agency records access officer shall assess no fee of more than \$25 per hour for the cost to comply with a request for public records.

(m) Municipal Records Access Officers.

1. a municipal records access officer shall not assess a fee for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record in a municipality with a population of over 20,000.
2. a municipal records access officer in a municipality with a population of 20,000 persons or fewer may assess a fee for the first two hours of time spent compiling, segregating, redacting and reproducing a requested record, provided:
  - i. population data shall be determined by the decennial U.S. Census; and
  - ii. it shall be the burden of the municipal records

access officer to provide population data information in responses in which it seeks to assess such fees.

3. a municipal records access officer shall assess no fee of more than \$25 per hour for the cost to comply with a request for public records unless approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

4. a municipal records access officer shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

(n) Failure to Pay Fee. A records access officer may provide written notice denying access to public records to a requester who has failed to compensate the custodian for previously produced public records, provided:

1. a fee estimate for a previous request was prepared in compliance with 950 CMR 32.00 and the requester agreed to pay the previous fee;

2. the written notice details the reasons for denial, including an itemized list of any balances attributed to previously produced records.

### 32.08: Appeals

#### (1) Appeal to the Supervisor.

(a) 950 CMR 32.08 shall not apply to records in which an individual, or a representative of the individual, has a unique right of access to the record through statutory, regulatory, judicial or other applicable means.

(b) a requester may petition the Supervisor for failure by a records access officer to comply with a requirement of 950 CMR 32.00.

(c) an oral request, while valid as a public record request, shall not be the basis of an appeal under 950 CMR 32.08.

(d) petitions for appeal of a response by a records access officer must be made within 90 calendar days of the date of the response by a records access officer.

(e) petitions for appeal of a failure to respond within the timeliness requirements of 950 CMR 32.00 must be made within 90 calendar days of the request.

(f) all petitions for appeal shall be in writing and shall specifically describe the nature of the requester's objections to the response or failure to timely respond.

(g) requesters shall provide to the Supervisor complete copies of all correspondence associated with the petition, including:

1. a complete copy of the letter by which the request was made, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses; and

2. a complete copy of all written responses associated with requests subject to the petition for appeal, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses.

(h) in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition.

(i) if the requester's petition for appeal is related to a previous appeal to the Supervisor, the requester's petition shall refer to the previous appeal number.

(j) petitions under 950 CMR 32.08 received before 4:00 P.M. shall be opened on the day of receipt. Petitions received after 4:00 PM shall be opened on the following business day.

(2) Dispositions of Appeals.

(a) the Supervisor shall issue a written determination regarding any petition submitted in accordance with 950 CMR 32.08(1) not later than ten business days following receipt of the petition.

(b) the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:

1. the public records in question are the subjects of disputes in active litigation, administrative hearings or

mediation;

2. the request is designed or intended to harass, intimidate, or assist in the commission of a crime;
3. the public records request is made solely for a commercial purpose;
4. the requester has failed to comply with the provisions of 950 CMR 32.08(2).

(c) upon a determination by the Supervisor that a violation has occurred, the Supervisor shall order timely and appropriate relief.

(3) Hearings and Conferences.

(a) the Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. The decision to hold a hearing shall be solely in the discretion of the Supervisor.

1. said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08.

2. nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.

(b) the Supervisor may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding. The decision to hold a conference shall be solely in the discretion of the Supervisor.

(4) In Camera Inspections and Submissions of Data.

(a) the Supervisor may require an inspection of the requested record(s) in camera during any investigation or any proceeding initiated pursuant to 950 CMR 32.08.

(b) the Supervisor may require the records access officer to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.

(c) the Supervisor does not maintain custody of documents received from a records access officer submitted for an in camera review. The documents submitted for an in camera review do not fall within the definition of public records. M.G.L. c. 4, § 7(26).

(d) upon a determination of the public record status of the documents, they are promptly returned to the custodian, and no copies shall be retained by the Supervisor.

(e) any public record request made to the Division for records being reviewed in camera would necessarily be denied, as the office would not be the custodian of those records.

(f) attorney-client privileged records voluntarily submitted to Supervisor:

1. a records access officer may voluntarily submit documents to the Supervisor for in camera review;
2. such submission shall not waive any legally applicable privileges claimed by the agency or municipality.

(5) Custodial Indexing of Records.

(a) the Supervisor may require a records access officer or custodian to compile an index of the requested records within the context of a public records appeal under 950 CMR 32.08.

(b) said index shall be a public record and shall meet the following requirements:

1. the index shall be contained in one document, complete in itself;
2. the index shall adequately describe each withheld record or redaction from a released record;
3. the index must state the exemption or exemptions claimed for each withheld record or each redaction of a record; and
4. the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt.

(c) nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

32.09: Enforcement of Orders

A records access officer shall promptly take such steps as may be necessary to comply with an order of the Supervisor. If a records access officer fails to comply with an order issued by the Supervisor, the Supervisor, upon the Supervisor's initiative, may notify the Attorney General to ensure compliance.

32.10: Advisory Opinions

Advisory opinions from the Supervisor may be requested. However, it shall be in the Supervisor's discretion whether to issue an advisory opinion. The Supervisor has and will continue to provide a staff member on call every day during regular business hours to offer informal information to any person, whether a requester or custodian.

REGULATORY AUTHORITY

950 C.M.R. 32.00: G. L. c. 66, § 1.

**Examples of Exemption (a) Statutes**

Abatement Applications: G. L. c. 59, § 60.

Address Confidentiality Program: G. L. c. 9A, § 6.

Affordable Housing Applicant Information: G. L. c. 40T, § 3.

Air Pollution Control (Trade Secrets): G. L. c. 111, § 142B.

Alcohol Treatment Records: G. L. c. 111B, § 11.

Bank Examination Records: G. L. c. 167, § 2.

Bid Information, Trade Contractor Scores: G. L. c. 149A, § 8(f).

Birth Reports: G. L. c. 46, § 4A.

Blind Persons, Commission for the Blind Register: G. L. c. 6, § 149.

Business Schools (Private), Financial Statements: G. L. c. 75D, § 3.

Capital Facility Construction Project Records: G. L. c. 30, § 39R.

Central Registry of Voters: G. L. c. 51, § 47C.

Conflict of Interest, Request for an Opinion: G. L. c. 268A, § 22.

Consumer Protection Investigation: G. L. c. 93A, § 6(6).

Councils on Aging, Names, Addresses and Telephone Numbers of Elderly: G. L. c. 40, § 8B.

Criminal Offender Record Information: G. L. c. 6, § 167.

Delinquency, Sealing by Commissioner of Probation: G. L. c. 276, § 100B.

Department of Social Services, Central Registry: G. L. c. 119, § 51F.

Department of Youth Services Records: G. L. c. 120, § 21.

Drug Addiction Treatment Records: G. L. c. 111E, § 18.

Employment Agencies, Data: G. L. c. 140, § 46R.

Employment Security Data: G. L. c. 151A, § 46.

Exemption of Legislature from Public Records Law: G. L. c. 66, § 18.

Extreme Risk Protection Order Records: G. L. c. 140, § 131R.

Evaluations of Special Needs Children: G. L. c. 71B, § 3.

Fetal Death Reports: G. L. c. 111, § 202.

Gas and Electric Affiliated Company Records: G. L. c. 164, § 85.

Genetically Linked Diseases, Testing Records: G. L. c. 76, § 15B.

Hazardous Substances Reports: G. L. c. 111F, § 21.

Hazardous Waste Management Records: G. L. c. 21D, § 6.

Hazardous Waste Facilities: G. L. c. 21C, § 12.

Historical and Archaeological Sites and Specimen Inventory: G. L. c. 9, § 26A (1).

Hospital Records: G. L. c. 111, § 70.

Hospitals, Reports of Staff Privilege Revocation: G. L. c. 111, § 53B.

Impounded Birth Records: G. L. c. 46, § 2A.

Inspector General Investigations, Records: G. L. c. 12A, § 13.

Juvenile Delinquency Case Records: G. L. c. 119, § 60A.

Library Circulation Records: G. L. c. 78, § 7.

Malignant Disease Reports: G. L. c. 111, § 111B.

Massachusetts Commission Against Discrimination Investigatory Files: G. L. c. 151B, § 5.

Massachusetts Technology Development Corporation, Corporate Records: G. L. c. 40G, § 10.

Mental Health Facilities Records: G. L. c. 123, § 36.

Merit Rating Plans, Motor Vehicle Insurance: G. L. c. 6, § 183.

Mortgage Lender and Mortgage Broker Examination Records: G. L. c. 255E, § 8.

Mortgage Loan Originator Examination Records: G. L. c. 255F, § 14(d).

Native American Burial Site Records: G. L. c. 9, § 26A (5).

Natural Heritage Programs, Data Base: G. L. c. 66, § 17D.

Open Meeting Law: G. L. c. 30A, §§ 18-25.

Patient Abuse Information; Intermediate Care Facilities for Mentally Retarded Citizens, Convalescent, Nursing or Rest Homes: G. L. c. 111, § 72I.

Patient's Rights to Confidentiality of Records; Medical and Mental Health Facilities: G. L. c. 111, § 70E.

Protective Services Records, Aged Persons: G. L. c. 19A, § 23.

Public Assistance Records, Aged Persons, Dependent Children, Handicapped Persons: G. L. c. 66, § 17A.

Public Assistance, Wage Reporting System Information: G. L. c. 62E, § 8.

Reports of Rape, Sexual Assault, and Domestic Violence: G. L. c. 41, § 97D.

Records divulging name, home or email address and phone number; persons who own, possess or have license to carry firearms; government personnel: G. L. c. 66, § 10B.

Reyes Syndrome Report: G. L. c. 111, § 110B.

Sex Offender Registry, Requests for Registry Information: G. L. c. 6, § 178I.

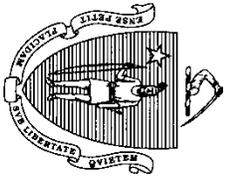
Street Lists, Children Aged 3-17, Court Order Granting Protection: G. L. c. 51, § 4(a), (d).

Student Records: G. L. c. 71, § 34D, 34E.

Tax Returns: G. L. c. 62C, § 21.

Venereal Disease Records: G. L. c. 111, § 119.

Vocational Rehabilitation Records: G. L. c. 6, § 8.



William Francis Galvin  
Secretary of the Commonwealth  
Division of Public Records  
One Ashburton Place, Room 1719  
Boston, MA 02108