



The Massachusetts Public Records Law

Secretary of the Commonwealth
Public Records Division

January 2019

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Introduction

- Every government record is presumed to be public unless a specific exemption applies



Electronic Records

- Electronic records treated the same as paper records for disclosure purposes
 - Email communications
 - Text messages



Records Access Officer (RAO)

- Municipality-
 - Municipal clerk or designee
 - Any designee that the municipality's chief executive officer appoints
- RAO contact information must be posted:
 - Online
 - Conspicuous place in the office



Records Access Officer (RAO)

- Duties:
 - Coordinate response to request for records
 - Assist requestors in identifying records
 - Help custodians with preserving records
 - Prepare guidelines to assist requestors in obtaining public information



Posting records online

- Agencies must post certain public documents on its website including:
 - Notices of hearings
 - Minutes of open meetings
 - Budgets
 - Winning bids for public contracts
 - Records of “significant interest”



Request log

- Agency RAOs shall document the following for each public records request it receives:
 - (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 requester;
 - (iii) the date on which a public record is provided to the requester; . . . (cont'd)



Request log

- Agency RAOs shall document the following for each public records request it receives:
 - (iv) the number of hours required to fulfill the request;
 - (v) fees charged to the person making the request, if any;
 - (vi) fee petitions submitted to the Supervisor . . .
(cont'd)



Request log

- Agency RAOs shall document the following for each public records request it receives:
 - (vii) requests appealed to the Supervisor
 - (viii) the time required to comply with the Supervisor's order
 - (ix) the final adjudication of any court proceedings



Request log

- Form prescribed by the Secretary
 - Agency RAOs must annually report this information to the Secretary
 - The Secretary has created an online database that RAOs can use to submit this information
 - The database can be accessed via this link:
<https://www.sec.state.ma.us/pre/prepra/praagencydb.htm>



Request

- A person may request copies of, or access to, public records
 - In person during regular business hours
 - In writing
 - Letter
 - Fax
 - Email
 - Not required to take phone requests . . . (cont'd)



Request

- Cannot require that requesters fill out a form
- A question does not constitute a request for records
- Do not have to create records in response to request



Response to Request

- The RAO must permit inspection or provide a copy of requested public records within a default time period of **10 business day**
 - If RAO does not provide initial response within 10 business days, cannot charge a fee





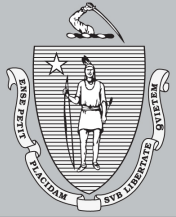
Response to Request

- Provide the requested records
 - Required to provide records electronically if available in an electronic format
- Fee estimate to obtain the records . . . (cont'd)



Response to Request

- Deny access to records
 - Cite exemption
 - State why exemption applies to the records
 - Inform requestor of right to appeal to Supervisor of Records



Response-Timeframe

- Agencies:
 - If it is a large request, an agency may inform the requester that it needs 15 total business days to produce records.
 - The requester may also voluntarily agree to a date beyond 15 business days. . . . (cont'd)



Response-Timeframe

- Agencies:
 - If more than 15 business days are needed, and the requester does not agree to more time, then the agency must seek an extension from the Supervisor of Records.



Response-Timeframe

- Municipalities:
 - If it is a large request, a municipality may inform the requester that it needs 25 total business days to produce records.
 - The requester may also voluntarily agree to a date beyond 25 business days. . . . (cont'd)



Response-Timeframe

- Municipalities:
 - If more than 25 business days are needed, and the requester does not agree to more time, then the municipality must seek an extension from the Supervisor of Records.



Extension

- The RAO may request an extension from the Supervisor of Records if more time is needed to respond
 - Request for extension must occur 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



Extension

- Supervisor may grant extension of 30 *business* days to municipalities and 20 *business* days to agencies
- RAOs are encouraged to send these petitions via email to either RAO.Petitions@sec.state.ma.us or pre@sec.state.ma.us



Appeal Process

- Requestor may appeal to the Supervisor of Records if response is not in compliance with the law
- Requestor must send:
 - a written copy of request
 - the response
 - cover letter . . . (cont'd)



Appeal Process

- Supervisor has 10 business days to issue determination



Fee Estimates

- Records custodians must issue a detailed fee estimate prior to search and segregation of records
 - Do not have to perform search until receive payment
- Encouraged to waive fees . . . (cont'd)



Fee Estimates

- Fees cannot be used as a deterrent for access
- Required to maintain procedures that allow for reasonable access to records



Fee Estimates

- Estimates may include:
 - Copies
 - \$.05 for single and double-sided black and white copies or printouts
 - Actual cost for oversized records . . . (cont'd)



Fee Estimates

- Estimates may include:
 - Hours needed to search for and segregate records
 - Hourly rate of lowest paid person capable
 - can only charge if segregation or redaction is required by law or approved by the Supervisor through a fee petition



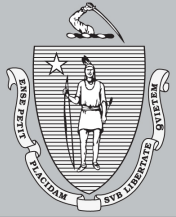
Fee Estimates

- Municipalities:
 - May not charge for the first 2 hours of time unless the municipality has 20,000 people or less.
 - After 2 hours-may not charge more than \$25/hour
 - May petition the Supervisor to charge more than \$25/hour
 - May petition the Supervisor to charge for the time spent segregating or redacting



Fee Estimates

- Agencies:
 - May not charge for the first 4 hours of time
 - After 4 hours-may not charge more than \$25/hour
 - May petition the Supervisor to charge for the time spent segregating or redacting



Exemptions

- Burden is on records custodian to claim an exemption
- Must state why the exemption applies to the portions withheld
- Applicable only to exempt portion of record



Exemption (a)

- A statute or other law specifically or by implication permits or requires non-disclosure
 - Student records
 - Criminal Offender Record Information
 - Executive session records for public bodies subject to the Open Meeting Law
- Must cite Exemption (a) and applicable statute



Exemption (b)

- Records related to personnel rules and practices
- It would interfere with necessary governmental function if records released
 - Law enforcement personnel policies



Exemption (c)

- Personnel records (does not apply to certain law enforcement records)
 - Disciplinary information
 - Job applications
- Medical records
- Records containing intimate personal details
 - Family disputes, reputation, government assistance



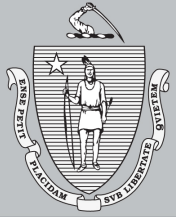
Exemption (d)

- Policy positions being developed
- May only withhold records until decision is made
- Exemption does not apply to factual information



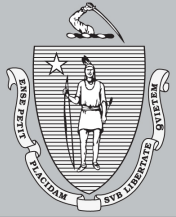
Exemption (e)

- Personal notes that are not maintained in government files
- Exemption is waived once records are shared



Exemption (f)

- Law enforcement records related to ongoing investigation
 - Disclosure would prejudice effective law enforcement
- Records that identify voluntary witnesses
- Records that disclose investigative techniques



Exemption (g)

- Records that disclose trade secrets or financial information voluntarily provided to government agencies
- Does not apply to records submitted as:
 - Required by law
 - Condition of receiving a governmental contract or other benefit



Exemption (h)

- Bids and proposals
 - May be withheld until the time for bidding expires
- Evaluations of bids and proposals
 - May be withheld until final decision



Exemption (i)

- Appraisals of real property acquired or to be acquired until:
 - Final agreement
 - Litigation has concluded
 - Time for litigation has expired



Exemption (j)

- Names and addresses of persons applying for license to carry or possess a firearm



Exemption (k)

- Library records
 - Repealed in 1988
 - Replaced with statutory protection



Exemption (I)

- Questions, answers and scoring keys of tests intended to be reused



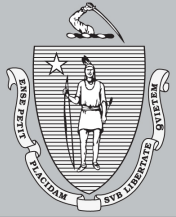
Exemption (m)

- Applies to contracts for hospital or health care services . . . (cont'd)



Exemption (m)

- To apply the record must:
 - Be a contract
 - For hospital or health care services
 - One party must be a government medical facility
 - The service provider must be one of those described in the exemption



Exemption (n)

- Applies to records related to:
 - Internal layouts of buildings
 - Security measures
 - Emergency preparedness
 - cyber security
- Disclosure must be deemed to jeopardize public safety or cyber security



Exemptions (o) and (p)

- Permits withholding of records disclosing name and address of government employees or family member
 - Also includes personal email addresses . . . (cont'd)



Exemptions (o) and (p)

- Exemption (o): record must contain name, address and identify person as government employee
- Exemption (p): record must contain name, address and identify person as family member of government employee



Exemptions (q) and (r)

- Exemption (q): Adoption registry records
- Exemption (r): Office of Child Advocate records



Exemptions (s), (t) and (u)

- Exemption (s): Trade secrets or other competitive information submitted by a government agency as an energy supplier
- Exemption (t): Statement of financial interest forms submitted by members of public retirement boards . . . (cont'd)



Exemptions (s), (t) and (u)

- Exemption (u): Applies to certain proprietary information made and received by UMASS



Attorney-Client Privilege

- Common law exemption based on case law
- Records related to:
 - Information submitted by client to an attorney
 - With expectation of confidence
 - Privilege has not been previously waived



Who owns the records?

- Government records are the property of the governmental entity
- Persons leaving government must return records within a reasonable time
- Email composed/received on private account for public purpose are property of the government



How long do I keep the records?

- Records retention schedules help determine lifecycle of government records
 - Cities, Towns, Local Government
 - Use The Municipal Records Retention Manual
- Call the Records Management Unit at (617) 727-2816 for more information



Resources

- Public Records Division sec.state.ma.us/pre
- *A Guide to the Massachusetts Public Records Law* sec.state.ma.us/pre/prepdf/guide.pdf
- Records retention schedules
sec.state.ma.us/arc/arcrmu/rmuidx.htm



Attorneys fees

- Attorney fees may be awarded if requestor prevails in lawsuit



Attorney of the Day

- The Public Records Division has an attorney on call every day to answer questions at (617) 727-2832.



QUESTIONS?