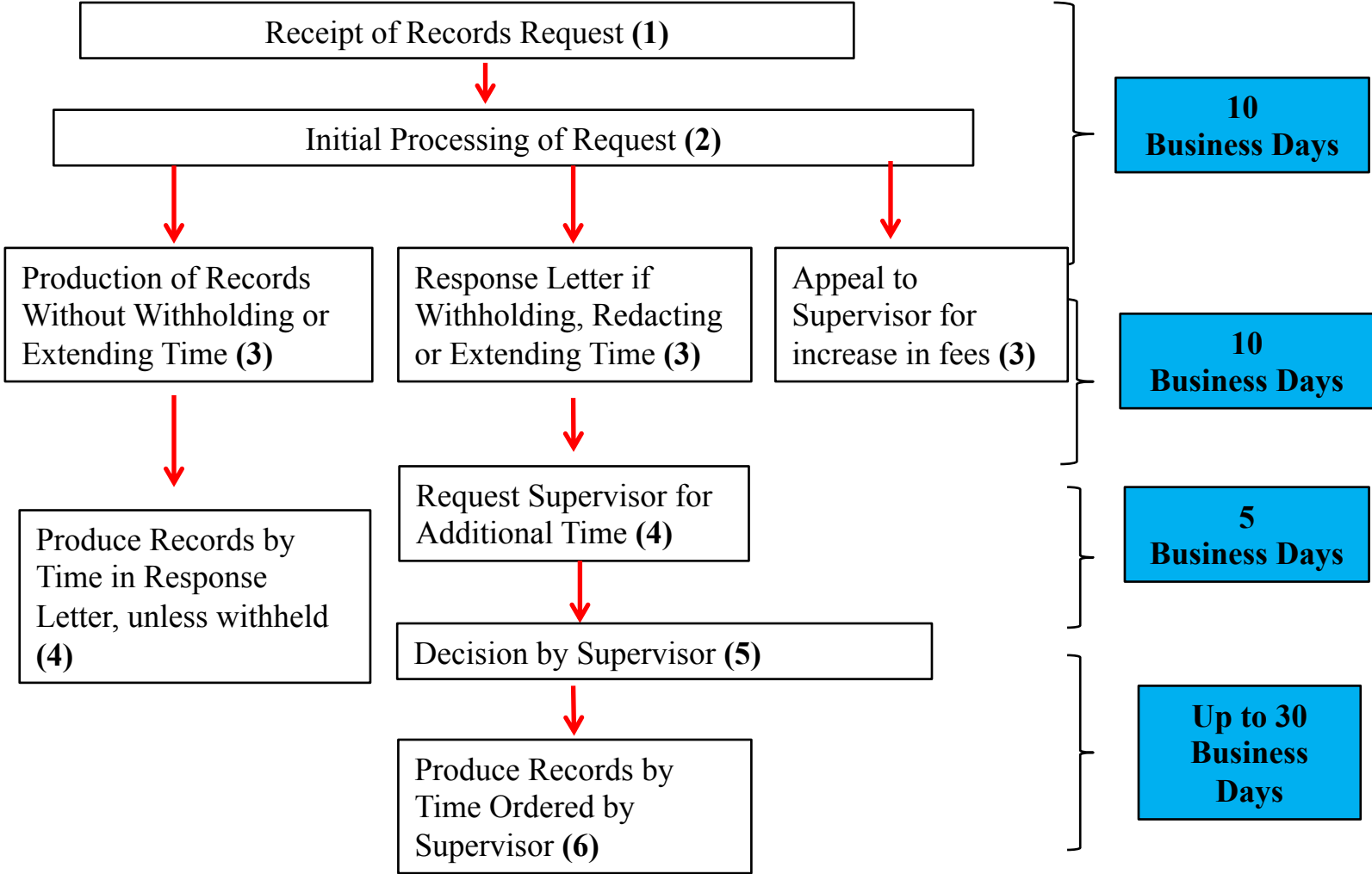


Massachusetts Municipal Association  
Annual Meeting  
January 25, 2020

Transparency Basics:  
Public Records

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# Flow Chart of Response Process



# Striking the Right Balance in Release of Records Held by Government

## Protecting Exempt Material

- Presumption that records are public
- Enumerated exemptions narrowly construed
- Claim exemptions per state law with specificity in response
- Release reasonably segregable, non-exempt portions of partially exempt record
- Redact exempt material

## Attorney-Client Privilege

- Any communication of legal advice between attorney for the Town and employees of the Town.
- Have Counsel review to confirm

# Best Records Management Practices:

## Electronic Records

- Collaborate with IT to search for and compile electronic records in response to request
  - disclose to and seek agreement from requester on search terms
  - foster dialogue between IT and legal advisors
- Retention/production of records from personal accounts and devices
  - ✓ Distribute public email accounts to volunteer board/commission members
  - ✓ Train employees and volunteers on public records requirements
  - ✓ Require all public records received/created on personal account/devices be forwarded to public accounts
  - ✓ Employees/Board members responsible for segregating personal records from public records
  - ✓ Employees (both paid and voluntary) must transfer public documents maintained on private servers to public servers upon leaving

# Best Records Management Practices:

## Be Prepared for Record Requests

- Be familiar with records statute and regulations
- Appoint and train Records Access Officer (“RAOs”)
  - ✓ Develop consistent approach across departments
- Be deliberate in what records are created or received
  - ✓ Develop process for culling on an annual basis
- Be familiar with records retention requirements (or make sure your staff are)
- Dispose of records beyond applicable retention period
- Organize records storage and inventory procedures
- Segregate and safeguard records with personal or sensitive security information

# Recent Cases: Privacy Interests v. Public Interest

- RAOs and Custodians must carefully analyze requests
- *PETA v. Dept. of Ag. Resources*, 477 Mass. 280 (2017)
  - o Privacy (exemption c)  
  
Balancing Test: Weight of Privacy Interest v. Public Interest
  - o Security (exemption n)  
  
Is Record Requested like Records Listed in Statute?  
Would a Terrorist Find Useful to Maximize Damage?

- *Boston Globe v. Dept. Public Health*, 482 Mass. 427 (2019)
  - o Electronic Indices of Publicly Available Records
  - o Privacy Analysis
    - Would privacy be compromised by comparing multiple indices?
    - Is compilation of records otherwise available?
    - Is identity theft and fraud at risk with release?
    - Would release lead to unwanted intrusions?
    - Does Public Interest outweigh privacy interests?

# Emerging Privacy Issues

- Body Cameras [SPR19/1915 (10/3/2019) (Sherborn)]
- Facial Recognition Software
- Automated License Plate Recognition (ALPR)  
(*Comm v. McCarthy*, SJC 12750)
- Internet Search Histories



*Thank you*