



## **THE PUBLIC RECORDS LAW** **G.L. c.66, §10 and G.L. c.4, §7(26)**

### **Basic Facts**

- A presumption exists that all municipal records are public records subject to mandatory disclosure upon request, unless a statutory exemption is applicable.
- The law applies to any kind of “document” made or received by a public officer or employee, regardless of its format, such as papers, maps, recordings, computer data, etc.
- The law applies to records in existence and in the custody of the records custodian. Therefore, a custodian of public records is not required to create a record in response to a public records request, nor is a custodian required to answer questions.
- A public records request may be made in person or in writing; a custodian of public records is not obligated to respond to requests made by telephone only.
- A custodian of public records is presumed to have superior knowledge of the records in his or her custody, and even if a records request is not precise, a records custodian should use his or her superior knowledge of the records to attempt to provide responsive records.
- A records custodian may not ask a public records requester why the requester is seeking a particular record.

### **The Response**

- A records custodian must respond to a records request within 10 calendar days following receipt of the request.
- The records custodian may: (1) provide copies of or access to the requested documents; (2) provide a written denial asserting any applicable exemptions; or, (3) if the custodian estimates that it will cost more than \$10.00 to comply with the request, the custodian must provide a good faith estimate of the cost to comply. The response may also be a combination of the above methods, to the extent applicable.
- If a portion of a requested record may be withheld from disclosure pursuant to one of the statutory exemptions, the remainder of the record will generally be subject to mandatory disclosure. Under such circumstances, the records custodian must issue a written denial.
- Pursuant to the Public Records Access Fee Regulations, 950 CMR 32.00 *et seq.*, a records custodian may recover from the requesting party the following fees:
  - (1) Photocopies, \$.20 per page; computer printouts, \$.50 per page; and for records not susceptible to ordinary means of reproduction, the actual cost to provide a copy.
  - (2) Document search time, i.e., the time necessary to search for and copy responsive records, such fee to be determined at the pro-rated hourly rate of the lowest paid employee capable of performing the search.
  - (3) Segregation time, i.e., the time necessary to delete or redact protected information from records otherwise subject to disclosure, such fee to be determined at the pro-rated hourly rate of the lowest paid employee capable of such review.
- A records custodian may wait until receipt of applicable fees prior to performing the work necessary to comply with the request.
- The analysis a municipal records custodian undergoes upon receipt of a public records request is generally the same regardless of who seeks copies of the records.

## Frequently Asserted Exemptions

- Exemption (a) allows withholding of records that are “specifically or by necessary implication exempted from disclosure by statute.”
- Exemption (c) allows withholding of “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.”
- Exemption (d) allows withholding of “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.”
- Exemption (e) allows withholding of “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.”
- Exemption (f) allows withholding of “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.”
- Exemption (h) allows withholding of “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.”
- Exemption (i) allows withholding of “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.”
- Exemption (n) allows a records custodian, who reasonably believes that disclosure is “likely to jeopardize public safety” to withhold records including, but not limited to, “blue prints, 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, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth.”
- Exemption (o) allows withholding of “the home 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.”