



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

December 15, 2021
SPR21/3255

Kathryn Silva
Director for Student Services
Ashland Public Schools
87 West Union Street
Ashland, MA 01721

Dear Kathryn Silva:

I have received the petition of Malden Transparency appealing the response of the Ashland Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On December 14, 2021, Malden Transparency sought, "...an attorney fee affidavit outlining the time spent, the attorney who performed the work, and the work performed" pertaining to a previous records request by Malden Transparency.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Current Appeal

The School responded on December 14, 2021 indicating it did not have records responsive to the request. Based on a discussion between a member of the Public Records Division staff and the School, it is my understanding the School confirmed it does not have responsive records but are willing to provide responsive records to Malden Transparency as they become available in the future.

No Duty to Create Records

Please be advised, under the Public Records Law a custodian is not required to create a record in response to a public records request. See G. L. c. 66, §6A(d). In addition, a public employee is not required to answer questions, or do research, or create documents in response to questions. See 32 Op. Att’y Gen. 157, 165 (May 18, 1977). The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii).

Conclusion

Where the School has confirmed that it does not possess documents responsive to the request, and has no duty to create records responsive to the request, I will now consider this administrative appeal closed.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looped "M" and a long, sweeping underline.

Rebecca S. Murray
Supervisor of Records

cc: Malden Transparency