



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

Rebecca S. Murray
Supervisor of Records

December 22, 2021
SPR21/3279

Allison G. Cox
Director of Human Resources and Educator Development
Quincy Public Schools
34 Coddington Street
Quincy, MA 02169

Dear Ms. Cox:

I have received your petition on behalf of the Quincy Public Schools (School) requesting an extension of time to produce records, a waiver of statutory limits on fees that may be assessed in responding to the request, permission to charge for time spent segregating or redacting responsive records, and relief from the obligation to respond to the request. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, the School furnished a copy of this petition to the requestor. G. L. c. 66, § 10(c). On December 4, 2021, Commonwealth Transparency requested the following:

For the time period December 1, 2020 through December 3, 2021, please provide the following;

1. Any and all public records requests seeking public records of your school(s), and/or district(s).
2. All metadata from the requests in #1 above including all contact information of the requestor, including but not limited to emails and text messages.
3. All electronic communications regarding #1 above including but not limited to emails and text messages.
4. All responses, appeals, fee requests and responsive records resulting from the requests in #1 above.

Petitions for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) 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 there has been a showing of good cause, the Supervisor 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.

G. L. c. 66, § 10(c).

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

Extension of Time to Produce Responsive Records

In its December 17, 2021 petition, the School states the following:

[Commonwealth Transparency] has made multiple voluminous requests within a short time period. This instant request will take a significant amount of time to respond to given the volume of records requested. As a result, it is not possible to respond within 10 business days. Therefore, [the School] hereby petitions for an extension of time to respond given that the scope of redaction required to prevent unlawful disclosure is significant. The [School] will be unable to produce the records during normal business hours of operation without an extension in light of the size of the request and the repeated requests within a short time period.

Pursuant to M.G.L. c. 66, section 10(c), the [School] requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt payment for the work, to respond to the portion of the request that seeks legal invoices.

I find in light of the need to collect and segregate the request, as well as the capacity of the School to produce the request without an extension, the School has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(ii). The School is granted an extension of 30 business days. Please note the time may begin to run once the School receives payment. G. L. c. 66, § 10(c).

Petition to Assess Fees

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 of Records (Supervisor) under a petition under G. L. c. 66, § 10 (d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

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. 950 C.M.R. 32.06(4)(g).

Fee Estimates

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first two hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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 a record requested, but the fee shall not be more than \$25 per hour. Id. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

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 of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4). Petitions relating to fees must be submitted to the Supervisor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Current Petition

In its December 17, 2021 petition, the School states that:

First, the request seeks all electronic communication about public records requests. Those records likely contain the content of discussions between the [School] and its attorneys, for the purpose of obtaining legal advice, which has not been shared with the public and is therefore protected by the attorney-client privilege...Accordingly, the records will need to be reviewed to determine if they contain information protected by the attorney-client privilege and then any necessary redactions will need to be made...Second, in many cases the public records requests are from parents seeking records of their children and additional records. In those cases, a response may provide both information covered under student records regulations and public records information. As a result, the records are likely to contain personally identifying information of public school students...At the very least, the records will need to be reviewed to determine if they contain any student information, and then any necessary redactions will need to be made...Finally, these emails and responses require redactions in accordance with the exemption set forth at G.L. c. 4, § 7(26)(c)... In accordance with the exemption, the [School] needs to redact personal email addresses and cell phone numbers from these requests.

Based on the School's petition, I find the School has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). To the extent the responsive records contain the exempt information as described above, the School may assess a fee for the segregation and redaction of such exempt material.

Request for Relief

In its petition, the School "requests that [this office] determine, pursuant to G. L. c. 66, § 10(c), that this request is part of a series of requests that is intended to harass the [School] and thereby relieve the [School] of its obligation to provide copies of the records sought." The School provides the following information:

[Commonwealth Transparency] appears to be filing this request to harass and intimidate [the School]. The request is so broad and seeking such a comprehensive set of records that there can be no valid public purpose for such a request. Upon information and belief, [Commonwealth Transparency] has served

this voluminous records requests on [the School] that provided a fee estimate to its last request. This is further evidence that [Commonwealth Transparency's] request is intended to harass and intimidate the [School] and is not intended for the broad dissemination of information to the public about government activity.

Additionally, [Commonwealth Transparency] has made this broad public records request exclusively to [a named law firm's] clients. [The named law firm] represents one particular school district that is currently engaged in litigation, in multiple forums, with the individual behind [Commonwealth Transparency]. Given the targeted nature of the request and the parties involved, the request does not appear to have been made in good faith, or for any genuine public purpose, or in the public interest. Rather, it is clear on its face that the purpose of this request, as part of a series of requests, is to intimidate and harass [the named law firm] and its clients.

Based on the information provided in the School's petition, I find that the School has not demonstrated the requests are frivolous and not intended for the broad dissemination of information to the public about actual or alleged government activity, as required by G. L. c. 66, § 10(c).

Conclusion

Accordingly, I find the School has established good cause for a time extension of 30 business days as described above. Additionally, to the extent the responsive records contain the exempt information described above, the School may assess a fee for segregation and redaction.

Please note, Commonwealth Transparency has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Commonwealth Transparency
Kevin W. Mulvey, Superintendent