



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

Rebecca S. Murray
Supervisor of Records

February 28, 2022
SPR21/0402

Anthony Soto
Superintendent
Holyoke Public Schools
57 Suffolk Street
Holyoke, Massachusetts 01040

Dear Superintendent Soto:

On February 17, 2022, this office received your petition on behalf of the Holyoke Public School District, (School) requesting an extension of time to produce records and permission to charge for time spent segregating or redacting responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10 (d)(iv). As required by law, it is my understanding that the School furnished a copy of this petition to the requestor, Elizabeth Koh of the *Boston Globe*. Id. On February 3, 2022, Ms. Koh requested:

- any and all contracts or invoices with outside vendors or private parties for legal, investigative or human resources work from Jan. 1, 2007 through Jan. 30, 2022 pertaining to inquiries related to allegations of abuse, bullying, harassment, discrimination or other misbehavior or misconduct by students, staff members, and/or coaches
- any and all related records to such services provided from Jan. 1, 2007 through Jan. 30, 2022. This includes, but is not limited to:
 - any prepared reports, investigations or reviews
 - any preparatory materials or files, including internal and external communications or electronic correspondence in the possession of the district, school board or school officials service orders, memoranda of agreement/understanding, or other records related to retainment, cost, and scope of work.
 - any emails, statements, news releases, or other communications to families, educators, the media, or the public about the outside vendors' 'work.'

Petition 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).

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

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

The School stated, "...please note that due to the expansive scope of the request, the [School] will require additional time to fulfill the request. If the request cannot be fulfilled within 25 business days after receipt of the fee, the [School] will seek your consent and/or petition the Supervisor of Records for additional time."

In an email dated February 25, 2022, the School stated, "[w]e are seeking an additional 25 business days..."

I find in light of the volume of records, 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 25 business days.

Petitions 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).

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 February 17th petition, the School requests "...that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production." The School notes:

The documents responsive to the above requests include, but are not limited to, confidential student and employee records maintained by the District. Responsive documents are expected to contain information that is exempt from disclosure under the Public Records Law. Documents protected by the attorney-client privilege will be exempt and excluded in accordance with Massachusetts law. *See Suffolk Construction Co., Inc., v. Division of Capital Asset Management*, 449 Mass. 444, 451 (2007). Documents that contain personally identifiable information regarding students of the District will be redacted pursuant to M.G.L. c. 4, § 7(26)(a), because personally identifiable information in education records/student records is specifically exempted from disclosure pursuant to several statutes, including: the Family and Educational Rights and Privacy Act (FERPA); the Individuals with Disabilities Education Act (IDEA); M.G.L. c. 71B; M.G.L. c. 71, § 34D; and the regulations implementing these statutes. Any executive session minutes and documents related thereto will be exempt under M.G.L. c. 4, § 7(26)(a), because of the specific statutory exemption set out in M.G.L. c. 30A, § 22(f). Documents that contain medical, personnel, or other information relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy, will be redacted pursuant to M.G.L. c. 4, § 7(26)(c), the privacy exemption. Employee personal contact information will be redacted in accordance with M.G.L. c. 4, § 7(26)(o).

To the extent that the responsive documents contain information which may be exempt under the investigatory exemption, M.G.L. c. 4, § 7(26)(f), they will be redacted. The investigatory exemption provides custodians a basis for withholding 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. This exemption applies in situations when the investigating entity depends on reports from private individuals as part of its investigative functions. *See Bougas v. Chief of Police of Lexington*, 371 Mass 59, 62 (1976). The disclosure of statements of persons who volunteered information as part of an investigation would have a harmful and chilling effect on the willingness of witnesses to cooperate in such future investigations.

Accordingly, to the extent such statements are in the responsive documents, they will be withheld. M.G.L. c. 4, § 7(26)(f). Documents that contain pending actions at the Massachusetts Commission Against Discrimination will be redacted pursuant to M.G.L. c. 4, § 7(26)(a), the statutory exemption, because “the investigative file in every charge under investigation, including the complaint, shall be confidential and exempt from public disclosure.” 804 CMR 1.21(1)(a).

If, upon review of the responsive documents, documents that fall within any additional exemptions are discovered, the District will promptly notify you of those exemptions.

With respect to fees, the School contends that “...requesting authority to charge the hourly rate of our legal counsel for the segregation and redaction time involved in the response to the enclosed public records request. This request to waive the statutory limit on fees pertains only to the time needed to perform legally required segregation and redaction of the responsive documents. Please note that the District is billing \$22.50/hour for search time.”

The School estimates that, “...that this request will require approximately 80 hours of search time. Please note that the estimated 80 hours of search time would be billed at an hourly rate of \$22.50. Excluding the first two hours of work, pursuant to 950 CMR 32.07(2)(m), this would result in a search time fee of \$1,755.00 (78 hours x \$22.50/hour). This is a preliminary estimate of a fee for search time only, and the [School] reserves the right to amend this estimate.”

Conclusion

Given the public interest served by limiting the cost of public access to the requested records, I am unable to grant permission to charge for time spent segregating or redacting responsive records or to charge in excess of \$25 an hour. Please note, this does not preclude the School from charging for segregation and redaction that is required by law at \$25.00 per hour.

When preparing a fee estimate for the provision of the requested records the School is advised to provide a detailed explanation to the requestor detailing why the amount of time is necessary. See G. L. c. 66, § 10(d)(iv) (requiring the amount of the fee must be reasonable). The School must provide a response to Ms. Koh within five business days of receipt of this determination. See 950 C.M.R. 32.06(4)(h)(4). Ms. Koh may appeal the School’s fee estimate within ninety days. See 950 C.M.R. 32.08(1).

Supt. Anthony Soto
Page 6
February 28, 2022

SPR22/0402

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, prominent "R" and "M".

Rebecca S. Murray
Supervisor of Records

cc: Elizabeth Koh