

J. Raymond Miyares
Thomas J. Harrington
Christopher H. Heep
Donna M. Brewer

Jennie M. Merrill
Jonathan E. Simpson
Ivria Glass Fried
Eric Reustle
Blake Mensing

November 3, 2015

Ben Thompson
P.O. Box 231115
Boston, MA 02115

Re: Public Records Request-October 22 -- Town of Carlisle

Dear Mr. Thompson:

I am responding to your Public Records request emailed to the Town Clerk of the Town of Carlisle dated October 20, 2015 and received on October 22, 2015 ("Request"), requesting the most recent annual Town of Carlisle "employee earnings report (or payroll report) for all employees, including the full name, job title, department, salary, overtime and other types of compensation for each employee if available ... provide[d] in a standard spreadsheet or data format... such as XLS or CSV[.]" As Town Counsel, I am working with the Town to respond to your Request.

As an initial matter, the Town notes that, in *Hastings & Sons Pub. Co. v. City Treasurer of Lynn*, 374 Mass. 812 (1978), the Supreme Judicial Court held that municipal payroll records are subject to production in response to a public records request for that information; provided, however, that the requestor is required under G.L. c. 66, § 10(a), to pay "the actual expense of the search for the records sought." After that SJC decision, the public records law has been amended to add Exemption (o) (exempting from disclosure certain personal information of unelected employees of a political subdivision of the commonwealth). See G.L. c. 4, § 7, cl. 26(o) (inserted by St. 2004, c. 149, § 8). The Supervisor of Public Records has interpreted Exemption (o) so that payroll records which contain exempt information are "subject to redaction under this exemption." See [A Guide to the Massachusetts Public Records Law](#) (at page 25). In addition, G.L. c. 66, § 10(d) (as amended by St. 2004, c. 149, § 124) now exempts from disclosure certain personal information of law enforcement personnel. Payroll records containing such information are similarly subject to redaction. Exemption (c), the privacy exemption, also exempts from disclosure "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." See G.L. c. 4, § 7, cl. 26(c) (exempting, e.g., social security numbers). Before disclosing any payroll records, the records custodian must review the records against the exemptions in the Public Records Law, redact the information and claim the proper exemptions. Cf. [A Guide to the Massachusetts Public Records Law](#) (at page 21). Accordingly, the Town

Miyares and Harrington LLP

Ben Thompson
November 3, 2015
Page 2 of 3

objects to your Request to the extent it calls for the production of exempt information stored or contained in the Town's payroll records; and the Town will redact such information prior to production of any payroll records.

Moreover, the Request asks that the payroll records be "provide[d] in a standard spreadsheet or data format...such as XLS or CSV[.]" The Town's payroll records are not maintained in such a spreadsheet format. A records custodian "is not required by the Public Records Law to ... create a record in response to a request, but may do so at his or her discretion." See A Guide to the Massachusetts Public Records Law (at page 2 and note 18). The records custodian "is obliged to furnish copies of non-exempt portions of computerized information at the cost of reproduction, unless otherwise provided by law ... however ... as with paper records a records custodian is not required to create a computer record in response to a request for information." Id. (at page 29). "[I]f a requester is willing to pay for the work, the records custodian may create a digital record to respond to the request." Id. Without limitation, the records custodian "may charge and recover a fee for the time he or she spends searching [for and] redacting" the information. Accordingly, the Town objects to your Request to the extent it calls for the Town to create a standard spreadsheet or data format...such as XLS or CSV. The Town also objects to your Request if and to the extent that it seeks privileged (Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444 (2007)) and/or other exempt information (G.L. c. 4, § 7(26)(a)-(q)).

Subject to the foregoing objections, the Town is willing to create the most recent annual Town of Carlisle "employee earnings report (or payroll report) for all employees, including the full name, job title, department, salary, overtime and other types of compensation for each employee if available ... provide[d] in a standard spreadsheet or data format...such as XLS or CSV[.]a spreadsheet containing the most recent annual Town of Carlisle municipal payroll information including, employee earnings report (or payroll report) for all employees, including the full name, job title, department, salary, overtime and other types of compensation for each employee if available. The estimated cost for searching for, compiling, and redacting the responsive information and creating the spreadsheet is approximately \$889.35 (calculated as 35 hours of time at the rate of \$25.41 per hour, the prorated hourly wage of the lowest paid employee who is capable of performing the task). The actual cost of producing the payroll record spreadsheet may vary once the custodian begins preparing the record, and you will be charged the actual cost. This estimate does not include any charges for scanning and emailing the spreadsheet once it is created.

In accordance with A Guide to the Massachusetts Public Records Law (at page 3), the records custodian will require "payment of the estimated fee before commencing work." Please email me to confirm that you will pay the estimated charges in advance and please provide your check in the foregoing amount to "Town of Carlisle", attention Treasurer. If I do not hear from you and the Treasurer does

Miyares and Harrington LLP

Ben Thompson
November 3, 2015
Page 3 of 3

not receive your check, the payroll information spreadsheet will not be compiled and produced.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at 617.489.1600.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. J. Harrington', with a long horizontal flourish extending to the right.

Thomas J. Harrington

cc: L. Barton
T. Goddard