

A denial must detail the specific basis for withholding the requested materials.¹⁴ The denial must include a citation to one of the statutory exemptions upon which the records custodian relies, and must explain why the exemption applies.¹⁵ A denial must also advise the requester of his right to seek redress through the administrative process provided by the Supervisor.¹⁶ Appeals are opened at the discretion of the Supervisor.¹⁷

The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received.¹⁸ Consequently, there is no obligation to create a record for a requester or to honor prospective requests. It should be noted, however, that the Public Records Access Regulations (Regulations) do not prohibit a records custodian from responding to such requests.

The records custodian has discretion to produce a record in the manner in which it was requested, and may charge a reasonable fee for creation of such a record. In creating a new record, the records custodian may charge a fee for the creation of this record on a one-time basis. Any costs due to subsequent requests for this record can be assessed only for production of copies.

With the exception of situations in which a records custodian is withholding records pursuant to Exemption (n), inquiries into a requester's status or motivation for seeking information are expressly prohibited.¹⁹ Consequently, all requests for public records, even if made for a commercial purpose or to assist the requester in a lawsuit against the holder of the records, must be honored in accordance with the Public Records Law.

Fees

A records custodian may charge a reasonable fee to recover the costs of complying with a public records request.²⁰ A records custodian is encouraged, but not required, to waive fees where disclosure is in the public interest.²¹ Please be advised that the Supervisor does not have the authority to order a waiver of fees. Records custodians assessing a fee must do so in

¹⁴ 950 CMR 32.08(1).

¹⁵ Id.

¹⁶ Id.

¹⁷ 950 CMR 32.08(2).

¹⁸ G. L. c. 4, § 7(26) (defining "public records" as materials which have already been "made or received" by a public entity); see also 32 Op. Att'y Gen. 157, 165 (May 18, 1977)