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Office of the General Counsel
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Guide to Public Records For Massachusetts Law Enforcement Agencies Adhered to by the Lanesborough Police Department.

2016 Edition





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I. INTRODUCTION

On June 3, 2016, Governor Baker signed Bill H.4333 into law. This law represents a massive overhaul to the Public Records law, originally enacted nearly 43 years ago.

The law will become effective as of January 1, 2017, so departments should conduct training, develop guides and begin implementing the provisions of this law to ensure compliance. The Supervisor of Public Records (“Supervisor” or “SPR”) has also been tasked with developing regulations by January 1, 2017 and to develop educational materials, training and guidelines for departments.¹ As of the date of publication of this Guide, the SPR has adopted updated regulations relative to the new law, but has yet to develop educational materials, training and best practices.

There are a series of **ACTION ITEMS** scattered throughout this Guide which advise law enforcement executives of particular actions that must be taken prior to the effective date of the law on January 1, 2017.

Lastly, the terms “municipality” and “agency” appear throughout the new law. Representatives from the office of the SPR has confirmed that the term “agency” applies to state agencies only and that the term “municipality” applies to municipalities and municipal departments. As a result, municipal police departments will be held to the standards established for municipalities in the new law.

DISCLAIMER: **THIS GUIDE REFLECTS THE UPDATES TO THE PUBLIC RECORDS LAW AS APPEARS IN THE UPDATED LAW AND REGULATIONS. WHILE THIS GUIDE SHOULD PROVIDE PRACTITIONERS WITH A GOOD WORKING KNOWLEDGE OF THE NEW LAW, IT SHOULD NOT BE USED AS A SUBSTITUTE FOR LEGAL COUNSEL. WE ARE STILL WAITING FOR THE SUPERVISOR OF PUBLIC RECORDS TO PROVIDE CLARIFICATION TO SOME PROVISIONS AND OUTSTANDING QUESTIONS AND BEST PRACTICES FOR POLICE DEPARTMENTS. UPDATED INFORMATION, CLARIFICATION AND BEST PRACTICES WILL BE DISTRIBUTED AS SOON AS THEY ARE RECEIVED.**

¹ G.L. c. 66, § 1A.



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II. BASIC PRINCIPLES

Under the Massachusetts Public Records Law (“the Law” or “PRL”) every person has the right to access **public records**. This includes the right to inspect, copy or have copies provided to them. One of the services that all police departments provide in the Commonwealth of Massachusetts is the dissemination of information to the public.

A. Definition of Public Records

The term “public records” includes

“all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, or any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in section 1 of chapter 32...”²

Essentially, all records a police department holds, creates, maintains, etc. are **presumed** to be public records unless a specifically-identified exemption applies.

Keep in mind that public records also include those records which are created by electronic means.³

Exemptions to the PRL will be discussed in a subsequent section.

² G.L. c. 4, § 7(26).

³ G.L. c. 66, § 3.



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B. Definition of Records Custodian

A “custodian” is “any governmental entity that makes or receives public records.”⁴

Under the old PRL, it was the custodian who not only maintained the public records, but also was responsible for handling public records requests. The new changes to the PRL requires the **records access officer** to handle public records requests.

C. Definition of Records Access Officer

A “records access officer” (RAO) is “the employee designated within a governmental entity to perform the duties described in 950 CMR 32.00 including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requesters to make informed requests regarding the availability of such public records electronically or otherwise.”⁵

The duties of a **records access officer** will be discussed in a subsequent section.

III. RECORD ACCESS OFFICERS

A. In General

The new Section 6A of Chapter 66 requires each agency and municipality to designate 1 or more employees as records access officers in order to coordinate responses to requests and facilitate the resolution of requests by the timely and thorough production of public records.⁶

ACTION ITEM

It should be a best practice that Chiefs should designate at least one (1) person to serve as the records access officer (RAO) of the department. While municipalities may designate the Town Clerk, or similar individual, to serve as the RAO for the entire municipality and all departments, chiefs should discuss the potential implications of this decision with those making the

⁴ 950 CMR 32.02.

⁵ 950 CMR 32.02.

⁶ G.L. c. 66, § 6A(a).



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designation. Keep in mind that the RAO will need to have access to department records, including information which may be protected as CORI or which relates to ongoing criminal investigations. In light of these concerns, chiefs may want to speak to their appointing authorities about this issue and request that town counsel opine on the matter in order to give chiefs some cover. It is recommended that out of an abundance of caution, each department designate one person from within the department as the RAO, unless such an assignment is not practicable.

B. Tasks of the RAO

The RAO is tasked with handling public records requests, and under the regulations **both municipal and agency RAOs** shall:⁷

- ✓ Coordinate the custodian's response to requests for access to public records and shall facilitate the resolution of such requests by the timely and thorough production of public records;
- ✓ Assist persons seeking public records to identify the records sought;
- ✓ Assist the custodian in preserving public records in accordance with all applicable laws, rules, regulations and retention schedules;
- ✓ To the extent feasible, provide public records to a requester in electronic format unless the record is not available in electronic form or the requester does not have the ability to receive or access the records in electronic format and if feasible, in the requesters preferred format. In the absence of a preferred format, the records shall be provided in a searchable machine-readable form;⁸

Where the requester is an individual held in custody in any correctional facility, as defined in M.G.L. c. 125, § 1(d), the RAO shall presume that the requester does not have the ability to receive or access records in usable electronic form;

⁷ G.L. c. 66, § 6A(b); 950 CMR 32.04(5).

⁸ G.L. c. 66, § 6A(d).



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- ✓ To the extent feasible, furnish the public records by providing reasonable assistance in locating the records on an appropriately indexed and searchable public website;
- ✓ Prepare guidelines of the agency or municipality that enable the person seeking access to public records in the custody of the agency or municipality to make informed requests regarding the availability of such public records electronically or otherwise. The guidelines shall include a list of categories of public records maintained by the agency or municipality and such list shall be updated periodically; each agency or municipality that maintains a website shall post the guidelines on its website;
- ✓ A municipal RAO shall, to the extent feasible, post commonly available public record documents on a website maintained by the municipality. The website copy shall not be deemed the record copy for retention purposes.

In addition to those tasks discussed immediately above, the following requirements also apply to **all agency RAOs**:⁹

- ✓ Agency designation of primary and secondary RAOs; reporting requirements:
 - Each agency shall designate one primary RAO responsible for reporting information to the Secretary pursuant to M.G.L. c. 66, § 6A(e) and 950 CMR 32.05(1)(c).
 - A primary RAO shall submit a notification of such designation to the Division electronically in a manner determined by the Division.
 - The primary RAO may notify the secondary RAO to facilitate reporting such information.
 - The primary RAO shall electronically notify the Secretary of the designation of secondary RAO electronically in a manner determined by the Division.
 - The agency shall maintain and update information regarding primary and secondary RAOs electronically, including changes in personnel identified as primary and secondary RAOs, in a manner determined by the Division.
- ✓ Agency RAOs shall electronically report to the Secretary the information described in 950 CMR 32.05(1)(c)1. through 9. in a manner determined by the Secretary.

⁹ 950 CMR 32.05.



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- ✓ An agency RAO shall report to the Secretary with respect to written requests for public records and responses to these requests for each calendar year ending December 31st.
 - The nature of each request and the date on which each request was received;
 - The date on which a response is provided to the requester;
 - The date on which a public record is provided to the requester;
 - The number of hours required to fulfill the request;
 - Fees charged to the requester, if any;
 - RAO petitions to the Supervisor submitted under M.G.L. c. 66, § 10(d)(iv) and 950 CMR 32.06(4)(g) and (g);
 - Requests appealed to the Supervisor under M.G.L. c. 66, § 10A and 950 CMR 32.08(1);
 - The time required to comply with the Supervisor's order under M.G.L. c. 66, § 10A; and
 - The final adjudication of any associated court proceedings under M.G.L. c. 66, § 10A(d).

- ✓ The Supervisor may make exceptions to the reporting requirement in 950 CMR 32.05(1)(c) for particular classes of records, such as:
 - Certified copies of records;
 - Registry of deeds records;
 - Incorporation records;
 - Vital records;
 - Criminal offender record information requested by the offender, representative, or other authorized recipient.

- ✓ All information must be provided in accordance with 950 CMR 32.05(1) within ten business days of the last day of the calendar year.

- ✓ An agency shall provide on a searchable website electronic copies, accessible in a commonly available electronic format, of the following types of records, provided that any agency may withhold any record or portion thereof in accordance with state or federal law:
 - Final opinions, decisions, orders, or votes from agency proceedings;
 - Annual reports;
 - Notices of regulations proposed under M.G.L. c. 30A;
 - Notices of hearings;
 - Winning bids for public contracts;
 - Awards of federal, state and municipal government grants;



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- Minutes of open meetings;
 - Agency budgets; and
 - Any public record information of significant interest that the agency deems appropriate to post, such determinate to be made by each agency on a case-by-case basis.
- ✓ An agency shall post records online pursuant to 950 CMR 32.05(1)(f) as soon as practicable on a website maintained by the agency. The website copy shall not be deemed the record copy for retention purposes. 950 CMR 32.05(1)(f) and (g) shall apply only to records made or received on or after January 1, 2017.
- ✓ An agency may fulfill the requirements of 950 CMR 32.05(1)(f) and (g) by providing links to other agency websites that provide access to the categories of records described in 950 CMR 32.05(1)(f)1. through 9.; provided, however, that the website is searchable and provides electronic copies, accessible in a commonly available electronic format.

ACTION ITEM

Chiefs should ensure that the department's RAO is tasked with the respective responsibilities listed above. Remember that state agency RAOs have more responsibilities than RAOs of municipal police departments. As will be discussed below, RAOs of state agencies will be required to document each request received and make an annual report to the SPR while municipal department RAOs will not.

C. Identifying the RAO

The name, title, business address, business telephone number, and business email address of each records access officer must be posted in a conspicuous location at the department's offices and on its website, if any.¹⁰

¹⁰ G.L. c. 66, § 6A(c); 950 CMR 32.04(4).



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ACTION ITEM

Chiefs must post the name, title, business address, business telephone number, and business email address of each RAO in a conspicuous location at the department (e.g. the lobby) and on the department's website if one exists.

A sample notification has been included in the Appendix (SAMPLE FORM 1).

Keep in mind that if an RAO is scheduled to be out of the office during a certain period of time, this is not an excuse to extend the time limits for responding to a public record request. If an RAO is scheduled to be the office, then the another person should be designated as RAO to handle requests.

D. Documenting of Requests (State Agency RAOs ONLY)

Keep in mind that only agency RAOs are required to document each request submitted (as discussed above), specifically documenting:¹¹

1. the nature of the request and the date on which the request was received;
2. the date on which a response is provided to the requester;
3. the date on which a public record is provided to the requester;
4. the number of hours required to fulfill the request;
5. fees charged to the person making the request, if any;
6. petitions submitted under clause (iv) of subsection (d) of section 10;
7. requests appealed under section 10A;
8. the time required to comply with supervisor of records orders under said section 10A; and

¹¹ G.L. c. 66, § 6A(e); 950 CMR 32.05(c).



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9. the final adjudication of any court proceedings under subsection (d) of said section 10A.

ACTION ITEM

Chiefs of state agencies should prepare a designated system for the recording of this information by the RAO. Each records request may be recorded either electronically or in writing. Each chief must make the determination as to the most appropriate mode of collecting and storing this information. In either case, a form should be adopted by the agency that should be used for each request.

A sample form has been included in the Appendix (SAMPLE FORM 2).

IV. REQUESTS

RAOs should understand that any request made orally in person or in writing must be honored. Telephone requests may be accepted at the discretion of the RAO.¹² Written requests may include those made in-person, or via mail, electronic mail or facsimile (if available).¹³ Furthermore, an RAO cannot require the requester to complete a particular form, but may make forms available for requesters.¹⁴

A requester shall not be required to make a personal inspection of the record prior to receiving a copy.¹⁵

Furthermore, the requester may not necessarily know what information he or she is specifically looking for. While the requester may be able to provide a rough description of what information is sought, it is up to the RAO to help the requester determine what he or she is seeking. It is not a valid reason to deny a request simply because the requester did not use a specific phrase or term of art to request the record.

¹² 950 CMR 32.06(1)(a).

¹³ G.L. c. 66, § 10(a); 950 CMR 32.06(1)(c).

¹⁴ 950 CMR 32.06(1)(d).

¹⁵ 950 CMR 32.06(1)(e).



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A RAO may not require the requester to specify the purpose for a request, except:¹⁶

- 1) when the requested records concern information which may be exempt from disclosure under Exemption (n);
- 2) to determine whether the records are requested for a **commercial purpose**; or
- 3) whether to grant a request for a fee waiver.

Commercial Purpose means “the sale or resale of any portion of the public record or the use of information from the public record to advance the requester’s strategic business interests in a manner that the requester can reasonably expect to make a profit, and shall not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or for academic, scientific, journalistic or public research or education.”¹⁷

V. RESPONSES

Once a request is received by the RAO, the RAO must respond to the request. The PRL generally provides that RAOs must permit inspection or furnish a copy of any public record no later than 10 business days following the receipt of the request, provided that:¹⁸

1. the request reasonably describes the public record sought;
2. the public record is in the possession, custody or control of the department; and
3. payment of a reasonable fee, if any, is received.

Whether the response is: (1) to comply with the request (either with redacted or un-redacted records); (2) a denial; or (3) an extension of time or clarification of the request; **ALL RESPONSES MUST BE MADE WITHIN 10 BUSINESS DAYS OF THE DATE THE REQUEST WAS RECEIVED.**

Calculation of Time

The PRL refers to “business days” as opposed to “calendar days”. As a result, Saturdays, Sundays and legal holidays

¹⁶ G.L. c. 66, § 10(d)(viii).

¹⁷ G.L. c. 66, § 10(d)(ix); see also 950 CMR 32.02.

¹⁸ G.L. c. 66, § 10(a).



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should be excluded from the calculation of time. Also, for written requests, the calculation of time begins on the first business days following receipt of the request by the RAO. For oral requests, the calculation of time begins on the day the request was made.¹⁹

The RAO and requester may enter into an agreement to extend the time required to respond under the PRL.²⁰ It is advisable that any such agreements be documented, in writing.

Records must be produced electronically as long as they are available in electronic format and the requester has the ability to receive or access the records in a usable electronic form. Records should be provided in the requester's preferred format or, in the absence of a preferred format, in a searchable, machine readable format. If the record requested is available on the department website, the records access officer may furnish the public record by providing reasonable assistance in locating the requested record on the website.²¹

A. Compliance Response WITHOUT Redactions

In most instances, the agency will have the requested record and be able to provide the record either in its un-redacted format or in a redacted format due to the application of one exemption or another. This is what is referred to as a "compliance response." If the compliance response offers un-redacted records, then no other written response is necessary.

B. Compliance Response WITH Redactions & Denials

If the compliance response offers redacted records or the response is simply an outright withholding of records or denial of access to the records, then the RAO must provide a written response to the requester explaining the redactions and/or denial. The written response must be either made via first-class mail or electronic mail and include the following (if applicable):²²

1. confirm receipt of the request;

¹⁹ 950 CMR 32.06(2)(e).

²⁰ 950 CMR 32.06(i).

²¹ G.L. c. 66, § 6A(d); 950 CMR 32.04(5)(d) & (e).

²² G.L. c. 66, § 10(b); 950 CMR 32.06(3)(a) & (c).



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2. identify any records or categories of records sought that are not within the department's possession, custody, or control;
3. identify the agency or municipality that may be in possession, custody or control of the record sought, if known;
4. identify any records, categories of records or portions of records that the department intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based;
5. identify any records, categories of records, or portions of records that the department intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the department and therefore requires additional time to produce the public records sought;
6. suggest a reasonable modification of the scope of the request or offer to assist the requester to modify the scope of the request if doing so would enable the entity to produce records sought more efficiently and affordably;
7. include an itemized, good faith estimate of any fees that may be charged to produce the records; and
8. include a statement informing the requester of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

If the record is withheld on the basis of the attorney-client privilege, the RAO must provide the following information in the written denial: (1) a detail description of the record; (2) the names of the authors and recipients; and (3) in general terms, the subject matter of the withheld information.²³

Furthermore, the RAO may deny requests from a requester who has previously failed to pay for previously produced records. In such instances, the records access officer must provide a written denial explaining the reason for the denial and the amounts owed.²⁴

²³ 950 CMR. 32.06(3)(d).

²⁴ G.L. c. 66, § 10(d)(vi) & (vii); 950 CMR 32.07(2)(n).



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A sample response form has been included in the Appendix (SAMPLE FORM 3).

C. Obtaining an Extension

If the department is unable to respond within 10 business days as a result of the undue burden placed upon the other responsibilities of the department due to the magnitude or difficulty of the request, or of multiple requests from the same requester, the department must inform the requester in writing (no later than 10 business days after the initial receipt of the request). The written response shall be made via first class or electronic mail and shall:²⁵

1. confirm receipt of the request;
2. identify any records or categories of records sought that are not within the department's possession, custody, or control;
3. identify the agency or municipality that may be in possession, custody or control of the record sought, if known;
4. identify any records, categories of records or portions of records that the department intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based;
5. identify any records, categories of records, or portions of records that the department intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the department and therefore requires additional time to produce the public records sought;
6. identify a reasonable timeframe (no more than **25 business days** following the initial receipt of the request **for municipal police departments** and no more than **15 business days** following the initial receipt of the request **for state agencies**) in which the records will be produced;

²⁵ G.L. c. 66, § 10(b).



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7. suggest a reasonable modification of the scope of the request or offer to assist the requester to modify the scope of the request if doing so would enable the entity to produce records sought more efficiently and affordably;
8. include an itemized, good faith estimate of any fees that may be charged to produce the records; and
9. include a statement informing the requester of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

Keep in mind that while there no need to obtain the permission of the Supervisor of Public Records for this extension, departments are cautioned against using this process as a blanket automatic extension in all cases. Remember, the standard here is the **inability to respond within 10 business days as a result of the undue burden place upon other responsibilities of the department due to the magnitude or difficulty of the request, or due to multiple requests by the same requester.**

Also, pay close attention to the timing of the extension:

For **municipalities**, the extension may be for up to 25 days following the initial receipt of the request, meaning an additional 15 days after the 10 day deadline.

For **state agencies**, the extension may be for up to 15 days following the initial receipt of the request, meaning an additional 5 days after the 10 day deadline.

A sample response form with sample extension language has been included in the Appendix (SAMPLE FORM 3).

VI. EXTENSIONS

A. First Extension

The rules governing the first extension to respond to a public records request is found in Section V(C) above.



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B. Second Extension

If a municipal department needs more than 25 days to respond or a state agency needs more than 15 days to respond to a request, then a second extension may be requested. Unlike the first extension, a petition must be filed with the Supervisor of Public Records requesting this extension.²⁶

Again, the standard for such an extension is that the RAO cannot complete the request within 25 business days (for municipal departments) and 15 business days (for state agencies) following its initial receipt because the request **unduly burdens the other responsibilities of the entity due to the magnitude or difficulty of a request, or the receipt of multiple requests from the same requester.**²⁷

A petitions for an extension of time must be filed within 20 business days after the initial receipt of the request or within 10 business days after receipt of a determination by the supervisor of public records that the requested record constitutes a public record. The requester must be provided with a copy of the petition.²⁸

The Supervisor of Public Records **may** grant a single extension of up to 30 business days (for municipal departments) and up to 20 business days (for state agencies). In determining whether good cause exists, the supervisor may consider the following:²⁹

- ✓ the need to search for, collect, segregate or examine records;
- ✓ the scope of redaction required;
- ✓ the capacity or the normal business hours of operation of the department;
- ✓ efforts undertaken by the department to fulfill request;
- ✓ whether the request is frivolous or intended to harass or intimidate the department; and
- ✓ the public interest served by expeditious disclosure.

²⁶ G.L. c. 66, § 10(c); 950 CMR 32.06(4).

²⁷ G.L. c. 66, § 10(c); 950 CMR 32.06(4).

²⁸ G.L. c. 66, § 10(c); 950 CMR 32.06(4).

²⁹ G.L. c. 66, § 10(c); 950 CMR 32.06(4).



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As a result, the RAO should be careful to address each of these factors in the petition.

The supervisor of records will issue a decision within 5 business days of receiving the petition.³⁰

The supervisor has discretion to grant a longer extension or to relieve the department of its obligation to comply with the request if the supervisor determines that the request is frivolous or designed to intimidate or harass, and the request is not intended for the broad dissemination of information to the public about actual or alleged government activity.³¹

VII. FEES

ACTION ITEM

As an initial matter, note that G.L. c. 66, § 10(a) as it existed under the past PRL has been deleted in its entirety. This section previously provided that department could charge \$5 for the first six pages of accident reports and \$1.00 per page for crime, incident or miscellaneous reports. This provision has been deleted and re-written.

Since there is no mention of charging \$5.00 per accident report in the law, departments should no longer charge this flat rate fee, even for insurance companies requesting motor vehicle accident reports. Unless the SPR opines otherwise, departments should charge insurance companies the same as all other requesters would be charged.

For those departments that use online services for the distribution of accident reports which charge a flat rate fee (e.g. \$10), this should be permissible provided that the department also permits the public to request the same document from the department for the fee allowable under the public records law. For those departments that use such services, it would be advisable to put something on the website alerting individuals that the department has partnered with [insert company] to provide such reports for a convenience fee of [insert fee]. If an

³⁰ G.L. c. 66, § 10(c).

³¹ G.L. c. 66, § 10(c); 950 CMR 32.06(4).



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individual wishes to make a public records request directly to the department, the department will happily provide a copy of the same report for \$0.05 per page, pursuant to the PRL.

An RAO may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection (e.g. public log or press log).³²

If any fee is going to be assessed, the RAO must provide the requester with a written, good faith estimate within 10 business days.³³

If the RAO does not respond to the request within 10 business days, no fee may be charged.³⁴

A. Copy Costs

Single and double-sided black and white paper copies or printouts of public records susceptible to reproduction by ordinary means cannot exceed \$0.05.³⁵ It is not permissible to take a record that is electronically accessible and print it out, copy it, and send it to the requester so that copy costs may be accessed. For records which are not susceptible to reproduction by ordinary means, the actual cost of reproduction may be charged.³⁶

Public records should be provided in electronic format, if possible, and it should be presumed that the requester's preferred format is electronic unless otherwise noted.³⁷ No copy costs may be charged for records provided electronically or by facsimile.³⁸

As an alternative to obtaining copies, a requester shall be permitted, to the extent feasible, and at reasonable times:³⁹

- To view and inspect records prior to obtaining copies; or
- To use a personal device such as a camera or portable scanner to copy records.

³² G.L. c. 66, § 10(d).

³³ 950 CMR 32.07(2)(b).

³⁴ G.L. c. 66, § 10(e).

³⁵ G.L. c. 66, § 10(d)(i); 950 CMR 32.07(2)(e).

³⁶ 950 CMR 32.07(2)(h).

³⁷ 950 CMR 32.07(1)(c);

³⁸ 950 CMR 32.07(2)(f).

³⁹ 950 CMR 32.07(1)(b).



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B. Search and Segregation Fees

1. **Municipal Departments**

A fee for search and segregation may be charged only if:⁴⁰

- The department is required to devote more than 2 hours of time to search for, compile, segregate, redact or reproduce a record; and
- The segregation or redaction of records is required by law [under Exemption (a)] or the fee is approved by the supervisor of public records.

If a fee is permitted, then the following rules apply:⁴¹

- The fee must be calculated using the hourly rate equal to or less than the hourly rate of the lowest paid employee who has the necessary skill to complete the search and segregation. However, the hourly rate cannot exceed \$25.00 per hour unless approved by the supervisor of public records.
- For municipalities with over 20,000 people, the first 2 hours cannot be charged. For municipalities with 20,000 people or less, the first 2 hours may be charged.

2. **State Departments**

A fee for search and segregation may be charged only if:⁴²

- The agency is required to devote more than 4 hours of time to search for, compile, segregate, redact or reproduce a record; and
- The segregation or redaction of records is required by law [under Exemption (a)] or the fee is approved by the supervisor of public records.

If a fee is permitted, then the following rules apply:⁴³

⁴⁰ G.L. c. 66, § 10(d); 950 CMR 32.07(2)(d) & (m).

⁴¹ G.L. c. 66, § 10(d); 950 CMR 32.07(2)(i) & (m).

⁴² G.L. c. 66, § 10(d); 950 CMR 32.07(2)(d) & (l).

⁴³ G.L. c. 66, § 10(d); 950 CMR 32.07(2)(i) & (l).



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- The fee must be calculated using the hourly rate equal to or less than the hourly rate of the lowest paid employee who has the necessary skill to complete the search and segregation. However, the hourly rate cannot exceed \$25.00 per hour.
- The first 4 hours cannot be charged.

C. Postage Costs

The RAO may charge the actual cost of postage to mail copies of public records, but only if:⁴⁴

- 1) The requester specifically requests that records be mailed or is unable to receive copies in person; and
- 2) The RAO charges the lowest cost available for such mailing, at the discretion of the requester.

D. Medium / Reproduction Costs

The actual cost of reproducing the record or any storage device may be charged to the requester.⁴⁵

E. Discretion to Waive & Waiver of Fees

Records access officers have the discretion to waive or reduce fees. Such waiver or reduction may be granted where it is shown that:⁴⁶

- 1) Disclosure of a requested record is in the public interest;
- 2) The request is not primarily in the commercial interest of the requester; or
- 3) The requester lacks the financial ability to pay the full amount of the reasonable fee.

⁴⁴ G.L. c. 66, § 10(d)(i); 950 CMR 32.07(2)(c) & (g).

⁴⁵ G.L. c. 66, § 10(d)(i); 950 CMR 32.07(2)(c) & (g).

⁴⁶ G.L. c. 66, § 10(d)(v); 950 CMR 32.07(2)(k).



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A fee cannot be charged if the records access officer failed to respond to the requester within 10 business days.

F. Petitions to Charge Fees

A municipal department may petition the supervisor of records to allow an hourly fee in excess of \$25 or to charge time spent segregating or redacting documents (not required by law).⁴⁷

A state agency may only petition the supervisor to charge time spent segregating or redacting documents (not required by law) and may not request an hourly fee in excess of \$25.⁴⁸

The supervisor may approve the petition if:⁴⁹

1. the request is for a **commercial purpose**; or
2. the fee represents an actual and good faith representation to comply with the request, the fee is necessary, the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records.

A copy of the petition must be provided to the requester and the supervisor will make a decision within 5 business days of receiving the petition.

VIII. **Violations for Noncompliance; Penalties; Sanctions**

A. Petitions to Supervisor of Public Records

The new Section 10A of Chapter 66 provides a mechanism for requesters to file a petition with the supervisor of records for a determination that the agency or municipality violated the requirements of G.L. c. 66, § 10. The supervisor will review the records and make a decision within 10 business days of receiving the petition. The supervisor will order “appropriate relief” and the requester may appeal the order to

⁴⁷ G.L. c. 66, § 10(d)(iv); 950 CMR 32.06(4).

⁴⁸ G.L. c. 66, § 10(d)(iv); 950 CMR 32.06(4).

⁴⁹ G.L. c. 66, § 10(d)(iv); 950 CMR 32.06(4).



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the superior court. Keep in mind that oral requests cannot serve as the basis for an appeal to the SPR.⁵⁰

The SPR may deny an appeal, for among other reasons, if in the opinion of the SPR:⁵¹

- 1) The public records in question are the subjects of disputes in active litigation, administrative hearings or mediation;
- 2) The request is designed or intended to harass, intimidate, or assist in the commission of a crime;
- 3) The public records request is made solely for a *commercial purpose*;
- 4) The requester has failed to comply with the provisions of 950 CMR 32.08(2).

If the department refuses or fails to comply with the order of the supervisor, then the supervisor **may** notify the attorney general, who **may** take whatever measures necessary to ensure compliance including an action to compel compliance filed before the superior court.⁵²

B. Civil Actions Before Superior Court

The new Section 10A of Chapter 66 gives a requester the right to file a civil action to enforce the requirements of the public records law in the superior court.⁵³ As always, the burden is on the department to prove, by a preponderance of the evidence, that the record or portion of the record may be withheld. All records are presumed public unless proven otherwise. For such actions, the superior court will have the following powers:⁵⁴

- To issue an injunction;
- To conduct an in-camera review of the records;
- To expedite the proceeding;

⁵⁰ G.L. c. 66, § 10A(a); 950 CMR 32.08(1) & (2).

⁵¹ 950 CMR 32.08(2).

⁵² 950 CMR 32.09; G.L. c. 66, § 10A(b).

⁵³ G.L. c. 66, § 10A(c).

⁵⁴ G.L. c. 66, § 10A(d)(1).



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- To award reasonable attorney fees and costs. Such fees and costs should be awarded unless the agency or municipality proves that:⁵⁵
 - the supervisor ruled in its favor;
 - it reasonably relied upon a published opinion of an appellate court or attorney general of the commonwealth based on substantially similar facts;
 - the request was designed or intended to harass or intimidate; or
 - the request was not in the public interest and made for a commercial purpose unrelated to disseminating information to the public about actual or alleged government activity.
- To order an agency or municipality to waive any fee assessed for complying with the request.⁵⁶
- To assess punitive damages of between \$1,000 - \$5,000 against an agency or municipality that has not acted in good faith in withholding records or failing to appropriate respond to the request. Such amount will be deposited into the Public Records Assistance Fund.⁵⁷

IX. Exemptions

In 2013, the Division of Public Records published [A Guide to the Massachusetts Public Records Law](#) which discusses the Public Records Law in depth. While many provisions of this Guide are now outdated by operation of the passing of the new PRL, the discussion relative to the exemptions is particularly useful and still probative since the exemptions remain mostly unchanged. As a result, some of the provisions in the Guide that relate to each exemption have been reproduced herein.

A. Exemption (a)

⁵⁵ G.L. c. 66, § 10A(d)(2).

⁵⁶ G.L. c. 66§ 10A(d)(3).

⁵⁷ G.L. c. 66, § 10A(d)(4).



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Exemption (a) applies to records that are

specifically or by necessary implication exempted from disclosure by statute⁵⁸

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

A government entity may use the statutory exemption as a basis for withholding requested materials where the exempting statute expressly states or necessarily implies that the public's right to inspect records under the Public Records Law is restricted.⁵⁹

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either "shall not be a public record," "shall be kept confidential" or "shall not be subject to the disclosure provision of the Public Records Law."⁶⁰

The second category under the exemption includes records deemed exempt under statute by necessary implication.⁶¹ Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities.⁶² A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

Examples of Exemption (a) Statutes as may relate to law enforcement include the following:

⁵⁸ G.L. c. 4, § 7(26)(a).

⁵⁹ Attorney General v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 549, 545-46 (1977).

⁶⁰ See, e.g., G.L. c. 41, § 97D (all reports of rape or sexual assault "shall not be public reports").

⁶¹ G.L. c. 4, § 7(26)(a).

⁶² See, e.g., G.L. c. 6, § 172 ("Criminal offender record information...shall only be disseminated to: criminal justice agencies...").



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- Alcohol Treatment Records: G. L. c. 111B, § 11.
- Conflict of Interest, Request for an Opinion: G. L. c. 268A, § 22.
- Criminal Offender Record Information: G. L. c. 6, § 167.
- Delinquency, Sealing by Commissioner of Probation: G. L. c. 276, § 100B.
- Department of Social Services, Central Registry: G. L. c. 119, § 51F.
- Department of Youth Services Records: G. L. c. 120, § 21.
- Drug Addiction Treatment Records: G. L. c. 111E, § 18.
- Firearms Bureau Records: G. L. c. 66, § 10(d).
- Hazardous Substances Reports: G. L. c. 111F, § 21.
- Home Addresses and Telephone Numbers of Public Safety Personnel, Victims of Adjudicated Crimes and Persons Providing Family Planning Services: G. L. c. 66, § 10.
- Inspector General Investigations, Records: G. L. c. 12A, § 13.
- Juvenile Delinquency Case Records: G. L. c. 119, § 60A.
- Protective Services Records, Aged Persons: G. L. c. 19A, § 23.
- Rape and Domestic Abuse Reports: G. L. c. 41, § 97D.

1. Criminal Offender Record Information (CORI)

Chapter 6, sections 167 through 172 protects the release of criminal offender record information (CORI) in certain instances.

CORI includes records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 is adjudicated as



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an adult, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.⁶³

The regulations promulgated by DCJIS provides the following instances for when CORI may be disseminated by a criminal justice agency (CJA):⁶⁴

- 1) CORI may be provided to another CJA for official criminal justice purposes;
- 2) A CJA with official responsibility for a pending criminal investigation or prosecution may disseminate CORI that is specifically related to, and contemporaneous with, an investigation or prosecution;
- 3) A CJA may disseminate CORI that is specifically related to, and contemporaneous with, the search for, or apprehension of, any person, or with a disturbance at a penal institution;
- 4) A CJA may disseminate CORI to principals or headmasters relating to a student aged 18 or older charged with or convicted of a felony offense, provided that information provided to school officials is limited to the felony offense(s) that may subject the student to suspension or expulsion pursuant to the provisions of M.G.L. c.71, § 37H½; for the purpose of publishing information in the department's daily log as required by M.G.L. c. 41, § 98F;
- 5) A CJA may disseminate CORI as otherwise authorized by law in the interest of public safety.
- 6) Pursuant to C.L. c. 6, § 175, a CJA may disseminate CORI to the individual to whom it pertains, or to the individual's attorney, with a signed release from the individual. The CORI provided shall be limited to information compiled by the CJA, such as a police report prepared by the CJA. A CJA may not provide an individual with any CORI obtained through CJIS.
- 7) If an individual seeks to access the individual's national criminal history, the individual shall contact the FBI. Likewise, requests for driver history information shall be submitted to the Massachusetts Registry of Motor

⁶³ G.L. c. 6, § 167.

⁶⁴ 803 CMR 7.10.



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Vehicles. All other information contained in CJIS shall only be disseminated to other criminal justice agencies for official criminal justice purposes.

- 8) All requests for an individual's CORI shall be directed to DCJIS.

2. Domestic Violence and Rape Reports

Chapter 41, section 97D provides that

All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality; provided, however, that all such reports shall be accessible at all reasonable times, upon written request, to: (i) the victim, the victim's attorney, others specifically authorized by the victim to obtain such information, prosecutors and (ii) victim-witness advocates as defined in section 1 of chapter 258B, domestic violence victims' counselors as defined in section 20K of chapter 233, sexual assault counselors as defined in section 20J of chapter 233, if such access is necessary in the performance of their duties; and provided further, that all such reports shall be accessible at all reasonable times, upon written, telephonic, facsimile or electronic mail request to law enforcement officers, district attorneys or assistant district attorneys and all persons authorized to admit persons to bail pursuant to section 57 of chapter 276. Communications between police officers and victims of said offenses and abuse may also be shared with the forgoing named persons if such access is necessary in the performance of their duties. A violation of this section shall be punished by imprisonment for not more than 1 year or by a fine of not more than \$1,000, or both such fine and imprisonment.

3. G.L. c. 66, § 10B



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The home address, telephone number and personal email address of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel shall not be public records. This also includes the name, home address, telephone number and personal email address of family members of such personnel.

The home address, telephone number, personal email address or place employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name, home address, telephone number, personal email address or place of employment or education of a family member of any of the foregoing shall not be public records.

Licensing authorities (under G.L. c. 140, § 121) shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said chapter 140, and names and addresses of persons licensed to carry or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in section 167 of chapter 6 and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

4. Law Enforcement Cases

- The Supervisor of Public Records ruled that the Drivers' Privacy Protection Act did not apply to a request for an electronic index/list of resident parking permits, including the recipient's name, address, neighborhood, issue date, and other public information in the database since the information contained in the parking permit database is obtained directly from the individual seeking the permit, rather than through the Registry of Motor Vehicles. SPR14/144 (September 17, 2014).
- The Supervisor of Public Records had no jurisdiction to rule on the applicability of G.L. c. 214, § 1B. Decisions regarding whether privacy rights have been violated under this statute are the jurisdiction of the superior court, and as a result, this was not a valid application of Exemption (a). SPR14/482 (October 10, 2014).



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- The Supervisor of Public Records ruled that law enforcement officials had discretion whether to release a copy of the public information / booking photo for a specifically identified individual. 803 CMR 2.04(5)(a). A state agency is granted deference in interpreting its own regulations. Rock v. MCAD, 384 Mass. 198, 207 (1981). In consultation with the Supervisor of Public Records, the General Counsel to DCJIS concurs with this analysis. As a result, an agency may properly withhold booking photos under CORI. SPR14/620 (January 21, 2015).
- The Supervisor of Public Records ruled that documents related to a suspect's arrest and booking, including the booking photograph or any other documents prepared during the booking process could not be wholly withheld under CORI unless it could be shown that the identity of the arrested person was known. The CORI Act does not apply to files in which individuals are not directly or indirectly identifiable. G.L. c. 6, § 167. SPR14/654 (February 24, 2015).
- The Supervisor of Public Records ruled that it is appropriate to withhold the booking photograph as CORI. SPR14/679 (February 19, 2015).
- The Supervisor of Public Records ruled that arrest reports may be properly withheld as CORI. SPR14/680 (February 20, 2015).
- Arrest report of a Deputy Sheriff may be properly withheld as CORI. SPR14/737 (March 9, 2015).
- A chronological booking log may be properly withheld as CORI. SPR14/739 (February 24, 2015).
- Abuse prevention orders must be withheld under G.L. c. 41, § 97D. SPR15-437 (July 20, 2015).

B. Exemption (b)

Exemption (b) applies to records that are

related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper



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performance of necessary governmental functions requires such withholding⁶⁵

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

There are no authoritative Massachusetts decisions interpreting Exemption (b). The general purpose of the cognate federal exemption, however, is to relieve agencies of the burden of assembling and maintaining for public inspection matters in which the public cannot reasonably be expected to have a legitimate interest.⁶⁶

The language of the federal provision is duplicated in the first clause of Exemption (b). The addition of the qualifying second clause of Exemption (b) evidences a legislative intent to create an exemption that is narrower in scope than the previously enacted, parallel federal exemption.⁶⁷

For Exemption (b) to apply in Massachusetts, a records custodian must demonstrate not only that the records relate solely to the internal personnel practices of the government entity, but also that proper performance of necessary government functions will be inhibited by disclosure.

C. Exemption (c)

Exemption (c) applies to

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy⁶⁸

⁶⁵ G.L. c. 4, § 7(26)(b).

⁶⁶ Department of the Air Force v. Rose, 425 U.S. 352, 362-70 (1976).

⁶⁷ See Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-33 (1983) (where the language of a parallel state statute differs in material respects from a previously enacted federal statute, a rejection or expansion of the legal principles embodied in the federal statute may be inferred).

⁶⁸ G.L. c. 4, § 7(26)(c).



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With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

The privacy exemption is made up of two separate clauses, the first of which exempts personnel and medical files. As a general rule, medical information will always be of a sufficiently personal nature to warrant exemption.⁶⁹

The Massachusetts Supreme Judicial Court determined that exempting personnel information from disclosure serves to protect the government's ability to function effectively as an employer.⁷⁰ The release of certain personnel information could disrupt the government's capability to conduct sensitive and careful investigations regarding employees.⁷¹

While statutorily exempting personnel information from the expansive definition of public records, the legislature did not explicitly define personnel information.⁷² However, judicial decisions acknowledge that the term is neither rigid, nor exact, and that the determination is case-specific.⁷³ The custodian's classification of materials as "personnel information" is not conclusive.⁷⁴ Instead, the nature or character of the documents, as opposed to the documents' label, is crucial to the analysis.⁷⁵

...

⁶⁹ Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 442 (1983); see also Globe Newspaper Company v. Chief Medical Examiner, 404 Mass. 132 (1989) (autopsy reports constitute exempt medical information).

⁷⁰ Wakefield Teacher's Association v. School Committee of Wakefield, 431 Mass. 792, 802 (2000).

⁷¹ Id.

⁷² G.L. c. 4, § 7(26)(c).

⁷³ Worcester Telegram & Gazette Corporation v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003).

⁷⁴ Wakefield Teacher's Association, 431 Mass. at 798.

⁷⁵ See Worcester Telegram & Gazette Corp., 436 Mass. at 386.



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Generally, personnel information that is useful in making employment decisions regarding an employee is sufficiently personal to be exempt pursuant to the first clause.⁷⁶ Such information may include employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information.⁷⁷

...

The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Its application is limited to “intimate details of a highly personal nature.”⁷⁸ Examples of “intimate details of a highly personal nature” include marital status, paternity, substance abuse, government assistance, family disputes and reputation.⁷⁹ Portions of records containing such information are exempt unless there is a paramount public interest in disclosure.⁸⁰

When applying the second clause of the exemption to requested records it is necessary to perform a two-step analysis: first, determine whether the information constitutes an “intimate detail” and second, determine whether the public interest in disclosure outweighs the privacy interest associated with disclosure.⁸¹ Consequently, the application of the second clause of the exemption must be determined on a case-by-case basis.

⁷⁶ Wakefield Teachers Association v. School Committee of Wakefield, 431 Mass. 792, 798 (2000); see also Connolly v. Bromery, 15 Mass. App. Ct. 661, 664 (1983) (evaluative materials are of a particularly personal and volatile nature).

⁷⁷ Wakefield Teachers Association v. School Committee of Wakefield, 431 Mass. 792, 798 (2000); see also Brogan v. School Committee of Westport, 401 Mass. 306, 308 (1987); Pottle v. School Committee of Braintree, 395 Mass. 861, 866 (1985); George W. Prescott Publishing Company v. Register of Probate for Norfolk County, 395 Mass. 274, 278 (1985).

⁷⁸ Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980).

⁷⁹ Id. At 626 n. 2.

⁸⁰ Collector of Lynn, 377 Mass. 156.

⁸¹ Id.



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1. Internal Affairs Records

The lead case on the applicability of exemption (c) to internal affairs records is Worcester Telegram & Gazette Corporation v. Chief of Police of Worcester, 58 Mass. App. Ct. 1 (2003), where the Court ruled that **internal affairs reports do not fall within exemption (c) of the public records law.**

In the Worcester case, the Telegram & Gazette sought to obtain access to a Worcester police department internal affairs file pursuant to the public records law. The file contained materials that were compiled during an investigation of a citizen complaint filed against a particular officer. The City sought to withhold the entire file on the ground that it was exempted under exemption (c) of the law. In particular, the City claimed that the file was categorically exempt “personnel file or information” because it was part of a disciplinary report. The City argued that because internal affairs is an investigatory process that leads to officer discipline, documents and reports in an internal affairs file are “disciplinary documentation” and “disciplinary reports” within the ambit of the decision in Wakefield Teachers Assn. v. School Comm. of Wakefield, 431 Mass. 792 (2000).⁸² The Appeals Court disagreed, however, and ruled that the certain portions of the internal affairs file must provided pursuant to the law.

In its analysis, the Court considered each of the different types of documents that were included within the internal affairs file in determining whether any of those documents would be exempted as “personnel file or information.”

The Court determined that the following documents in the internal affairs file did not fall within the ambit of exemption (c):

- Citizen complaint;
- Notice of claim under the Tort Claims Act;
- Letters from the Chief to the complainant (advising of the start of the investigation and of its results);
- Police reports;
- Incident reports;

⁸² In Wakefield, the SJC advised that “While the precise contours of the legislative term ‘personnel [file] or information’ may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’”... It would distort the plain statutory language to conclude that disciplinary reports are anything but ‘personnel [file] or information.’” Wakefield, 431 Mass. at 798.



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- Card reflecting police details and rosters;
- Arrest logs;
- Commercial phone book listing;
- Memoranda from the Chief to the involved officer and other officers requiring information about the incident;
- Responses of the involved officer and other officers;
- Summaries of witness interviews;
- Internal affairs report and supplemental report;
- Memorandum from the Chief to the involved officer detailing the results of the investigation.

Specifically, the Court noted that

The officers' reports, the witness interview summaries, and the *internal affairs report* itself clearly bear on the ultimate decision by the chief to discipline or to exonerate [the officer] based upon the investigation. However, that these documents bear upon such decisions does not make their essential nature or character 'personnel [file] or information.' Rather, their essential nature and character derive from their function in the internal affairs process.⁸³

The Court further explained "[t]hat the internal affairs process might lead to discipline, or even criminal action, does not transmute all materials in an internal affairs investigation into a disciplinary report, disciplinary documentation, or promotion, demotion or termination information."⁸⁴

The Court distinguished its holding in this case from that in the Wakefield by advising that

The formalized nature and unique purpose of the internal affairs citizen complaint process serve to distinguish this case from Wakefield, supra, in which the court determined a disciplinary decision and report of a school superintendent regarding a public

⁸³ Worcester, 58 Mass. App. Ct. at 7 (*emphasis added*).

⁸⁴ Worcester, 58 Mass. App. Ct. at 8.



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school teacher to be exempt "personnel [file] or information."...It would be odd, indeed, to shield from the light of public scrutiny as "personnel [file] or information" the workings and determinations of a process whose quintessential purpose is to inspire public confidence. Accordingly, we consider the officers' reports, the witness interview summaries, and the internal affairs report itself to be substantially different from the single, integrated report held to be "personnel [file] or information" in Wakefield. ...The nature and character of these materials, and the context in which they arise, take them beyond what the legislature contemplated when exempting "personnel [file] or information."⁸⁵

The Court did, however, determine that one document in the internal affairs file was subject to exemption (c); that was a notice from the disciplining authority (the Chief) to the involved officer advising of the disciplinary decision (that disciplinary action was not warranted in this particular case). The Court ruled that "[t]he nature and character of this document makes it part of 'the core category of personnel information that is useful in making employment decisions regarding the employee.'"⁸⁶

2. Law Enforcement Cases

- A Notification of Personnel Action Form was properly withheld while an Agreement between specifically named employee and city was not properly withheld. The Notification of Personnel Action Form is a disciplinary document that is useful in making employment decisions. Although certain information within records of separation, severance,

⁸⁵ Worcester, 58 Mass. App. Ct. at 8-9.

⁸⁶ Worcester, 58 Mass. App. Ct. at 9. The Court went on to explain that

We acknowledge that, at first glance, the distinction drawn between the records seems an unlikely splitting of hairs: the memorandum from the chief to [the officer] constitutes exempt "personnel [file] or information," while documents from the internal affairs investigation proper, including the interviews, the reports, the conclusions and recommendations, and the documenting of its results to the complainant are not so exempt. However, when considered in light of the purpose of the public records law, it is not at all illogical that the Legislature would intend the bricks and mortar of the investigation and the documenting of its results to the complainant to fall outside the exemption for "personnel [file] or information," but would intend the actual order and notice of disciplinary action issued as a personnel matter from the chief to the target of the disciplinary investigation to be exempt. Worcester, 58 Mass. App. Ct. at 10.



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transition or settlement agreements are considered public records subject to mandatory disclosure, portions of information contained in the agreements that are “useful in making employment decisions regarding an employee” are entitled to be withheld from mandatory disclosure. SPR15/314, recon. (January 8, 2016) (citing Globe Newspaper Company, Inc. v. Executive Office of Administration and Finance, Suffolk Superior Court Civil Action No. 11-01184-A (June 14, 2013)).

- Social security numbers may be properly withheld under exemption (c). Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988) (holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).
- Copy of a video of the exterior of the police department from January 10, taken from 7:38 a.m. to 8:20 a.m. was properly withheld where the release of a security video which provides a visual record of medical or personal information of a highly sensitive nature would unduly encroach upon the privacy rights or interests of an individual who voluntarily came to the Public Safety Building seeking medical assistance, particularly where the release of the video would add nothing to the written reports that the Town has already provided. SPR16/034; SPR 16/092 (February 17, 2016).
- Certain photographs and video and a specific witness statement relating to a fatal shooting were properly withheld where the photographs which depict the inside of the victim’s home after the incident had occurred and where the victim’s family still resides at this location and the disclosure of the photographs and video would provide an intimate view into their private residence. It was also proper to withhold the witness statement since it was provided by a minor child and the privacy exemption is specifically designed to protect information relating to individuals under the age of 18. SPR14/284 (June 3, 2014).
- Any information contained in a witness statement, which if disclosed would create a grave risk of directly or indirectly identifying the *voluntary witness* is subject to withholding. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 438 (1983).
- A copy of a 2002 investigative report regarding a specifically identified State Police Academy candidate was properly withheld as a personnel record where it was created as a result of a background investigation conducted of a prospective employee, and where the department



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generally conduct background investigations of candidates for employment and where the record is considered part of the candidate's employment application and useful in making employment decisions. SPR14/441, October 27, 2014.

- Copies of the disciplinary investigations that were conducted of two specifically identified police officers were not properly withheld. SPR14/482 (October 10, 2014).
- An individual's date of birth does not constitute exempt personnel information. Furthermore, the Superior Court has held that an individual's date of birth does not constitute an intimate detail of a highly personal nature. See Doe v. Registrar of Motor Vehicles, 1 Mass. L. Rptr. 156, 19-20 (1993). SPR14/520 (October 20, 2014).⁸⁷
- A 2013 Superior Court decision provides guidance with respect to the public nature of separation, severance, transition or settlement agreements, as well as the types of personnel information included within such agreements that may be exempt from disclosure. See Globe Newspaper Company, Inc. v. Executive Office of Administration and Finance, Suffolk Superior Court Civil Action No. 11-01184-A (June 14, 2013, 34-35. No government agency may make private an otherwise public document merely by entering into an agreement to keep its terms confidential. Washington Post Co. v. Department of Health and Human Services, 690 F.2d 252, 263 (D.C. Cir. 1982); Galvin v. Mass. Mut. Life Ins. Co., 20 Mass. L. Rep. 533, 28 (2006). SPR14/566 (October 22, 2014).
- Documents related to injuries received by an officer during an arrest may be properly redacted to protect the disclosure of the officer's medical information. SPR14/654 (February 24, 2015).
- Copies of the department's official photos for specifically named officers cannot be withheld as a personnel record since the photos would not be useful in making employment decisions regarding the officers. SPR14/674, recon. (June 5, 2015).

⁸⁷ Note that this case did not involve the argument that a date of birth in combination with other identifying information could be used to perpetrate identity theft and should be protected under exemption (c) for that reason.



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- For incident reports, internal affairs reports or other records pertaining to officers that have been arrested for OUI since January 1, 2012, and photos of each officer arrest for OUI since January 1, 2012, it was proper to redact the officer's name and withhold the officer's photograph. While generally, photographs of public employees are a public record, in this instance, the disclosure would serve to reveal identifying information regarding an employee subjected to discipline. SPR14/729 (February 23, 2015).
- A disciplinary memorandum may properly be withheld as personnel record. See Worcester Telegram & Gazette Corp., 58 Mass. App. Ct. 1 (2003). SPR 14/737 (March 9, 2015).
- The Massachusetts Superior Court has determined that the competence and integrity of police personnel are inherently public concerns and all internal investigations of police officers rise to the level of public record status, regardless of the complainant, or the reason for commencing the investigation. SPR15/059 (March 20, 2015) (citing Leeman v. Alan N. Cote, 2006 Mass. Super. LEXIS 404, 16 (Mass. Super. Ct. 2006)).
- The fact that officers of the department initiated the complaint does not diminish their status as citizens for public records disclosure purposes. Leeman v. Cote, 21 Mass. L. Rep. 411 (2006).
- A complete report of the findings made during internal employment investigation initiated by one employee against another may not be withheld even where the investigation was initiated through an internal employee grievance process involving allegations of "harassing behavior" among co-workers. SPR15/591; SPR15/592; SPR15/593 (March 24, 2016).

D. Exemption (d)

Exemption (d) applies to

inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based⁸⁸

⁸⁸ G.L. c. 4, § 7(26)(d).



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With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

The exemption is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed. Its application is limited to recommendations on legal and policy matters found within an ongoing deliberative process.⁸⁹ Factual reports which are reasonably complete and inferences which can be drawn from factual investigations, even if labeled as opinions or conclusions, are not exempt as deliberative or policy making materials.⁹⁰ Only portions of records that possess a deliberative or policymaking character and relate to an ongoing deliberative process are exempt from mandatory disclosure.

E. Exemption (e)

Exemption (e) applies to

notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit⁹¹

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

The application of Exemption (e) is limited to records that are work-related but can be characterized as personal to an employee. Materials covered by the exemption include personal reflections on work-related activities and notes created by an employee to assist him in preparing reports for other employees or for the files of the governmental entity. The exemption may

⁸⁹ *Babets v. Secretary of the Executive Office of Human Services*, 403 Mass. 230, n.8 (1988).

⁹⁰ *Moore-McCormack Lines, Inc. v. I.T.O. Corporation of Baltimore*, 508 F.2d 945, 948 (1974) (construing cognate federal provision).

⁹¹ G.L. c. 4, § 7(26)(e).



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not be used to withhold any materials that are shared with other employees or are being maintained as part of the files of a governmental unit.⁹²

Keep in mind that the key here is that the personal notes must not be shared with another employee. If the notes are shared, then they become public records.

Generally speaking, email correspondence is not to be considered personal notes under exemption (e). [SPR16/046](#); [SPR16/073](#) (February 18, 2016).

F. Exemption (f)

Exemption (f) applies to

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 interest⁹³

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

The exemption allows investigative officials to withhold materials that could compromise investigative efforts if disclosed. Exemption (f) does not, however, create a blanket exemption for all records that investigative officials create or maintain.⁹⁴ A records custodian must demonstrate a prejudice to investigative efforts in order to withhold requested materials. Accordingly, a records custodian may withhold any information relating to an ongoing investigation that could potentially alert suspects to the activities of investigative officials.

⁹² G.L. c. 4, § 7(26)(e).

⁹³ G.L. c. 4, § 7(26)(f).

⁹⁴ [District Attorney for the Norfolk District v. Flatley](#), 419 Mass. 507, 512 (1995); [WBZ-TV4 v. District Attorney for the Suffolk District](#), 408 Mass. 595, 603 (1990).



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Records custodians may withhold confidential investigative techniques indefinitely since their disclosure would prejudice future law enforcement efforts.⁹⁵

The legislature also designed the exemption to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly about matters under investigation.⁹⁶ Any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness are indefinitely exempt.⁹⁷

This is one of the primary exemptions utilized by law enforcement agencies to withhold or redact information from public records. It is also the most “controversial” and as a result, the new Public Records Law provides for the establishment of a “working group” that will explore how exemption (f) applies and will make recommendations to the Legislature relative to the exemption.

Below are some cases in which exemption (f) was discussed which may be relevant to law enforcement agencies:

- Confidential investigative techniques may be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976).
- An investigative agency is not required to demonstrate prejudice to withhold the identities of voluntary witnesses, informants, or complainants. Reinstein v. Police Commission of Boston, 378 Mass. 281, 290 n.18 (1979).
- 911 calls and video recordings of citizen witness statements relating to a fatal shooting were properly withheld since the identities of the individual complainants / witnesses would be known upon disclosure and the responsive records cannot be redacted in a manner that would protect the identities of these individuals. SPR14-284 (June 3, 2014).

⁹⁵ Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976); see also United States Department of Justice v. Landano, 113 S. Ct. 2014, 2020 (1993) (discussion of confidential sources of information under the federal Freedom of Information Act.).

⁹⁶ Bougas, 371 Mass at 62.

⁹⁷ Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 438 (1983) (explanation of “identifying details” and “grave risk of indirect identification”).



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- Emails related to the investigation of a fatal shooting were properly withheld since they related to actions and recommendations that were taken during the course of an investigation, the disclosure of which may have an adverse effect on this and potentially other law enforcement efforts. SPR14-284 (June 3, 2014).
- Any information contained in a witness statement, which if disclosed would create a grave risk of directly or indirectly identifying the voluntary witness is subject to withholding. “The inquiry as to what constitutes identifying information regarding an individual must be considered not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual and his career.” Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 438 (1983).
- Where the department has not shown that the identifying information of witnesses and/or complainants was so inextricably intertwined in the requested documents, the documents may not be withheld in their entirety, but the documents may be appropriately redacted. SPR14/482 (October 10, 2014).
- The disclosure of motor vehicle crash photos would not be harmful to investigative efforts even where the department claims that the department anticipates using the evidence in an on-going criminal case and the release would prejudice the possibility of effective law enforcement. SPR14/679 (February 19, 2015).
- There is no requirement that an investigative agency demonstrate prejudice to an ongoing investigation to withhold the identities of voluntary witnesses, informants or complainants. Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 290 n. 18 (1979).
- Any information contained in a witness statement which would create a grave risk of directly or indirectly identifying the voluntary witness is subject to withholding. The “inquiry as to what constitutes identifying information regarding an individual must be considered not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual and his career.” Globe Newspaper Co. v. Boston Retirement Board, 388 Mass. 427, 438 (1983).



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- Audio recordings of specifically identified internal affairs interviews were properly withheld where the department showed that it was necessary to preserve its ability to offer confidentiality to employees who participate in disciplinary investigation interviews; where the department's ability to conduct interviews with its officers regarding allegations against other officers and/or employees is essential to its function and an assurance of confidentiality is essential to ensure employees' candid participation and, as a result, the investigation's success; and where disclosure of such records in this case would discourage voluntary employee participation and candor which would harm the department's ability to conduct disciplinary investigations. [SPR15/591](#); [SPR15/592](#); [SPR15/593](#) (March 24, 2016).

G. Exemption (g)

Exemption (g) applies to records that are

trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit⁹⁸

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

To properly claim Exemption (g), a custodian must meet all six criteria contained in the exemption: (1) trade secrets or commercial or financial information; (2) voluntarily provided to a government entity; (3) for use in developing government policy; (4) upon an assurance of confidentiality; (5) information not submitted by law; and (6) information not submitted as a condition of receiving a governmental benefit. Consequently, this exemption does not apply to information that companies provide to the government in connection

⁹⁸ G.L. c. 4, § 7(26)(g).



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with a contract bid or in compliance with a filing requirement.⁹⁹

H. Exemption (h)

Exemption (h) applies to

proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person¹⁰⁰

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

Exemption (h) serves to protect the integrity of the bidding processes used by the government to procure goods and services by allowing a records custodian to withhold the proposals of early bidders from other interested parties.¹⁰¹ The exemption allows government officials to review bids and proposals in an insulated environment, but also provides for public review of all evaluative materials once a decision is reached.

Competitive bidding ensures full publicity of the contract and encourages the guarding of the public welfare.¹⁰² Although the competitive bidding process does not have the advantages of more flexible

⁹⁹ Id.

¹⁰⁰ G.L. c. 4, § 7(26)(h).

¹⁰¹ Datatrol Inc. v. State Purchasing Agent, 379 Mass. 679, 691 (1980) (the purposes of competitive bidding go beyond economy and efficient administration to the prevention of favoritism in the awarding of government contracts).

¹⁰² Datatrol Inc. v. State Purchasing Agent, 379 Mass. 679, 699 (1980).



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purchasing policies, the legislature has mandated the process to foster honesty and accountability in government.¹⁰³

...

The exemption addresses two types of records held by an awarding authority (records custodian), each with its own time frame. Proposals may be withheld until the time for the receipt of proposals has expired. Bids may be withheld until such time as the bids are publicly opened and read by the awarding authority. This allows the proposals of early bidders to be kept in confidence so that subsequent bidders do not gain an unfair advantage, thus, keeping all on equal footing. The limitation on the duration of the exemption provides the public with an opportunity to review the rejected proposals to ensure that taxpayer dollars are wisely spent.

The second clause of the exemption is similar to Exemption (d) in its application.¹⁰⁴ It allows government officials to withhold any inter-agency or intra-agency communications regarding the evaluations of the bids or proposals until the records custodian renders a decision to enter into negotiations with the successful bidder or awards the contract.

I. Exemption (i)

Exemption (i) applies to

appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been

¹⁰³ Id. at 701.

¹⁰⁴ G.L. c. 4, § 7(26)(d); See also discussion of the application of Exemption (d) in the Massachusetts Guide to the Public Records Law.



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terminated; or (3) the time within which to commence such litigation has expired¹⁰⁵

This exemption does not apply to law enforcement entities since such entities do not engage in the acquisition of real property, either through purchase or eminent domain.

J. Exemption (j)

Exemption (j) applies to

the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards¹⁰⁶

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

The purpose of Exemption (j) is to prevent individuals with devious motives from ascertaining the identities of those who possess firearms. The scope of the exemption is limited to restricting the public disclosure of the name and address of the individual.¹⁰⁷

Clearly, on its face the exemption does not permit the records custodian to withhold the firearm application or identification card in its entirety. Exemption (j) allows the identifying data, in particular, the name and address of the licensee to be deleted from the record prior to

¹⁰⁵ G.L. c. 4, § 7(26)(i).

¹⁰⁶ G.L. c. 4, § 7(26)(j).

¹⁰⁷ G.L. c. 4, § 7(26)(j).



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disclosure. It is exceptional that there are both an exemption prohibiting the release of the identity and a separate statute mandating confidentiality of records.¹⁰⁸ This lends credibility to the supposition that the legislature was especially concerned about release of this type of information.

For example: What if the records custodian receives a request for firearm records of a specifically named individual, such as, “I request all gun permits issued to John Smith”?

Here, the records custodian should withhold the entire record, because even if the name and address are redacted, the requester knows with certainty that this particular record pertains to John Smith. It is impossible for the records custodian to protect Mr. Smith’s identity.

For example: Is the records custodian permitted to withhold identifying information, other than name and address, such as a criminal offender record information (C.O.R.I.) or social security numbers?

The records custodian should review all the exemptions in the Public Records Law to see whether one or more of them are applicable, redact the information and claim the proper exemptions.¹⁰⁹ For instance, C.O.R.I. must be redacted before disclosing the gun application pursuant to Exemption (a), and social security numbers contained in the application may be withheld pursuant to Exemption (c).

Note that the new Section 10B of Chapter 66 provides that records divulging or tending to divulge the names and addresses of persons who own or possess firearms or and ammunition, and names and addresses of persons licensed to carry or possess the same may be provided to criminal justice agencies to the extent such information

¹⁰⁸ G.L. c. 140, §§ 121-131P (discussing sale of firearms).

¹⁰⁹ G.L. c. 4, § 7(26) (exemptions to the Public Records Law).



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relates solely to the person making the request and is necessary to the official interests of the entity making the request.

K. Exemption (k)

Exemption (k) was repealed and only applies to public libraries.

L. Exemption (l)

Exemption (l) applies to

questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument¹¹⁰

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

The purpose of Exemption (l) is to prevent individuals from gaining an unfair advantage by using the Public Records Law to access test questions and answers prior to the administration of an examination.

As long as the same materials are used to administer subsequent examinations, the custodian of records may continue to withhold the materials pursuant to Exemption (l). The action to withhold the testing materials ensures that the integrity of future testing is not jeopardized.

M. Exemption (m)

Exemption (m) applies to

contracts for hospital or related health care services between (i) any hospital, clinic or other health care

¹¹⁰ G.L. c. 4, § 7(26)(l).



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facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees¹¹¹

This exemption does not apply to law enforcement entities.

N. Exemption (n)

Exemption (n) applies to

records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety and cyber security¹¹²

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

This exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public

¹¹¹ G.L. c. 4, § 7(26)(m).

¹¹² G.L. c. 4, § 7(26)(n).



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inspection. The nature of the exemption requires a records custodian to make some value judgment regarding the requester in order to decide whether to release the information sought.

Making such a value judgment is specifically antithetic to the previously expounded presumptions that all records are public records and all requesters shall be treated uniformly. The legislature was informed in writing of this radical and disparate change in the Public Records Law but chose to retain the language thereby clearly indicating its intent to provide records custodians with the discretion to withhold applicable records.

A records custodian should review a request for such records promptly and completely to gather all facts surrounding the request. The records custodian is not prevented from engaging the requester in conversation by asking the requester to voluntarily provide additional information in order to reach a “reasonable judgment,” but a records custodian may not “require” the requester to provide personal information.¹¹³

For example: If a records custodian discloses a set of blueprints under Exemption (n) to one requester, must the same blueprints be made available to all subsequent requesters?

This exemption is unique in its application in that the disclosure of records to one requester does not render the records public to all. If a records custodian determines that disclosure of the records to a specific requester would not compromise public safety, the records custodian may then withhold the same records to later requesters if, in the reasonable judgment of the records custodian, release of the records to those subsequent requesters would jeopardize public safety.

¹¹³ See SPR Bulletin No. 04-03 (April 1, 2003).



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Below are some decisions wherein exemption (n) was discussed which may be relevant to law enforcement agencies:

- It was proper to withhold records related to security breaches at Logan International Airport since the release of the information would likely jeopardize public safety. The Supervisor of Public Records further advised that he appreciated “the gravity with which the [custodian] treated this response, particularly his choice to sign ‘under the penalty of perjury,’ a certification that while not requested, is nonetheless noticed and appreciated.” [SPR14/437](#) (October 17, 2014).
- It was proper to withhold dates of birth for each state police officer since personal data, such as dates of birth, can be used to directly or indirectly identify or target law enforcement personnel, their families, and/or allow for the identification of home addresses and/or other confidential information. See [Commonwealth v. Righini](#), 64 Mass. App. Ct. 19, 24 (2005) (stating that dates of birth “could be used to identify home addresses, to the discomfiture of the officer and his family”). [SPR14/520](#), recon. (August 26, 2015).
- It was proper to withhold the annual inventory report completed by the Department as Massachusetts Coordinator for the 1033 Program since the 1033 Program provides surplus Department of Defense military equipment to state and local law enforcement agencies through the State Coordinator and where the records detail the quantity and technical specifications of property received under the program and where the disclosure of this information would undermine public safety as it relates to security measures and emergency preparedness. [SPR14/554](#) (December 17, 2014).
- It was appropriate to redact certain items from emails between the Fusion Center and security vendors where the redacted material would reveal specific security measures and security plans that the Commonwealth Fusion Center has in place or in planning to implement and where the release of that information would jeopardize public safety and would not be in the public interest. [SPR14/575](#) (October 31, 2014).
- The release of the officer’s photos would not jeopardize public safety unless the officers provide undercover work for the department. [SPR14/674](#), recon. (June 5, 2015).
- It was proper to withhold a surveillance video clip where: (a) the video shows individuals attempted to enter a high school; (b) disclosure would reveal both



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the location of the camera, the quality of the video, and the scope of the camera's range and capability which is not readily apparent upon looking at the unit; and (c) disclosure would reveal the capability to monitor not only the area in question, but every other area covered by a similar camera on the school campus. SPR15/058, recon. (June 5, 2015).

- It was proper to withhold the inventory list of all non-lethal and less than lethal directed energy weapons used by the State Police where the agency showed that in its reasonable judgment, the release of the inventory and/or technical specifications of weapons that it does, and does not have, would undermine public safety as it relates to security measures and emergency preparedness. SPR15/544 (August 25, 2015).

O. Exemption (o)

Exemption (o) applies to

the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6¹¹⁴

Note that the new section 10B of Chapter 66 provides that the home address, personal email address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, may be disclosed to an employee organization under G.L. c. 150E, a nonprofit organization for retired public employees under G.L. c. 180 or to criminal justice agencies as defined in G.L. c. 6, §167.

¹¹⁴ G.L. c. 4, § 7(26)(o).



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P. Exemption (p)

Exemption (p) applies to

the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o)¹¹⁵

Q. Exemption (q)

Exemption (q) applies to

Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46¹¹⁶

This exemption does not apply to law enforcement entities.

R. Exemption (r)

Exemption (r) applies to

Information and records acquired under chapter 18C by the office of the child advocate.¹¹⁷

S. Exemption (s)

Exemption (s) applies to

trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the

¹¹⁵ G.L. c. 4, § 7(26)(p).

¹¹⁶ G.L. c. 4, § 7(26)(q).

¹¹⁷ G.L. c. 4, § 7(26)(r).



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department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed¹¹⁸

This exemption does not apply to law enforcement entities.

T. Exemption (t)

Exemption (t) applies to

Statements filed under section 20C of chapter 32¹¹⁹

With respect to this exemption, [A Guide to the Massachusetts Public Records Law](#) advises that

Members of public retirement boards are required by statute to file a statement of financial interest with the Public Employee Retirement Administration Commission. The statement of financial interest document is exempt from disclosure under Exemption (t).¹²⁰

U. Exemption (u)

¹¹⁸ G.L. c. 4, § 7(26)(s).

¹¹⁹ G.L. c. 4, § 7(26)(t).

¹²⁰ See G.L. c. 32, § 20C.



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Exemption (u) applies to

trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns¹²¹

This exemption only applies to certain records in possession of the University of Massachusetts. As a result, this exemption will not apply to law enforcement entities outside of UMASS.

X. Records Management

Agencies are encouraged to have a policy relative to a records management program which includes protocols and standards for the retention of paper and electronic records consistent with the law applicable regulations.

A. Records Storage

The Public Records Law permits agencies to store records in many formats, most notably, in paper and electronic formats. The Supervisor of Public Records has issued several bulletins relating to the maintenance and storage of records.

On February 4, 2004, the Supervisor of Public Records issued guidelines relative to records storage areas. These guidelines include the following:

- a) Each container in a room should have a unique number and appear on an inventory list or database. Shelves should be numbered also to provide location information on lists.
- b) Intellectual control of records also includes materials relating to records destructions and transfers, and retrievals of records.
- c) Do not store furniture and office supplies in record areas, and do not store records with office supplies and furniture. Definitely, do not store records with janitorial or facilities supplies especially flammables. Attics are prone to excessive temperatures, and basements often flood or have excessive moisture and humidity. Rooms with large window areas can become too hot. Window shades can be utilized or plastic tinted window films can be applied

¹²¹ G.L. c. 4, § 7(26)(u).



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to window surfaces. Windows should be kept closed and locked where security is an issue.

- d) Keep tops on boxes to minimize damage from light, dust, and water.
- e) Special media such as computer tapes and disks, video and audio-tape, photographs, microfilm is best stored in cool environments with low relative humidity, with low dust and pollution from internal vapors or outside air.
- f) Records room should be secure and locked when not in use.
- g) Records should be kept off the floors in case of flooding or a pipe burst, or if sprinklers are set off. 3' to 6" is normally adequate. Where no shelving exists, place boxes up on pallets. Stack un-shelved boxes a maximum of 7 high or the bottom box is likely to crush and topple the stack.
- h) Avoid storing records under water pipes and steam pipes.
- i) Rooms should be environmentally controlled to avoid excessive humidity and temperatures.
- j) Rooms should have a fire suppression system such as water sprinkler systems, wet or dry, or gas and also smoke and/or heat sensors. Remember that wet records can often be salvaged but burned records cannot be.
- k) Shelving should be designed to maximize available space.
- l) Remember that storage space can tend to fill up much quicker than anticipated so leave as much room for growth as possible. Investigate alternative media such as microfilm or scanning as a way of alleviating space problems.
- m) Floor load capacity an issue especially in older buildings. For calculations, consider that a standard 1 cubic foot records carton can weigh between 30 and 40 pounds, and that these will be stacked one above the other.
- n) Shelves must not extend the full distance to the ceiling or they will interfere with sprinkler systems. Boxes should not be placed on the tops of shelving units.



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- o) Good shelf design is designed around the box dimensions. Two design principles govern. 1. Higher is better. 2. Minimize aisle space. To minimize aisle space you can place boxes two deep on a shelf. You will be able to locate them through your inventory list with the shelf locations. Then you can place two shelving units back to back, essentially providing 4 boxes deep, with aisle access on both sides. Place shelves against walls when possible but, in this case, only go two boxes deep. Aisles should be 3" wide. A standard shelf dimension is 32x48" with either 12", 24" or 36" clearance between shelves. If you go to 36" clearance you will need much stronger shelves to support the extra weight. 36" clearances make retrieval more difficult.
- p) Shelves should have diagonal bracing and use nut and bolt construction that has been found most secure during earthquakes. Ideally shelves should be metal with baked enamel finishes.
- q) Boxes should be the standard records carton (10"x12"x15") for ease of handling and to maximize available space.
- r) Avoid whenever possible storing records in buildings with wood flooring and wood framing due to the potential fire hazards.
- s) It may be cheaper or easier to make use of State Records Center or private Record Centers instead of in-house storage. Distance away from the agency is not as important as retrieval turn around time. Next day delivery is normally acceptable, with the potential for emergency 1 to 2 hour service. Generally, Records Center storage is cheaper than office space.
- t) If records get wet, moldy, or damaged contact the Records Management Unit of the Massachusetts Archives for guidance. See article on "Records Disaster Recovery" at this website.
- u) A table is useful for viewing box contents, for processing boxes and for other general use. A wheeled library or book cart makes a temporary table and provides a method of transporting materials. Be sure aisles can accommodate carts or ladder mechanisms, or other equipment that might be used in the area.

With respect to the maintenance of dedicated records storage areas, the Supervisor of Public Records has established the following regulations:¹²²

¹²² [SPR Bulletin 03-92](#)



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- 1) The use of smoking materials and the consumption of foods and beverages in dedicated records storage areas is prohibited.
- 2) Dedicated records storage areas should be kept clean and free of environmental hazards to records. In the case of storage areas shared by multiple offices, the executive officer should appoint an individual to monitor conditions, report and correct violations.
- 3) All persons should refrain from smoking and consumption of foodstuffs when handling records.
- 4) Officials should take reasonable care in referencing, retrieving, and refiling records so that the physical composition of the record, and the information it contains, is not damaged.
- 5) When planning the construction or refurbishment of a dedicated records storage area, officials should consult Specifications for Safes and Vaults, available from this office. Specifications describe requirements for the construction of vaults; temperature and humidity levels to be maintained in them; sprinkler, heating, ventilation and air conditioning systems to be used; appropriate storage equipment; and related matters.

The PRL provides that when records are not in use, they must be stored in “fireproof rooms, vaults or safes or buildings, vaults or file rooms that comply with standards of the National Fire Protection Association, or by electronic means with off-site secure storage, or in accordance with standards promulgated by the records conservation board.”¹²³

With respect to records created outside of a municipal office, the Supervisor of Public Records has established the following regulations:¹²⁴

- 1) Whenever original public records are removed from a municipal office by a records custodian for use in the regular course of business in a private office or home, they shall be stored in fire resistant devices and safes provided by the municipality.

¹²³ G.L. c. 66, § 12.

¹²⁴ [SPR Bulletin 04-94](#)



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- 2) If a custodian cannot insure fire resistant storage outside the municipal building then no original records may be removed. However, the custodian may create copies of records for use in a private office or home.
- 3) Whenever original records are created outside the municipal offices, they shall be transferred on a regular and frequent basis to secure storage in the municipal building. If secure storage is available in the custodian's private office or home, then copies of records shall be made and stored in the municipal building.
- 4) Whenever a records custodian finds it necessary to work in another location other than the municipal building, he shall make himself available during regular posted office hours at a location convenient to the public.
- 5) Whenever an official relinquishes his office, he shall deliver over to his successor all such records he is not authorized by law to retain. See G. L. c. 66, § 14.

Finally, the Supervisor of Public Records has established certain guidelines relative to security breach protections of public records. In particular, these guidelines relate to agencies which maintain personal information of residents of the Commonwealth. The bulletin describes "personal information" as being

a resident's first name and last name or first initial and last name in combination with any 1 or more of the following data elements that relate to such resident:

- a) Social Security number;
- b) driver's license number or state-issued identification card number; or
- c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "personal information" shall not include information that is lawfully obtained from publicly available information, or from



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federal, state or local government records
lawfully made available to the general public.”¹²⁵

The guidelines advise that:¹²⁶

- 1) An agency to which this Bulletin applies shall establish, execute, and manage an inclusive, written information security program that applies to any records under their custody or control containing personal information, as defined in Section 1 of Chapter 93H. The security program should take into consideration the legal requirements for the retention and destruction of the records at issue. Additionally, the records management policy should develop procedures that address the identification, retention, retrieval, ultimate disposition or destruction of and access to these records containing personal information.
- 2) An agency to which this Bulletin applies shall provide guidance to employees regarding how to identify and maintain information that contains personal information.
- 3) An agency to which this Bulletin applies shall take all reasonable steps to destroy, or arrange for the destruction of a Massachusetts resident's records within its custody or control containing personal information which is no longer to be retained by the agency in compliance with the destruction provisions of Section 2 of Chapter 93I, the Records Conservation Board and/or the Supervisor of Records, agency business needs, or the requirements of any other Federal or state records retention requirement including, without limitation, rules of civil or criminal procedure.
- 4) An agency to which this Bulletin applies that owns or licenses personal information about a Massachusetts resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.
- 5) An agency to which this Bulletin applies that discloses personal information about a Massachusetts resident pursuant to a contract with a nonaffiliated third party executed after implementation of this Bulletin shall require by contract that the third party implement and maintain reasonable security

¹²⁵ [SPR Bulletin 01-08](#)

¹²⁶ [SPR Bulletin 01-08](#)



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procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

- 6) As required by Section 3(c) of Chapter 93H, an agency within the Executive Department must provide written notification of the nature and circumstances of a security breach or unauthorized acquisition or use of personal information to both the Information Technology Division and the Division of Public Records. The agency is required to comply with all policies and procedures adopted by the Information Technology Division pertaining to the reporting and investigation of such an incident.
- 7) The written notification, at minimum, must contain information concerning:
 - a. The nature of the breach of security or unauthorized acquisition or use of personal information;
 - b. The number of individuals affected;
 - c. Actions taken to address the security issue;
 - d. Measures to be implemented to prevent similar security issues;
 - e. Contact information for an individual at the agency who can provide further information concerning the security issue, if necessary.
- 8) An electronic communication will satisfy the requirement for written notification. See G.L. ch. 110G. The Information Technology Division requests that notification, pursuant to Section 3(c) of Chapter 93H, is provided electronically via an email sent to Information Technology Division's Chief Information Officer and copied to the Information Technology Division's Security Officer and General Counsel, rather than via paper letter.
- 9) The exemptions to the Public Records Law shall apply to the records created pursuant to Chapter 93H. Please note, these exemptions from disclosure are strictly and narrowly construed. Agencies are encouraged to refer to Chapter 4, Sections 7(26)(a-q) in order to properly apply the exemptions in the manner necessary to maintain the integrity and security of these records.

In addition, the PRL gives a custodian of records the ability to enter into a contract for the storage of records containing public record information, provided the contract



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does not prevent or unduly restrict a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records held in another location pursuant to a contract will still considered to be in the custody of the custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of \$20.¹²⁷

It is permissible to establish electronic storage systems. Municipal agencies wishing to do so should file [Form RMU-1E](#) and [Form RMU-2E](#) with the Supervisor of Public Records. Section 19 of Chapter 66 provides that a records access officer must consult with their chief executive or administrative officer (G.L. c. 110G, § 17) or the Massachusetts officer of information technology (G.L. c. 7D) when designing or acquiring an electronic record keeping system or database, to ensure that the system or database is capable of providing data in a commonly available electronic, machine readable format.¹²⁸

Such database designs or acquisitions shall allow for, to the extent feasible, information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access.

Agencies should also be cautious to adhere to the [Electronic Records Management Guidelines](#) issued by the Supervisor of Public Records, the Records Conservation Board and the Information Technology Division.

B. Records Retention

Municipalities are best advised to consult the [Municipal Records Retention Schedule](#) to ensure that all records are retained for the requisite periods. In some cases, it may be advisable to retain the records longer than required by the schedule (e.g. it is a best practice to retain records that may be useful in civil litigation until the statute of limitation has run).

C. Records Destruction

After records have been retained for the required retention period, they may be destroyed. In all cases, the appropriate form must first be filed and written permission must be obtained.

¹²⁷ G.L. c. 66, § 17.

¹²⁸ G.L. c. 66, § 19.



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1. Municipal Departments

For municipal departments, it will be necessary to obtain the written permission of the Supervisor of Public Records prior to destroying any public records.

If the department is simply destroying records, then the department must complete and submit [Form RMU-2](#).

If the department is scanning records into electronic format and then destroying the paper originals, then the department must complete and submit [Form RMU-2E](#).

If the department is scanning records into microfilm format and then destroying the paper originals, then the department must complete and submit [Form RMU-2M](#).

2. State Agencies

For state agencies, it will be necessary to obtain the written permission of the Records Conservation Board prior to destroying any public records.

If the agency is simply destroying records, then the agency must complete and submit [Form RCB-2U](#).

If the agency is scanning records into microfilm format and then destroying the paper originals, then the agency must complete and submit [Form RCB-2M](#).

ACTION ITEM

As soon as practicable, Chiefs should inspect the department's records storage to ensure compliance with the guidelines set forth by the SPR. Chiefs should also audit the records to determine if certain records should be destroyed pursuant to the applicable regulations.



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FORMS APPENDIX

Sample Form 1.....Records Access Officer Information Notice

Sample Form 2.....Agency Records Access Officer Request Log

Sample Form 3.....Sample Public Record Response Letter



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SAMPLE FORM 1
*POST IN CONSPICUOUS PLACE (E.G. LOBBY)
AND WEBSITE IF ONE EXISTS.*

RECORDS ACCESS OFFICER FOR THE LANESBOROUGH POLICE DEPARTMENT

The following person has been designated as the Records Access Officer for the [Insert Name] Police Department pursuant to the Public Records Law. All Public Records requests should be directed to this person using the contact information provided below. Public Records may be made in-person, via telephone, mail or electronic mail.

NAME: JASON COSTA

TITLE: OFFICER

ADDRESS: 8 PROSPECT STREET, PO BOX 1560

PHONE: 413-443-4107 FAX-413-442-9708

EMAIL: jcosta@lanesboroughpolice.com



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SAMPLE FORM 2

PUBLIC RECORD REQUEST LOG

DATE REQUEST RECEIVED	NATURE OF REQUEST
FORM OF REQUEST (check one):	
<input type="checkbox"/> IN-PERSON ORAL <input type="checkbox"/> IN-PERSON WRITTEN <input type="checkbox"/> VIA POSTAL MAIL <input type="checkbox"/> VIA ELECTRONIC MAIL	
RESPONSE TO THE REQUEST:	
INITIAL RESPONSE DUE: ____/____/____ INITIAL RESPONSE PROVIDED: ____/____/____ RESPONSE (check all that apply): <input type="checkbox"/> COMPLIED WITH THE REQUEST (the records were provided either in a redacted or un-redacted format) <input type="checkbox"/> DENIED THE REQUEST <input type="checkbox"/> OBTAINED AN EXTENSION OF TIME <input type="checkbox"/> SUGGESTED A REASONABLE MODIFICATION OF THE SCOPE OF THE REQUEST <input type="checkbox"/> PROVIDED THE REQUESTER WITH A REASONABLE FEE ESTIMATE RECORDS PROVIDED: ____/____/____	
FEES:	
WERE ANY FEES CHARGED IN CONNECTION WITH THIS REQUEST? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, ANSWER THE FOLLOWING: TOTAL FEE CHARGED: \$ _____ ESTIMATE PROVIDED? <input type="checkbox"/> YES <input type="checkbox"/> NO PAYMENT RECEIVED? <input type="checkbox"/> YES <input type="checkbox"/> NO ITEMIZATION OF FEE CHARGED (check all that apply): <input type="checkbox"/> Copy Costs: \$ _____ <input type="checkbox"/> Search and Segregation Time: \$ _____ Hours Required to Fulfill Request: _____ Lowest Paid Employee Capable: _____ Hourly Rate: _____ <input type="checkbox"/> Cost of Medium: \$ _____	
PETITIONS (check all that apply):	
<input type="checkbox"/> EXTENSION OF TIME	Date Filed: ____/____/____ Supervisor Response: ____/____/____ Time Requested: _____ days Time Granted: _____ days
<input type="checkbox"/> S&S TIME FEES	Date Filed: ____/____/____ Supervisor Response: ____/____/____ Fee Requested: \$ _____ Fee Granted: \$ _____
<input type="checkbox"/> HR RATE INCREASE	Date Filed: ____/____/____ Supervisor Response: ____/____/____ Rate Requested: \$ _____ Rate Granted: \$ _____
APPEALS (check all that apply):	
<input type="checkbox"/> SUPERVISOR OF PUBLIC RECORDS	Date Filed: ____/____/____ Supervisor Response: ____/____/____ Result: Date to Comply with Order: ____/____/____
<input type="checkbox"/> SUPERIOR COURT	Date Filed: ____/____/____ Final Adjudication: ____/____/____ Result:



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SAMPLE FORM 3
***REPRODUCE ON LETTERHEAD AND
CHOOSE ALL PARAGRAPHS THAT APPLY.***

[Insert Date]

[Requester's Name]

[Address 1]

[Address 2]

**RE: Public Records Request dated [insert date]
 Response of Records Access Officer**

Dear [Requester]:

On [INSERT DATE], we received your request pursuant to the Massachusetts Public Records Law for the following records:

- [INSERT LIST OF REQUESTED RECORDS HERE]

USE IF REQUESTED RECORDS ARE NOT WITHIN DEPARTMENT'S POSSESSION, CUSTODY OR CONTROL:

With respect to your request, please be advised that this Department does not have possession, custody or control of the records requested. The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the Department at the time the request is received. As a result, there is no obligation for a Department to create a record for a requester to honor a request. See G.L. c. 4, section 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) (custodian is not obliged to create a record in response to a request for information); see also A Guide to the Massachusetts Public Records Law, Secretary of the Commonwealth, Division of Public Records, p. 7 (January 2013) (hereinafter Public Records Guide). As a result, the Department is unable to respond to your request. However, the records requested may be in the possession, custody or control of the following department/agency: [INSERT APPROPRIATE DEPARTMENT AND ADDRESS IF KNOWN].

USE IF THE REQUESTED RECORDS WILL BE WITHHELD AND/OR REDACTED:

With respect to your request, the Department intends to withhold/redact the following requested records:

- [INSERT REQUESTED RECORDS TO BE WITHHELD/REDACTED]



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The Department intends to withhold/redact the above-referenced requested records due to the applicability of the following exemptions and the reasons set forth below [CHOOSE ALL THAT APPLY]:

1. Exemption (a): This exemption applies to records that are "specifically or by necessary implication exempt from disclosure by statute." [INSERT APPROPRIATE STATUTORY LANGUAGE – EXAMPLES BELOW]

[CORI]: In particular, G.L. c. 6, sections 167-178B, and related regulations, requires that criminal justice agencies withhold any records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 is adjudicated as an adult, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

[DOMESTICS]: In particular, G.L. c. 41, section 97D requires law enforcement agencies to keep the following information confidential: "All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse..."

[HOME ADDRESS, TELEPHONE NUMBER AND PERSONAL EMAIL ADDRESS OF CERTAIN PERSONNEL]: In particular, G.L. c. 66, section 10B advises that the home address, telephone number and personal email address of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel shall not be public records.



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[NAME, HOME ADDRESS, TELEPHONE NUMBER AND PERSONAL EMAIL ADDRESS OF FAMILY MEMBERS OF CERTAIN PERSONNEL]: In particular, G.L. c. 66, section 10B advises that the name, home address, telephone number and personal email address family members of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel shall not be public records.

[VICTIM INFORMATION]: In particular, G.L. c. 66, section 10B advises that the home address, telephone number, personal email address or place employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name, home address, telephone number, personal email address or place of employment or education of a family member of any of the foregoing shall not be public records.

[FIREARM OWNERSHIP / LICENSE INFORMATION]: In particular, G.L. c. 66, section 10B advises that licensing authorities (under G.L. c. 140, § 121) shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said chapter 140, and names and addresses of persons licensed to carry or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in section 167 of chapter 6 and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The records requested contain [INSERT APPROPRIATE RESPONSE HERE]. As a result, such information must be withheld/redacted under the law.

2. Exemption (b): This exemption applies to "records that are related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding." The requested records contain [INSERT APPROPRIATE RESPONSE HERE]. This exemption applies because [EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
3. Exemption (c): This exemption applies to "personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." [INSERT APPROPRIATE LANGUAGE – EXAMPLES BELOW]



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The records requested contain medical files or information which must be withheld/redacted from the records pursuant to this exemption.

The records requested contain information which, if disclosed, would constitute an unwarranted invasion of personal privacy. Such information contains intimate details and the privacy interests involved outweigh the public interests in the disclosure of that information.

[EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.

4. Exemption (d): This exemption applies to "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based." In particular, the requested records concern an ongoing deliberative process which could be tainted if prematurely disclosed. Once this deliberative process has been completed, the requested documents may be disclosed. The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
5. Exemption (e): This exemption applies to "notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit." In particular, the requested records concern an ongoing deliberative process which could be tainted if prematurely disclosed. The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
6. Exemption (f): This exemption applies to "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." While this exemption is not a blanket exemption it applies to such information, the disclosure of which would prejudice investigative efforts. In particular, it applies to information related to ongoing investigations, confidential investigative techniques and information which directly or indirectly identifies witnesses or informants. The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be redacted under the law.



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7. Exemption (g): This exemption applies to "trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit." In particular, the requested records include: (1) trade secrets or commercial or financial information; (2) voluntarily provided to a government entity; (3) for use in developing government policy; (4) upon an assurance of confidentiality; (5) information not submitted by law; and (6) information not submitted as a condition of receiving a governmental benefit. The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
8. Exemption (h): This exemption applies to "proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person." In particular, proposals may be withheld until the time for the receipt of proposals has expired and bids may be withheld until such time as the bids are publicly opened and read by the awarding authority. After that point in time, the requested records may be provided. The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
9. Exemption (j): This exemption applies to "the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards." The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
10. Exemption (l): This exemption applies to "questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument." The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS



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EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.

11. Exemption (n): This exemption applies to "records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety and cyber security." In particular, this exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public inspection. The nature of the exemption requires a records custodian to make some value judgment regarding the requester in order to decide whether to release the information sought. You have advised that you are requesting these records because [INSERT REASON WHY RECORDS HAVE BEEN REQUESTED]. The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
12. Exemption (o): This exemption applies to "the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6." The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
13. Exemption (p): This exemption applies to "the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o)." The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.



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14. Exemption (r): This exemption applies to “information and records acquired under chapter 18C by the office of the child advocate.” The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
15. Exemption (t): This exemption applies to “statements filed under section 20C of chapter 32.” The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.
16. Exemption (u): This exemption applies to “trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.” The records requested contain [INSERT APPROPRIATE RESPONSE HERE AND EXPLAIN, WITH SPECIFICITY, HOW THIS EXEMPTION APPLIES]. As a result, such information must be withheld/redacted under the law.

USE IF THE DEPARTMENT REQUIRES ADDITIONAL TIME TO RESPOND:

The Department intends to produce the following records in (choose one: un-redacted or redacted) format:

- [INSERT REQUESTED RECORDS DEPARTMENT INTENDS TO PRODUCE]

Unfortunately, the Department requires additional time beyond the 10 business days allotted under the law in order to respond to this request. The magnitude or difficulty of the request unduly burdens the other responsibilities of the department. In particular, [DESCRIBE, WITH SPECIFICITY, HOW THE MAGNITUDE OR DIFFICULTY OF THE REQUEST UNDULY BURDENS THE OTHER RESPONSIBILITIES OF THE DEPARTMENT]. As a result, the Department will produce the requested records within [MUNICIPAL DEPARTMENTS: CHOOSE UP TO 25 BUSINESS DAYS | STATE AGENCIES: CHOOSE UP TO 15 BUSINESS DAYS] following the initial receipt of your request, which represents a reasonable timeframe under the law.

USE IF DEPARTMENT WISHES TO ASSIST REQUESTER WITH REASONABLE MODIFICATION OF THE REQUEST:

Due to the scope of the request, the time needed to comply with this request will exceed 10 business days, as discussed above. In order to produce the records sought in a more efficient and affordable manner, it is possible that the scope of the request could be modified. For instance, the Department would suggest the following reasonable modification to your request: [INSERT REASONABLE MODIFICATION]. If you would like your request to be modified in this



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manner, or if you would like to modify your request, kindly contact me at your earliest convenience.

USE IF DEPARTMENT INTENDS TO CHARGE ANY FEES [CHOOSE ALL THAT APPLY]:

In order to comply with your request, the total reasonable fee of [INSERT TOTAL FEE] will be charged. This fee must be paid in full prior to the requested records being provided. The total fee has been calculated as follows:

Copy Costs (Choose One):

Since the requested records are not available in electronic format or you have requested that the records be provided to you other than electronically, and the records are susceptible to ordinary means of reproduction the Department has assessed copy costs of \$0.05 per page. The pages of the requested records totals [INSERT TOTAL PAGES OF REQUESTED RECORDS]. As a result, the total copy costs are [INSERT TOTAL COPY COSTS].

Since the requested records are not available in electronic format or you have requested that the records be provided to you other than electronically, and the records are not susceptible to ordinary means of reproduction the Department has assessed the following copy costs of [INSERT COPY COSTS], which has been calculated as follows: [INSERT CALCULATION OF COPY COSTS].

Search and Segregation Costs (Choose One):

[FOR MUNICIPAL DEPARTMENTS] The Department is required to devote more than 2 hours of time to search for, compile, segregate, redact and/or reproduce the requested records; and the segregation or redaction of records is required by law or the fee has been approved by the Supervisor of Public Records. The lowest paid employee who has the necessary skill to complete the search and segregation is [INSERT EMPLOYEE TITLE] whose hourly rate is [INSERT HOURLY RATE]. The search and segregation costs have been calculated using the hourly rate of [INSERT HOURLY RATE ABOVE OR \$25, WHICHEVER IS LESS, OR THE HOURLY RATE ALLOWED BY THE SUPERVISOR OF PUBLIC RECORDS AFTER THE FILING OF A PETITION]. In order to comply with your request, it will take approximately [INSERT TOTAL NUMBER OF HOURS] hours of search and segregation time, based upon the following: [DESCRIBE THE BREAKDOWN OF HOURS AND WHY THEY ARE NECESSARY]. The total number of hours charged will be [FOR MUNICIPALITIES WITH OVER 20,000 PEOPLE, INSERT TOTAL HOURS MINUS 2 HOURS | FOR ALL OTHER MUNICIPALITIES, INSERT TOTAL HOURS].



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[FOR STATE AGENCIES] The Department is required to devote more than 4 hours of time to search for, compile, segregate, redact and/or reproduce the requested records; and the segregation or redaction of records is required by law or the fee has been approved by the Supervisor of Public Records. The lowest paid employee who has the necessary skill to complete the search and segregation is [INSERT EMPLOYEE TITLE] whose hourly rate is [INSERT HOURLY RATE]. The search and segregation costs have been calculated using the hourly rate of [INSERT HOURLY RATE ABOVE OR \$25, WHICHEVER IS LESS]. In order to comply with your request, it will take approximately [INSERT TOTAL NUMBER OF HOURS] hours of search and segregation time, based upon the following: [DESCRIBE THE BREAKDOWN OF HOURS AND WHY THEY ARE NECESSARY]. The total number of hours charged will be [INSERT TOTAL HOURS MINUS 4 HOURS].

Postage Costs: Since you have specifically requested that the records be mailed to you or you are unable to receive copies of them in person, the Department has assessed a postage fee of [INSERT POSTAGE FEE] which represents the lowest cost available for mailing the records, in your discretion or per your request.

Medium Costs: Since you have specifically requested that the records be provided to you on a storage device, the Department has assessed a fee of [INSERT DEVICE FEE] which represents the actual cost of the device.

Waiver of Fees: The Department has waived [INSERT PORTION OF FEE WAIVED] due to: (a) the disclosure of the requested record being in the public interest; (b) the request not being primarily in your commercial interest; or (c) your inability to pay the full amount of the reasonable fee.

1. include a statement informing the requester of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

Please be advised that pursuant to 950 CMR 32.00 and G.L. c. 66, section 10A(a) you have the right to appeal this decision to the Supervisor of Public Records within 90 calendar days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. Pursuant to G.L. c. 66, section 10A(c), you also have the right to seek judicial review by commencing a civil action in the superior court.



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Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Records Access Officer



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STATUTORY APPENDIX

Chapter 4, Section 7

Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, or any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in section 1 of chapter 32, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;
- (f) 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;



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(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

[There is no subclause (k).]

(l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security



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measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

(o) the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

(q) Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) Information and records acquired under chapter 18C by the office of the child advocate.

(s) trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.

(t) statements filed under section 20C of chapter 32.



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(u) trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.

Any person denied access to public records may pursue the remedy provided for in section 10A of chapter sixty-six.



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Chapter 10, Section 35DDD

Section 35DDD. There shall be established and set up on the books of the commonwealth a Public Records Assistance Fund, which shall be administered by the Massachusetts office of information technology. The fund shall be credited with:

- (i) all punitive damages assessed pursuant to paragraph (4) of subsection (d) of section 10A of chapter 66;
- (ii) any appropriations, bond proceeds or other monies authorized or transferred by the general court and specifically designated to be credited to the fund;
- (iii) gifts, grants and other private contributions designated to be credited to the fund;
- (iv) all other amounts credited or transferred to the fund from any other fund or source; and
- (v) interest or investment earnings on any such monies. Amounts credited to the fund may be expended by the chief information officer, without further appropriation, to provide grants to municipalities to support the information technology capabilities of municipalities to foster best practices for increasing access to public records and facilitating compliance with said chapter 66.



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Chapter 66, Section 1A

Section 1A. The supervisor of records shall:

- (i) create educational materials or guides for agencies and municipalities, and may make available training in order to foster awareness and compliance with this chapter; and
- (ii) prepare forms, guidelines and reference materials for agencies and municipalities to use and disseminate to individuals seeking access to public records to assist them in making informed public records requests.

The supervisor of records shall make the forms, guidelines and reference materials available at no cost on a website operated by the secretary of the commonwealth. Upon request and to the extent feasible, the supervisor of public records shall assist each agency and municipality in developing best practices to facilitate compliance with this chapter and to promote access to public records.



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Chapter 66, Section 3

Section 3. The word "record" in this chapter shall mean any written or printed book or paper, or any photograph, microphotograph, map or plan. All written or printed public records shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished or on one hundred per cent bond paper sized with animal glue or gelatin, and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer. All photographs, microphotographs, maps and plans which are public records shall be made of materials approved by the supervisor of records. Public records may be made by handwriting, or by typewriting, or in print, or by the photographic process, or by the microphotographic process, or by electronic means, or by any combination of the same. When the photographic or microphotographic process is used, the recording officer, in all instances where the photographic print or microphotographic film is illegible or indistinct, may make, in addition to said photographic or microphotographic record, a typewritten copy of the instrument, which copy shall be filed in a book kept for the purpose. In every such instance the recording officer shall cause cross references to be made between said photographic or microphotographic record and said typewritten record. If in the judgment of the recording officer an instrument offered for record is so illegible that a photographic or microphotographic record thereof would not be sufficiently legible, he may, in addition to the making of such record, retain the original in his custody, in which case a photographic or other attested copy thereof shall be given to the person offering the same for record, or to such person as he may designate.

Subject to the provisions of sections one and nine, a recording officer adopting a system which includes the photographic process or the microphotographic process shall thereafter cause all records made by either of said processes to be inspected at least once in every three years, correct any fading or otherwise faulty records and make report of such inspection and correction to the supervisor of records.



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Chapter 66, Section 6A

Section 6A. (a) Each agency and municipality shall designate 1 or more employees as records access officers. In a municipality, the municipal clerk, or the clerk's designees, or any designee of a municipality that the chief executive officer of the municipality may appoint, shall serve as records access officers. For the purposes of this chapter the term "agency" shall mean any entity, other than a municipality, that is identified in clause twenty-sixth of section 7 of chapter 4 as possessing "public records," as defined therein.

(b) A records access officer shall coordinate an agency's or a municipality's response to requests for access to public records and shall facilitate the resolution of such requests by the timely and thorough production of public records. Each records access officer shall:

- (i) assist persons seeking public records to identify the records sought;
- (ii) assist the custodian of records in preserving public records in accordance with all applicable laws, rules, regulations and schedules; and
- (iii) prepare guidelines that enable a person seeking access to public records in the custody of the agency or municipality to make informed requests regarding the availability of such public records electronically or otherwise.

Guidelines shall be updated periodically and shall include a list of categories of public records maintained by the agency or municipality. Each agency and municipality that maintains a website shall post the guidelines on its website.

(c) Each agency and municipality shall post in a conspicuous location at its offices and on its website, if any, the name, title, business address, business telephone number, and business email address of each records access officer. The designation of 1 or more records access officers shall not be construed to prohibit employees who have been previously authorized to make public records or information available to the public from continuing to do so. Any employee responsible for making public records available shall provide the records in accordance with this chapter.

(d) The records access officer shall provide the public records to a requester by electronic means unless the record is not available in electronic form or the requester does not have the ability to receive or access the records in a usable electronic form. The records access officer shall, to the extent feasible, provide the public record in the requester's preferred format or, in the absence of a preferred format, in a searchable, machine readable format. The records access officer shall not be required to create a



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new public record in order to comply with a request, provided that furnishing a segregable portion of a public record shall not be deemed to be creation of a new record. If the public record requested is available on a public website pursuant to subsection (b) of section 19 of this chapter, section 14C of chapter 7 or any other appropriately indexed and searchable public website, the records access officer may furnish the public record by providing reasonable assistance in locating the requested record on the public website. An electronically produced document submitted to an agency or municipality for use in deliberations by a public body shall be provided in an electronic format at the time of submission.

(e) Each records access officer of an agency shall document each request for public records submitted to the records access officer. The records access officer shall document:

- (i) the nature of the request and the date on which the request was received;
- (ii) the date on which a response is provided to the requester;
- (iii) the date on which a public record is provided to the requester;
- (iv) the number of hours required to fulfill the request;
- (v) fees charged to the person making the request, if any;
- (vi) petitions submitted under clause (iv) of subsection (d) of section 10;
- (vii) requests appealed under section 10A;
- (viii) the time required to comply with supervisor of records orders under said section 10A; and
- (ix) the final adjudication of any court proceedings under subsection (d) of said section 10A.

Nothing in this subsection shall require a records access officer to disclose information otherwise protected from public access. The secretary of the commonwealth shall prescribe a form for recording such information and shall annually collect the information from the records access officers, post the information on a website maintained by the secretary and report the same to the clerks of the house of representatives and senate.



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- (f) The supervisor of records shall document appeals filed under section 10A, including:
- (i) the date the request was submitted to the records access officer;
 - (ii) the date the records access officer responded;
 - (iii) the amount of fees charged to the requester, if any;
 - (iv) petitions made pursuant to clause (iv) of subsection (d) of section 10;
 - (v) the time required to comply with supervisor of records orders under said section 10A; and
 - (vi) the final adjudication of any court proceedings under subsection (d) of said section 10A.

Nothing in this subsection shall require the supervisor to disclose information otherwise protected from public access. The secretary of the commonwealth shall prescribe a form for recording such information and shall post the information on a website maintained by the secretary.



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Chapter 66, Section 10

Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request, provided that:

- (i) the request reasonably describes the public record sought;
- (ii) the public record is within the possession, custody or control of the agency or municipality that the records access officer serves; and
- (iii) the records access officer receives payment of a reasonable fee as set forth in subsection (d).

A request for public records may be delivered to the records access officer by hand or via first class mail at the record officer's business address, or via electronic mail to the address posted by the agency or municipality that the records access officer serves.

(b) If the agency or municipality does not intend to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request, or of multiple requests from the same requester, unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality is unable to do so within the timeframe established in subsection (a), the agency or municipality shall inform the requester in writing not later than 10 business days after the initial receipt of the request for public records. The written response shall be made via first class or electronic mail and shall:

- (i) confirm receipt of the request;
- (ii) identify any public records or categories of public records sought that are not within the possession, custody, or control of the agency or municipality that the records access officer serves;
- (iii) identify the agency or municipality that may be in possession, custody or control of the public record sought, if known;
- (iv) identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon



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which the withholding is based, provided that nothing in the written response shall limit an agency's or municipality's ability to redact or withhold information in accordance with state or federal law;

- (v) identify any public records, categories of records, or portions of records that the agency or municipality intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or municipality and therefore requires additional time to produce the public records sought;
- (vi) identify a reasonable timeframe in which the agency or municipality shall produce the public records sought; provided, that for an agency, the timeframe shall not exceed 15 business days following the initial receipt of the request for public records and for a municipality the timeframe shall not exceed 25 business days following the initial receipt of the request for public records; and provided further, that the requester may voluntarily agree to a response date beyond the timeframes set forth herein;
- (vii) suggest a reasonable modification of the scope of the request or offer to assist the requester to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably;
- (viii) include an itemized, good faith estimate of any fees that may be charged to produce the records; and
- (ix) include a statement informing the requester of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

(c) If the magnitude or difficulty of a request, or the receipt of multiple requests from the same requester, unduly burdens the other responsibilities of the agency or municipality such that an agency or municipality is unable to complete the request within the time provided in clause (vi) of subsection (b), a records access officer may, as soon as practical and within 20 business days after initial receipt of the request, or within 10 business days after receipt of a determination by the supervisor of public records that the requested record constitutes a public record, petition the supervisor of records for an extension of the time for the agency or municipality to furnish copies of the requested record, or any portion of the requested record, that the agency or municipality has within its possession, custody or control and intends to furnish. The



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records access officer shall, upon submitting the petition to the supervisor of records, furnish a copy of the petition to the requester. Upon a showing of good cause, the supervisor of records 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 the agency or municipality has established good cause, the supervisor of records 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 requester, is frivolous or intended to harass or intimidate the agency or municipality; and
- (vi) the public interest served by expeditious disclosure.

If the supervisor of records 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 of records may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. The supervisor of records shall issue a written decision regarding a petition submitted by a records access officer under this subsection within 5 business days following receipt of the petition. The supervisor of records shall provide the decision to the agency or municipality and the requester and shall inform the requester of the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court.

(d) A records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. The reasonable fee shall not exceed the actual cost of reproducing the record. Unless expressly provided for otherwise, the fee shall be determined in accordance with the following:



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- (i) the actual cost of any storage device or material provided to a person in response to a request for public records under subsection (a) may be included as part of the fee, but the fee assessed for standard black and white paper copies or printouts of records shall not exceed 5 cents per page, for both single and double-sided black and white copies or printouts;
- (ii) if an agency is required to devote more than 4 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested, the records access officer may also 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 (A) shall not be more than \$25 per hour; (B) shall not be assessed for the first 4 hours of work performed; and (C) 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 clause (iv);
- (iii) if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer 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 the record requested but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) 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 clause (iv);
- (iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:



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1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requester to pay the additional or increased fees and any other relevant extenuating circumstances;
 2. an agency or municipality, upon submitting a petition under this clause, shall furnish a copy of the petition to the requester;
 3. the supervisor of records shall issue a written determination with findings regarding any such petition within 5 business days following receipt of the petition by the supervisor of public records; and
 4. the supervisor of records shall provide the determination to the agency or municipality and the requester and shall inform the requester of the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court;
- (v) the records access officer may waive or reduce the amount of any fee charged under this subsection upon a showing that disclosure of a requested record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester, or upon a showing that the requester lacks the financial ability to pay the full amount of the reasonable fee;
- (vi) the records access officer may deny public records requests from a requester who has failed to compensate the agency or municipality for previously produced public records;
- (vii) the records access officer shall provide a written notification to the requester detailing the reasons behind the denial, including an itemized list of any balances attributed to previously produced records;
- (viii) a records access officer may not require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver; and
- (ix) for purposes of this section “commercial purpose” shall mean the sale or resale of any portion of the public record or the use of information from the public record to advance the requester's strategic business interests in a



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manner that the requester can reasonably expect to make a profit, and shall not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or for academic, scientific, journalistic or public research or education.

(e) A records access officer shall not charge a fee for a public record unless the records access officer responded to the requester within 10 business days under subsection (b).

(f) As used in this section, "employee time" means time required by employees or necessary vendors, including outside legal counsel, technology and payroll consultants or others as needed by the municipality.



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Chapter 66, Section 10A

Section 10A. (a) If an agency or municipality fails to comply with a requirement of section 10 or issues a response the requester believes in violation of section 10, the person who submitted the initial request for public records may petition the supervisor of records for a determination as to whether a violation has occurred. In assessing whether a violation has occurred, the supervisor of records may inspect any record or copy of a record in camera; provided, however, that where a record has been withheld on the basis of a claim of the attorney-client privilege, the supervisor of records shall not inspect the record but shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed. If an agency or municipality elects to provide a record, claimed to be subject to the attorney-client privilege, to the supervisor of records for in camera inspection, said inspection shall not waive any legally applicable privileges, including without limitation, the attorney-client privilege and the attorney work product privilege. The supervisor of records shall issue a written determination regarding any petition submitted in accordance with this section not later than 10 business days following receipt of the petition by the supervisor of records. Upon a determination by the supervisor of records that a violation has occurred, the supervisor of records shall order timely and appropriate relief. A requester, aggrieved by an order issued by the supervisor of records or upon the failure of the supervisor of records to issue a timely determination, may obtain judicial review only through an action in superior court seeking relief in the nature of certiorari under section 4 of chapter 249 and as prescribed in subsection (d).

(b) If an agency or municipality refuses or fails to comply with an order issued by the supervisor of records, the supervisor of records may notify the attorney general who, after consultation with the supervisor of records, may take whatever measures the attorney general considers necessary to ensure compliance. If the attorney general files an action to compel compliance, the action shall be filed in Suffolk superior court with respect to state agencies and, with respect to municipalities, in the superior court in the county in which the municipality is located. The attorney general shall designate an individual within the office of the attorney general to serve as a primary point of contact for the supervisor of records. In addition to any other duties the attorney general may impose, the designee shall serve as a primary point of contact within the office of the attorney general regarding notice from the supervisor of records that an agency or municipality has refused or failed to comply with an order issued by the supervisor of records.



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(c) Notwithstanding the procedure in subsections (a) or (b), a requester may initiate a civil action to enforce the requirements of this chapter. Any action under this subsection shall be filed in Suffolk superior court with respect to agencies and, with respect to municipalities, in the superior court in the county in which the municipality is located. The superior court shall have available all remedies at law or in equity; provided, however, that any damages awarded shall be consistent with subsection (d).

(d)(1) In any action filed by a requester pursuant to this section:

- (i) the superior court shall have jurisdiction to enjoin agency or municipal action;
- (ii) the superior court shall determine the propriety of any agency or municipal action de novo and may inspect the contents of any defendant agency or municipality record in camera, provided, however, that the in camera review shall not waive any legally applicable privileges, including without limitation, the attorney-client privilege and the attorney work product privilege;
- (iii) the superior court shall, when feasible, expedite the proceeding;
- (iv) a presumption shall exist that each record sought is public and the burden shall be on the defendant agency or municipality to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law.

(2) The superior court may award reasonable attorney fees and costs in any case in which the requester obtains relief through a judicial order, consent decree, or the provision of requested documents after the filing of a complaint. There shall be a presumption in favor of an award of fees and costs unless the agency or municipality establishes that:

- (i) the supervisor found that the agency or municipality did not violate this chapter;
- (ii) the agency or municipality reasonably relied upon a published opinion of an appellate court of the commonwealth based on substantially similar facts;
- (iii) the agency or municipality reasonably relied upon a published opinion by the attorney general based on substantially similar facts;



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- (iv) the request was designed or intended to harass or intimidate; or
- (v) the request was not in the public interest and made for a commercial purpose unrelated to disseminating information to the public about actual or alleged government activity.

If the superior court determines that an award of reasonable attorney fees or costs is not warranted, the judge shall issue written findings specifying the reasons for the denial.

(3) If the superior court awards reasonable attorneys' fees and other litigation costs reasonably incurred to the requester, it shall order the agency or municipality to waive any fee assessed under subsection (d) of section 10. If the superior court does not award reasonable attorneys' fees and other litigation costs reasonably incurred to the requester, it may order the agency or municipality to waive any fee assessed under said subsection (d) of said section 10. Whether the superior court determines to waive any fee assessed under said subsection (d) of said section 10, it shall issue findings specifying the basis for such decision.

(4) If a requester has obtained judgment in superior court in a case under this section and has demonstrated that the defendant agency or municipality, in withholding or failing to timely furnish the requested record or any portion of the record or in assessing an unreasonable fee, did not act in good faith, the superior court may assess punitive damages against the defendant agency or municipality in an amount not less than \$1,000 nor more than \$5,000, to be deposited into the Public Records Assistance Fund established in section 35DDD of chapter 10.

(e) Notwithstanding any other provision of this chapter, the attorney general may, at any time, file a complaint in Suffolk superior court with respect to agencies and, with respect to municipalities, in the superior court in the county in which the municipality is located, to ensure compliance with this chapter and may further intervene as of right in any action filed in accordance with this section. In any action filed or in which the attorney general has intervened under this subsection, paragraphs (1) and (4) of subsection (d) shall apply and any public records the court orders produced shall be provided without a fee.



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Chapter 66, Section 10B

Section 10B. The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined in section 121 of chapter 140, shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said chapter 140, and names and addresses of persons licensed to carry or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in section 167 of chapter 6 and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address, personal email address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to criminal justice agencies as defined in said section 167 of said chapter 6. The name, home address, telephone number and personal email address of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be 385 disclosed. The home address, telephone number, personal email address or place employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name, home address, telephone number, personal email address or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.



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Chapter 66, Section 12

Section 12. All such records shall be kept in the rooms where they are ordinarily used, and so arranged that they may be conveniently examined and referred to. When not in use, they shall be kept in the fireproof rooms, vaults or safes or buildings, vaults or file rooms that comply with standards of the National Fire Protection Association, or by electronic means with off-site secure storage, or in accordance with standards promulgated by the records conservation board.



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Chapter 66, Section 13

Section 13. Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.



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Chapter 66, Section 17

Section 17. Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county or municipality to which the records originally belonged; provided, however, that the custodian of public records may enter into a contract for the storage of records containing public record information, but no contract for the storage of public records shall be entered into if the contract prevents or unduly restricts a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records not directly in the custodian's possession shall be considered in the custody of the custodian if subject to a contract for the storage of public records that is permitted by this section. If the custodian does not have custody of public records, the custodian shall demand delivery from any person unlawfully having possession of the records, and the records shall immediately be delivered by such person to the custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of not more than \$20.



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Chapter 66, Section 19

Section 19. (a) When designing or acquiring an electronic record keeping system or database, records access officers shall, consistent with section 17 of chapter 110G, consult with their chief executive officer, chief administrative officer or the Massachusetts office of information technology pursuant to chapter 7D to ensure, to the extent feasible, that the system or database is capable of providing data in a commonly available electronic, machine readable format. Such database designs or acquisitions shall allow for, to the extent feasible, information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access. No agency or municipality shall enter into a contract for the storage of electronic records containing public records if the contract prevents or unduly restricts the records access officer from providing the public records in accordance with this chapter.

(b) Every agency shall provide on a searchable website electronic copies, accessible in a commonly available electronic format, of the following types of records, provided that any agency may withhold any record or portion thereof in accordance with state or federal law:

- (i) final opinions, decisions, orders, or votes from agency proceedings;
- (ii) annual reports;
- (iii) notices of regulations proposed under chapter 30A;
- (iv) notices of hearings;
- (v) winning bids for public contracts;
- (vi) awards of federal, state and municipal government grants;
- (vii) minutes of open meetings;
- (viii) agency budgets; and
- (ix) any public record information of significant interest that the agency deems appropriate to post.



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Section 16 of Chapter ___ of the Acts of 2016

A records access officer serving in a municipality pursuant to section 6A of chapter 66 of the General Laws shall, to the extent feasible, post the commonly available public record documents identified in subsection (b) of section 19 of said chapter 66 on a website maintained by the municipality.



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Section 17 of Chapter ___ of the Acts of 2016

The supervisor of records shall adopt regulations necessary to implement this act. These regulations shall be adopted not later than January 1, 2017.



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Section 18 of Chapter ___ of the Acts of 2016

Notwithstanding any general or special law to the contrary, sections 9 and 10 of this act shall not apply to public records requests submitted under section 10 of chapter 66 of the General Laws before the effective date of this act and no obligation imposed by sections 9 and 10 of this act shall be enforceable or deemed relevant in an appeal pending before the supervisor of records or a court on the effective date of this act.



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Section 19 of Chapter ___ of the Acts of 2016

There shall be a working group to review and evaluate the application of subsection (f) of clause twenty-sixth of section 7 of chapter 4 of the General Laws as it relates to law enforcement. The working group shall review determinations of the supervisor of records and judicial decisions regarding the application of said subsection (f) of said clause twenty-sixth of said section 7 of said chapter 4 and issue findings regarding:

- (i) the public interest in releasing records made and kept by police departments, including arrest records;
- (ii) privacy and confidentiality concerns related to releasing records made and kept by police departments; and
- (iii) the interaction of said subsection (f) of said clause twenty-sixth of said section 7 of said chapter 4 and the criminal offender record information system.

The working group shall consist of: the secretary of the commonwealth who shall serve as chair; the secretary of public safety and security, or a designee; the court administrator of the trial court, or a designee; 2 members of the senate, 1 of whom shall be the minority leader, or a designee; 2 members of the house of representatives, 1 of whom shall be the minority leader, or a designee; 1 of whom shall be the secretary of administration and finance, or a designee; a representative of the American Civil Liberties Union of Massachusetts, Inc.; a representative of the Massachusetts Newspaper Publishers Association; a representative of the Massachusetts Town Clerks Association; a representative of the Massachusetts Chiefs of Police Association, Incorporated.; the attorney general or a designee; a representative of the State Police Commissioned Officers Association of Mass., Inc., a representative of the Massachusetts Coalition of Police, Inc.; and a representative of the Massachusetts Municipal Association, Inc..

The working group shall file a report of its findings and recommendations, along with any drafts of legislation necessary to carry those recommendations into effect, with the clerks of the senate and house of representatives not later than December 30, 2017.



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Section 21 of Chapter ___ of the Acts of 2016

Notwithstanding section 16, a municipality that maintains a website shall not be required to post guidelines or reference materials on its website, as required by subsection (b) of section 6A of chapter 66 of the General Laws, until July 1, 2017.