

Subject: Request for Appeal - Peabody Public Schools - Non Responsive
Date: Tuesday, April 16, 2024 at 9:24:37 AM Eastern Daylight Time
From: Commonwealth Transparency <info@opencommonwealth.org>
To: pre@sec.state.ma.us <pre@sec.state.ma.us>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
CC: Marjorie Macarelli <macarellim@peabody.k12.ma.us>
Priority: High
Attachments: commonwealth.transparency.response.to.mertz.request[57].pdf

Greetings:

On April 6, 2024, the following public records request was served upon the Peabody Public Schools (“District”):

From: Commonwealth Transparency info@opencommonwealth.org
Date: Saturday, April 6, 2024 at 3:21 PM
To: Commonwealth Transparency info@opencommonwealth.org
Subject: Public Record Request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

Please provide the following documents/records in the possession or under the control of your school/district or town/city for the time period **January 1, 2018 through April 5, 2024:**

Any and all contracts, communications, or documents of any kind with the following:

- Accountedge LLC - 3 Meadowlark Farm Lane, Middleton, MA 01949 USA
- Antonietta Mertz (a.k.a. Toni Mertz) - - 28 East Meadow Lane, Middleton, MA 01949 USA
- Kelly DuMont - 3 Meadowlark Farm Lane, Middleton, MA 01949 USA

Any and all payments made to:

- Accountedge LLC - 3 Meadowlark Farm Lane, Middleton, MA 01949 USA
- Antonietta Mertz (a.k.a. Toni Mertz) - - 28 East Meadow Lane, Middleton, MA 01949 USA
- Kelly DuMont - 3 Meadowlark Farm Lane, Middleton, MA 01949 USA

Any and all conflict of interest documents for:

- Accountedge LLC - 3 Meadowlark Farm Lane, Middleton, MA 01949 USA
- Antonietta Mertz (a.k.a. Toni Mertz) - - 28 East Meadow Lane, Middleton, MA 01949 USA
- Kelly DuMont - 3 Meadowlark Farm Lane, Middleton, MA 01949 USA

This requests includes but is not limited to email, email-attachments, text messages, calendar entries, voice mail messages and/or physical documents.

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments **and metadata**.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her “superior knowledge” to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs’ agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for “retrieval of public portions of records to provide maximum public access.” See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker,

and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a “searchable machine-readable form.” 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: “Where public records are in electronic form, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. ” Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

On April 16, 2024 the following response (Including the attachment to this email) was received:

From: Marjorie Macarelli <macarellim@peabody.k12.ma.us>
Date: Tuesday, April 16, 2024 at 8:11 AM
To: Commonwealth Transparency <info@opencommonwealth.org>
Subject: Response to Public Records Request

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Marjorie A. Macarelli

Administrative Assistant to the Superintendent/School Committee Secretary/Public
Records Access Officer
Peabody Public Schools
27 Lowell Street
Peabody MA 01960
978-536-6500

H.O.P.E.

Every Student, Every Day.

OpenCommonwealth hereby appeals the response of the district as non-responsive/non-confirmative per Massachusetts Public Records Law M.G.L. c66, §§ 10-10A.

The response demands \$575 for search and redaction.

There is no quantification of responsive records, there is no claim of exemption to justify any charges for either segregation or redaction.

There is no quantification for why it would take 10 hours to search for records that many other districts have been able to search well withing the 2-4 hour window of non-chargeable time.

There are many districts that have found no records and several that have, none of these records have been redactable, nor is there any reasonable use of the available exemptions to the district for this records request.

The other districts responses, both of no responsive records and with responsive records can be found here:

[https://www.dropbox.com/scl/fo/hsqclfdx35em2svqmu72d/h?
rlkey=53x718jk46vd3qai45m8um5op&dl=0](https://www.dropbox.com/scl/fo/hsqclfdx35em2svqmu72d/h?rlkey=53x718jk46vd3qai45m8um5op&dl=0)

Wherefore, OpenCommonwealth requests that the SPR find and Order the District to provide all responsive records without delay and without charge.

Kindest Regards,

OpenCommonwealth.org