



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

Manza Arthur  
Supervisor of Records

May 15, 2024  
**SPR24/1405**

Shirley Dorai  
Executive Assistant to the Superintendent  
Malden Public Schools  
215 Pleasant Street  
Malden, MA 02148

Dear Ms. Dorai:

On May 8, 2024, this office received your petition on behalf of the Malden Public Schools (School/District) seeking an extension of time to produce records, permission to charge for time spent segregating or redacting responsive records, and relief from the obligation to produce responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, it is my understanding that the School furnished a copy of this petition to the requestor. G. L. c. 66, § 10(d)(iv). On April 24, 2024, Commonwealth Transparency (“requestor”) sought various “electronic communications of [a named individual].”

***Petition for an Extension of Time***

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

- (i) the need to search for, collect, segregate or examine records;
- (ii) the scope of redaction required to prevent unlawful disclosure;
- (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
- (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
- (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
- (vi) the public interest served by expeditious disclosure.

G. L. c. 66, § 10(c).

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

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) must provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

*Request for Additional Time to Produce Responsive Records*

In its petition, the School states, “[g]iven the broad scope of the request and the volume of potentially responsive records which require detailed review and redaction, the District submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the District hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. The District will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension. Pursuant to M.G.L. c. 66, section 10(c), the District requests an additional 30 business days...”

I find that in light of the need to search for, collect, segregate and examine the records, the capacity of the Town to produce the request without an extension, and efforts undertaken by the Town in fulfilling the current request, the Town has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(iv). The Town is granted an extension of 30 business days.

*Petition to Assess Fees – Municipalities*

The Supervisor of Records (Supervisor) may approve a petition from a municipality to charge for time spent segregating or redacting or to charge in excess of \$25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the municipality to comply with the request. G. L. c. 66, § 10(d)(iv).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve

a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of \$25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

### ***Fee Estimates – Municipalities***

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

### ***Petition to Assess Fees***

In its May 8<sup>th</sup> petition, in addition to charging for segregation and redaction required by law under Exemption (a) and the attorney-client privilege, the School states the following in support of its request to charge for segregation and redaction of the responsive records under Exemption (c), "the District needs to review and redact the documents to the extent they contain information concerning employees that relates to performance or complaints, evaluations of employees, requests for accommodations, leaves of absences, and discipline of employees."

In light of the School's petition, I find the School has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). To the extent the responsive records

contain the exempt information as described above, the School may assess a fee for the segregation and redaction of such exempt material.

*Request for Relief*

In its petition, “[t]he District believes, pursuant to G. L. c. 66, § 10(c), that this request is part of a series of requests that is intended to harass the District and thereby seeks that the Supervisor relieve the District of its obligation to provide copies of the records sought.”

In support of its request for relief, the School argues the following:

Open Commonwealth is requesting records related to a bus video that is subject of the litigation involving the Supervisor in case CIVIL ACTION NO. 21-1458-J, for which the Supervisor is considering the parties’ harassment arguments. This bus video was also the subject of litigation in Federal District Court at Docket No. 1:21-cv-10190. The request for these emails relates to discovery requests in that litigation. The consistent requests from Open Commonwealth and/or Mr. Friedman for these records repeatedly and using public records to conduct further discovery is harassment. Given that it is for his own use, it is not for a public purpose. For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

In an email to this office dated May 8, 2024, the requestor objected to all aspects of this petition and stated the following:

Malden has erected a scheme of denying the existence of records, regurgitating the same exemptions of attorney-client privilege, student records and personal information (Exemption C), inflating the responsive record set, and charging exorbitant fees to forestall and frustrate public records requests from multiple records seekers.

...

Malden has claimed harassment from OpenCommonwealth, in the present case and has again failed to provide evidence that meets both prongs of the law. This request is neither contemporaneous nor part of a series of requests designed to harass, and is absolutely intended for the broad dissemination to the public. Recent posts by OpenCommonwealth regarding Malden have been viewed by over 100,000 people in Massachusetts on multiple platforms. OpenCommonwealth has been reporting on Open Meeting Law, Public Records, Schools and Municipalities throughout the Commonwealth as the SPR knows well.

...

Malden’s request for 30 days to respond should be denied as they have not substantiated a need for same...

Based on the information provided in the School's petition, I find that the School has not demonstrated that the requests are frivolous and not intended for the broad dissemination of information to the public about actual or alleged government activity, as required by G. L. c. 66, § 10(c).

***Conclusion***

Accordingly, I find the School has established good cause for a time extension of 30 business days and that the School has met its burden to explain how the response could not be prudently completed without redaction or segregation based on the above. However, I am unable to grant relief from the obligation to produce responsive records.

Please note, the requestor has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, §§ 10(c), 10(d)(iv)(4), 10A(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur", is centered on the page. The signature is written in a cursive, flowing style.

Manza Arthur  
Supervisor of Records

cc: Commonwealth Transparency