President Search Committee Meeting

Thursday, August 27, 2020
3:00 p.m. – 5:00 p.m.

https://zoom.us/j/95180380271
Meeting ID: 951 8038 0271

Agenda

1. Welcome and introductions

2. Role of the search committee / Chair's perspective on the search
   - Charge

3. Procedural matters
   - Code of ethics
   - Contact information

4. WittKieffer introduction and search firm overview
   - Roles and responsibilities
   - Search process and timeline
   - Overview of constituent intake sessions – including survey for input and nominations
   - Profile and advertisement and position profile
   - Application sorting/WorkZone organization

5. Affirmative action, legal issues and search committee best practice
   - Massachusetts Board of Higher Education's *Guidelines and Procedures for the Search, Selection, Appointment and Removal of State University and Community College Presidents*
   - Massachusetts Open Meeting Law
   - Massachusetts Public Records Law (relevant provisions)

6. Discussion of the opportunity
   - Agenda for the next president
   - Desired qualities and characteristics

7. Communication plan
   - Index of documents to list on website

8. Next steps/adjourn

Attachments

- Charge
- Code of Ethics
- WittKieffer team profile
- WittKieffer contact information
- Survey – Draft
- Timeline – Draft
- BHE guidelines
- Open meeting law guide
- Public records law guide
- Index of documents to list on website

Westfield STATE UNIVERSITY

Search Committee Charge

Friday, August 21, 2020

With the help of the Westfield State University community and search firm, prepare a statement of institutional opportunities and challenges for the next president.

With the help of the Westfield State University community and search firm, prepare a statement of desired presidential characteristics necessary to realize those opportunities and challenges.

Conduct an active, national and even international search to attract a diverse pool of highly qualified candidates.

Serve as ambassadors for Westfield State University in energetically promoting the institution’s strengths and values.

Work in partnership with the search firm to organize and implement the search process, including communications with candidates and references, maintenance of records, and arrangements for interviews.

Maintain absolute confidentiality concerning the names of candidates and discussions within the Committee throughout the search and beyond.

Make regular reports to the Board and to members of the Westfield State University community about the progress of the search process while maintaining confidentiality about candidates.

Organize a process for introducing final candidates to the Westfield State University community and Board of Trustees and collect feedback from candidates' visits to inform the committee's decision.

Recommend to the Board three final candidates, unranked, with substantiation of the Committee’s conclusions that the candidate(s) meet the criteria originally set forth.

Westfield
STATE UNIVERSITY

Code of Ethics

Thursday, August 27, 2020

By my signature below, I pledge to adhere to the following:

1) As a participant in the search process for the President, I accept my responsibility shared by the members of the Search Committee ("Members") to protect the integrity of Westfield State University and all prospects and candidates.

2) I acknowledge that only the Chair of the Search Committee is authorized to speak to the news media or any other publication or media outlet, or to respond to any inquiries, on behalf of the Search Committee.

3) I agree to disclose promptly to the Chair of the Search Committee any conflict of interest, or the appearance thereof, as a result of a relationship between me and any prospect or candidate, or for any other reason.

4) I acknowledge that information is a crucial component of the Search Committee's work. This work includes, without limitation, information developed and received about prospects, candidates and their employing institutions. I understand maintaining the confidentiality of this information is necessary to attract high quality finalists, to avoid putting their current positions in jeopardy, and to protect the integrity of such individuals and Westfield State University. Specifically, I will adhere to the following principles:

    - I will respect the **absolute confidentiality** of all prospects and candidates. I will not reveal the identity of, or any other information about, prospects and candidates before or after the Search Committee completes its work.

    - I will respect the confidentiality of all Search Committee meetings and discussions.

    - I will be fair, accurate, honest and responsible in my management of information germane to the search.

    - I will give accurate and complete reports on candidates to the Search Committee Chair or his designee if requested.

5) I will place the best interests of Westfield State University ahead of all special and personal interests and I will use common sense and good judgment in applying ethical principles to this search process.

Please acknowledge your understanding of your obligations by signing below and returning the signed agreement to Jean Beal at jbeal@westfield.ma.edu.

Please do not hesitate to contact Bob Martin, Search Committee Chair at rmartin_trustee@westfield.ma.edu or WittKieffer at WSU-President@wittkieffer.com should you have questions.

_____ _____

Printed Name Date

_____

Signature

WittKieffer

WittKieffer is the largest executive search firm dedicated to organizations committed to improving the quality of life. WittKieffer clients include major colleges and universities, arts and cultural organizations, national associations and leading hospitals and health systems. Within the Education Practice, the firm specializes in executive searches for presidents, chancellors, provosts, deans, senior advancement officers and leaders of major academic and administrative units such as finance, enrollment management and student affairs.

Your Search Team

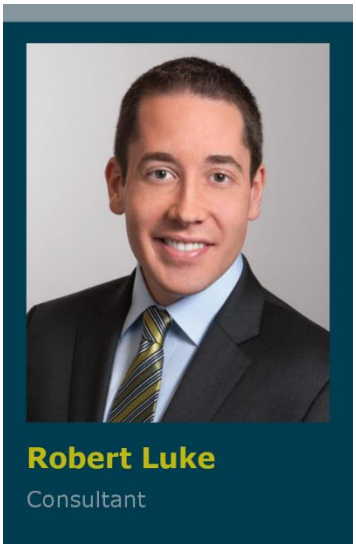
Through her executive search work, writing, speaking and professional activities, **Lucy Leske** continues to make an indelible imprint upon the higher education landscape. An executive recruiter since 1992 – and with WittKieffer since 1998 – Lucy has supported the hiring of hundreds of administrators who are helping to shape and position their institutions for the future.

During her tenure with WittKieffer, Lucy has led a broad range of searches, including presidential, vice presidential, decanal and provostial searches. Her areas of expertise include presidential and CEO positions; academic leadership in arts and sciences, law, engineering, education and business; finance and administration; inclusion and diversity; international leadership; and advancement and philanthropy.

She has published national articles and presented at professional conferences sponsored by the American Council on Education, the National Association of Diversity Officers in Higher Education, the Millennium Leadership Institute of the American Association of State Colleges and Universities, Association of Public Land Grant Universities, and TIAA-CREF Institute. Her topics have included leadership transition and assessment, professional development for women and underrepresented individuals, and the recruitment and retention of staff.

Lucy is the co-chair of the WittKieffer Diversity Council and works with clients to enhance diversity and inclusive excellence in leadership recruitment. She has played a key role in expanding WittKieffer's international executive search practice. She served for ten years on the Board of Trustees at Mitchell College in New London, Connecticut, and on numerous boards and committees related to environmental and community sustainability in her hometown of Nantucket, Massachusetts.

Education
B.A., Biological Sciences, Mount Holyoke College, South Hadley, MA
Certificate of Completion, Ecology, Marine Biological Laboratory, Woods Hole, MA

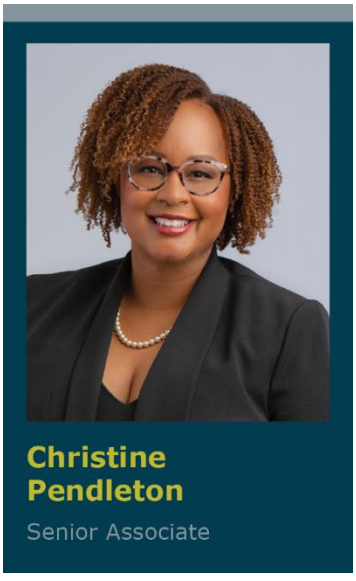


Robert Luke provides expertise and services to a broad range of universities, colleges and research institutions as a consultant in WittKieffer's Education and Interim Leadership practices.

Robert has a strong record placing deans of architecture, science and engineering, social work and social policy, as well as vice presidents for academic affairs, finance and development. Additionally, he has completed several chief executive officer searches for leading scientific centers, institutes and laboratories. In his interim leadership work, Robert ensures that institutions have the excellence and stability they need on their executive team, as they work toward conducting a traditional search. Robert strives to engage leaders who are interested in mitigating and solving today's most significant challenges.

In addition to consulting, Robert is known for his administrative and operational leadership, which he developed across a variety of sectors. He came to WittKieffer in 2013 from George Washington University, where he managed special projects and initiatives on behalf of the president, provost and board of trustees. Robert also previously served as the deputy campaign manager on a successful U.S. Senate campaign and as a staff member in the U.S. Senate.

Education
M.A., George Washington University
M.P.S., George Washington University
B.A. with Honors, University of Central Florida



Christine Pendleton exemplifies WittKieffer's spirit of professional dedication and commitment to clients. Based in the firm's Oak Brook, Illinois, office, Christine works to identify presidents, chancellors, provosts, vice presidents, deans and chief diversity officers on behalf of top colleges and universities, as well as key senior leaders in non-profit organizations.

Christine is the co-chair of the firm's Diversity Council and the director of its Community Fund. She was the recipient of WittKieffer's 2017 Quality Award.

Prior to joining WittKieffer, Christine worked at a community-based education, career development and supportive services organization in Chicago. In her role, she was responsible for developing and implementing fundraising, marketing, communications and program growth plans.

In addition to her professional work, Christine devotes a significant amount of her time to community service activities. She has served as a volunteer consultant for local and national non-profit organizations in strategic planning and marketing. She is a former member of the board of directors of the Junior League of Chicago and is a member of Delta Sigma Theta Sorority, Inc.

Education
M.A., Writing, DePaul University, Chicago, IL
B.A., English Education, magna cum laude, Bennett College, Greensboro, NC

Sylvia Smith will provide search coordination and logistical support for the search. She is expert at tracking and responding to all the applications, nominations and requests for information that a search entails, and at handling logistics and other details.

To suggest potential candidates or forward nominations,
or to send inquiries or comments to the entire search team, please email:

WSU-President@wittkieffer.com

President Search

WittKieffer is pleased to support Westfield State University in the search for its next president. We welcome your questions, comments and suggestions throughout the search.

WittKieffer Contact Information

Consulting Team

Lucy A. Leske
508-680-1268
lleske@wittkieffer.com

Robert Luke
617-877-0329
rluke@wittkieffer.com

Christine Pendleton
630-575-6939
cpendleton@wittkieffer.com

Search Coordination and Logistical Support

Sylvia Smith
630-575-6122
ssmith@wittkieffer.com

To suggest potential candidates or forward nominations,
or to send inquiries or comments to the entire search team, please email:

WSU-President@wittkieffer.com

Physical mail can be addressed to:

WittKieffer

Attn: Westfield State University President Search
Lucy Leske/Robert Luke/Christine Pendleton/Sylvia Smith
2015 Spring Road, Suite 510
Oak Brook, IL 60523

President Search
Timeline & Search Committee Schedule

Westfield STATE UNIVERSITY

Date	Time	Location	Activity
Week of August 24	TBD	Via Zoom	**Search Committee Meeting 1** Charge to the committee Equity in searches Process and timeline overview Open discussion of the opportunity
September	TBD	Via Zoom	**Campus Listening Sessions** Search committee members and WK team members hear from stakeholder groups
Late September	TBD	Via Zoom	**Search Committee Meeting 2** Review of surveys and listening discussions and leadership profile disussion
October			Finalization of leadership profile and ad
Mid-October – Mid December			WittKieffer active recruitment period
December	TBD	Via Phone	**Search Committee Meeting 3** Search updates and feedback from the marketplace Preparation for candidate review
Late December			Candidate materials posted for committee review
Early January	TBD	Via Zoom	**Search Committee Meeting 4** Presentation and selection of candidates for interviews
Mid-January	TBD	Via Zoom	**First-round Candidate Interviews**
Mid December			WittKieffer conducts referencing on finalists
Early February	TBD	On-campus Locations TBD	**Second-round/Campus Interviews with Finalists**
Mid-February	TBD	Via Zoom	**Search Committee Meeting 5** Preparation of report
TBD	TBD	TBD	**Board of Trustees Meeting** Discussion, selection, and vote
TBD	TBD	TBD	**Masssacusetts Board of Higher Education Meeting** Discussion and vote

Important Dates:

September 2	Start of Fall term
September 7	Labor Day
October 12	Columbus Day
November 11	Veterans Day
November 25-27	Thanksgiving
December 23 – January 4	Winter Break
January 19	Start of Spring term

DRAFT SURVEY
Westfield State University Presidential Search
Fall 2020

Constituency –

- Faculty
- Student
- Administration
- Staff
- Alumna/alumnus
- Volunteer
- Friend or community member
- Parent
- Other

WHAT ARE WESTFIELD STATE UNIVERSITY'S GREATEST STRENGTHS? (choose three)

- Mission
- Academic programs
- Faculty
- Campus (facilities, location, etc.)
- Leadership
- Culture
- Students
- Strategic plan
- International experience
- Alumnae/alumni
- Parents
- Comments

WHAT ARE WESTFIELD STATE UNIVERSITY'S GREATEST CHALLENGES? (choose three)

- Financial stability
- Programs
- Endowment growth
- Enrollment (size, quality, etc.)
- Fund-raising
- Competitive positioning/brand
- Space/facilities
- Retention/graduation rates
- Faculty (recruitment, retention, quality)
- Constituency engagement (alumnae/alumni, parents, friends, etc.)
- Community relations
- Other/Comments

WHAT ARE THE MOST IMPORTANT SHORT TERM PRIORITIES FOR THE NEW PRESIDENT IN THE FIRST ONE TO TWO YEARS? (choose three)

- Faculty – size, quality, recruitment
- Student recruitment
- Balancing financial aid, cost, access, etc.
- Technology
- Financial stability
- Fund raising
- Marketing and branding
- Board development
- Strategic planning
- Assessment
- Program development
- Other/Comments

WHAT ARE THE MOST IMPORTANT AGENDA ITEMS FOR THE NEW PRESIDENT IN THE FIRST THREE TO FIVE YEARS? (choose three)

- Faculty – size, quality, recruitment
- Student recruitment
- Balancing financial aid, cost, access, etc.
- Technology
- Financial stability
- Fund raising
- Marketing and branding
- Board development
- Strategic planning
- Assessment
- Program development
- Other/Comments

WHAT ARE THE MOST IMPORTANT METRICS FOR MEASURING THE PRESIDENT'S SUCCESS? (choose three)

- Net revenue
- Enrollment statistics (selectivity, yield, academic quality, size, etc.)
- Retention and graduate rates
- Rankings
- Alumnae/alumni participation
- Philanthropic revenue
- Financial indicators (debt ratios, bond ratings, net assets, etc.)
- Tuition discount rate (financial aid awards)
- Diversity and inclusion statistics
- Faculty quality
- Campus climate – student and employee satisfaction
- Marketing (# media hits, visibility)
- Other/Comments

WHAT CREDENTIALS AND EXPERIENCES ARE MOST IMPORTANT FOR THE NEW PRESIDENT DEMONSTRATE? (choose three)

- Earned doctorate or terminal degree (Ph.D., Ed.D., J.D., or equivalent)
- Tenured/tenurable
- Classroom teaching experience
- Peer-reviewed scholarship
- Leadership in complex organizations, regardless of type
- Higher education leadership experience
- Evidence of fund-raising success
- Evidence of effective financial management
- Evidence of improving results – enrollment, revenue, quality
- Evidence of successful change management
- Experience in a private, undergraduate, residential college
- Other/Comments

WHAT COMPETENCIES AND SKILLS ARE MOST IMPORTANT? (choose five)

Self-Awareness

- Self-knowledge and development
- Acts with integrity, creates an environment of trust and integrity
- Tolerance for ambiguity, flexibility
- Passion for work

Relationships

- Communicates effectively
- Influences and Inspires
- Inclusive, values diversity
- Collaborative

Organizational Leadership

- Builds organizational talent/capacity
- Manages resources (human, financial, technical)
- Service focused
- Ensures execution, is accountable

Innovation and vision

- Champions the vision and mission of university
- Shapes strategic focus, strategic thinking and planning
- Effective decision maker
- Thinking skills, analytical and systems thinker

- Other/Comments

Massachusetts Board of Higher Education

Guidelines and Procedures for the Search, Selection, Appointment and Removal of State University and Community College Presidents

June 2013

Contents

I. Introduction

Chapter 15A provides that the Board of Trustees for each state university and community college shall appoint and remove the institution's president subject to the approval of the Board of Higher Education. G.L. c. 15A, § 21. Section 9 of Chapter 15A further provides that the BHE shall "approve and fix the compensation of the chief executive officer of each institution." In furtherance of these legislative requirements, and consistent with the BHE's responsibility to establish overall goals in order to achieve a well-coordinated, quality system of public higher education in the Commonwealth, to establish coordination between and among institutions, and to resolve conflicts of policies or operations, the BHE issues these guidelines and procedures for the search, selection, appointment and removal of the chief executive officers at state universities and community colleges. G.L. c. 15A, § 9.

The authority to monitor and interpret this policy shall be vested in the Commissioner of Higher Education. The Commissioner, in consultation with the Chair of the BHE, shall have the authority to allow exceptions to this policy.

II. Search and Selection

A. Initiation of the Presidential Search

When a local Board of Trustees wishes to initiate the search for a new president, it shall so inform the Commissioner in writing. This notification shall occur at the earliest stage of the search process, prior to the appointment of a search committee or the selection of an executive search firm (where applicable).

To help ensure a successful outcome of the search, it is essential that communication between the Board of Trustees/search committee and the Commissioner's office be maintained throughout the search and selection process.

B. Position Description and Announcement

The leadership needs of an institution vary widely at different stages of its historical development. For this reason, the local Board of Trustees is strongly encouraged to begin the presidential search process by undertaking a careful assessment of the institution's current status and future goals. Such assessment is typically conducted with the assistance of an executive search firm (see Section II.D.3, below) and shall include attentiveness to regional and statewide needs and goals, and the institution's capacity to function within an integrated system.

Based on this assessment, the Board of Trustees (or the search committee, if so delegated by the Board of Trustees) should develop a reasonably detailed position description and announcement, commonly known as the "presidential profile." The Commissioner shall be provided a reasonable opportunity to review and comment upon the draft position description for a new president prior to its publication. The

Commissioner shall act with reasonable dispatch and shall share his/her comments, along with his/her preliminary thoughts regarding essential terms of appointment and an appropriate salary range, with the Chair of the Board of Trustees.

The presidential position description and announcement shall be placed in at least one major national publication serving the higher education marketplace, and in such other local and national publications as are necessary to attract a sufficiently large and diverse pool of qualified applicants.

C. Minimum Qualifications

All new presidents shall reflect the education and experience that represent the highest levels of qualifications for such positions. A well documented history of organizational leadership and proven success in meeting specific performance goals and objectives is required.

The minimum qualifications for a president shall therefore be as follows:

Education

An earned doctorate (including but not limited to a Ph.D., J.D., or Ed.D.), coupled with substantial experience relevant to the segmental mission and needs of the institution. In exceptional circumstances, an earned master's degree, coupled with substantial experience relevant to the segmental mission and needs of the institution, may satisfy minimum educational requirements.

Experience

Substantial experience in a senior management position in higher education.

or

Substantial experience in a senior management position in a field outside higher education, where such experience is deemed relevant to, and provides a basis for judging, the candidate's capability to serve as a college or university president.

D. Search Committee Selection, Procedures and Responsibilities

1. Selection and composition of the search committee

The Board of Trustees shall appoint a presidential search committee that includes a minimum of three Trustees and at least one individual from each of the major campus constituencies (students, faculty, professional staff, non-unit staff and support staff). In addition, one voting member shall be appointed by the Commissioner. In selecting the appointee, the Commissioner shall first offer the opportunity to serve on the search committee to members of the Board of Higher Education, and if that does not result in an appointment, the Commissioner shall appoint a senior-level staff member of the Department of Higher Education.

Other individuals, including but not limited to alumni/ae, community representatives, and distinguished educators from other institutions, may be included on the search committee at the discretion of the Board of Trustees. The search committee should not normally exceed nine to thirteen voting members. The chair of the search committee shall be appointed by the Chair of the Board of Trustees from among the Trustee members of the search committee.

The process for selecting search committee members from campus constituencies shall be determined by the Board of Trustees; provided, however, that the Board of Trustees shall provide an opportunity for any member of the college/university community to express interest in, and be considered for appointment. If the Board wishes to solicit nominations from any organization, including any employee organization, it shall require that such organization submit at least two nominees for each available committee vacancy. The Board shall make all reasonable efforts to ensure adequate diversity (i.e., gender, race, ethnicity) among members of the search committee.

The institution's affirmative action officer shall serve as a non-voting member of the search committee; shall have access to all committee materials and candidate files; and shall be invited to attend all meetings, including any executive sessions, of the search committee or any subcommittee thereof.

2. Search committee procedures

The Board of Trustees must approve a budget for the search committee which typically includes the following, where applicable: administrative or other support staff hired by or assigned to the search committee; supplies, stationery, and postage; travel and lodging for out-of-state candidates; visits to the home campuses of candidates; executive search firm fees; background and reference checks; and other related expenses. Members of the search committee shall not be compensated for their service but may be reimbursed for reasonable expenses connected with the search that are: 1) provided for in the budget, and 2) approved in advance by the chair of the search committee.

The chair of the search committee will appoint a secretary to the committee. The secretary's duties may include scheduling meetings and interviews; making travel arrangements for presidential candidates; maintaining committee files; preparing agendas, minutes and reports; and ensuring the Committee's compliance with the Open Meeting Law.

a) Open Meeting law and required trainings

As a special committee of the Board of Trustees, the presidential search committee is a "governmental body" subject to the state's Open Meeting Law, G.L. c. 30A, §§ 18-25. At the outset of the search process, the search committee must be fully trained on, and provided a copy of the Open Meeting

Law. The committee must also be trained on the applicable provisions of the Public Records Law.

In accordance with the Open Meeting Law procedures established by the Attorney General's Office, a notice of every search committee meeting must be posted on a website and a copy filed with the Secretary of State, at least 48 hours prior to the meeting. G.L. c. 30A, § 20; 940 CMR 29.03. Accurate minutes must be kept and become a part of the public record. Except as provided under the Open Meeting Law, and as otherwise provided in the Attorney General's regulations, interpretive guidance and rulings on the law, search committee meetings must be open to the public, in order to ensure transparency of the presidential search process. Please note, however, that many candidates for a presidential position may agree to be considered only if they can be assured that their candidacy will remain confidential until they reach the final stages of the process. There is a strong public interest in ensuring that the Commonwealth can attract the best possible pool of qualified candidates for this important position. For these reasons, it is permissible for public bodies, such as a search committee, to meet in executive session to screen, discuss and interview applicants during the preliminary, screening stages of a search, subject to Open Meeting Law procedural requirements. Since, however, this is an area of the Open Meeting Law subject to changing interpretation, the chair of the search committee is urged to consult the General Counsel of the Board of Higher Education or his/her designee before determining final procedures with respect to this point.

b) Confidentiality, Communications and Record Keeping

Subject to the requirements of the state's Open Meeting and Public Record Laws, members of the search committee shall protect the confidentiality of the search process.

Committee files and candidate application materials shall be kept in a secure area, and maintained consistent with Public Records Law requirements. Access to these materials shall be restricted to the members of the search committee and such other individuals who, having a direct role in the search process, are specifically so authorized by the chair. To facilitate review by committee members, the chair may authorize the production of one or more duplicate copies of candidate application materials and/or secure electronic access.

All communications from the search committee, including responses to media inquiries, shall be handled solely by the chair of the search committee or his/her designated spokesperson. The chair or his/her designee should issue periodic progress reports on the search to the college/university community and to the Commissioner.

A written record of the search committee's activities, proceedings, and decisions shall be maintained, including minutes from each meeting conducted by the search committee, whether held in open or executive session. This record shall include a summary of the steps taken to ensure affirmative action in the search and a statistical analysis of the applicant pool at each stage of the search process.

3. Use of executive search firms

The Board of Trustees or the search committee (with the Board's approval) will typically engage an executive search firm to assist in the conduct of the search. Exceptions to this practice may be approved when warranted due to extraordinary circumstances. Such a firm may be contracted to provide any or all of the following services:

- Developing an institutional profile or other background materials on the institution.
- Preparing and placing advertisements.
- Identifying and soliciting applications from qualified candidates.
- Preparing and processing correspondence with candidates.
- Responding to candidate inquiries and information requests.
- Making travel and lodging arrangements for out-of-state candidates.
- Conducting background and reference checks on applicants.
- Other related services.

In no case shall an executive search firm be delegated authority that is appropriately vested in Board of Trustees, or the search committee, as delegated by the Board of Trustees. At the discretion of the search committee, the search firm may screen the initial applicant pool to determine which candidates meet the minimum qualifications set forth in the position description. The search firm shall not screen or select candidates for further consideration.

The Board of Trustees and/or the search committee should solicit and consider proposals from a number of qualified executive search firms. Upon request, the Board of Higher Education shall furnish a list of executive search firms known to have interest and/or experience in presidential searches, including firms that have previously worked for other public higher education institutions in the Commonwealth.

In selecting an executive search firm, the Board of Trustees and/or the search committee shall take into specific consideration evidence of each firm's commitment to and experience in affirmative action recruitment.

4. Responsibilities of the search committee: screening, interviewing and recommending candidates

The search committee shall serve in an advisory capacity to the Board of Trustees, which has statutory authority to appoint the president of the institution, subject to approval of the Board of Higher Education. The Board of Trustees' charge to the search committee should set forth the Trustees' expectations, as well as the scope of the authority granted to the search committee.

The committee shall oversee the entire presidential search process, including all correspondence with candidates, solicitation and acknowledgement of references, and other communications and reports. The committee shall screen and evaluate all applications, and shall select candidates for interviews. The search committee shall provide the Board of Trustees and the Commissioner the opportunity to review the applications of the pool of candidates selected for interviews by the search committee. The Board of Trustees and the Commissioner shall act with reasonable dispatch in conducting such a review, and shall have the authority to ask that additional candidates be sought before interviews proceed; the Commissioner will make every effort to complete his/her review within 48 hours of receiving the documents.

The committee shall interview candidates for the presidency and shall recommend to the Board of Trustees an unranked list of no less than three (3) and no more than five (5) qualified candidates. Prior to making its recommendation, the search committee shall ensure that thorough reference and background checks are completed on all of the recommended finalists, and that the finalists understand that their appointment will be subject to a State Police Background check which will be facilitated by Department of Higher Education staff. In making its recommendations, the search committee shall transmit to the Board of Trustees the resume and all other relevant application materials for each of the three to five recommended finalists. The search committee may also, at its discretion, provide a summary of the perceived strengths and weaknesses of each candidate, but under no circumstances shall the committee rank order the candidates.

E. Board of Trustees Guidelines and Procedures for Interviewing Finalists and Selecting a Recommended Candidate

The Board of Trustees shall review the materials submitted by the search committee and interview each of the recommended finalists in open session. In conjunction with such interviews, the Board may provide an opportunity for students, faculty, and staff to meet informally with the candidates. The Board may also conduct such additional background and reference checks, including visits to candidates' home campuses or workplaces, as it deems necessary. By this stage of the process, there should be a clear understanding between the chair of the Board of Trustees and the Commissioner regarding essential terms of appointment and an appropriate salary

range, so that the chair of the Board of Trustees can ensure that the leading candidates have appropriate expectations prior to the Board of Trustees' vote to recommend a finalist to the Board of Higher Education.

The Board of Trustees shall extend to the Board of Higher Education and the Commissioner the opportunity to interview candidates selected as finalists by the search committee as part of candidate visits to the campus to meet with various constituencies. To that end, the Board of Trustees shall transmit to the Commissioner the résumés and all other relevant application materials for each of the three to five recommended finalists for review. The Board of Higher Education may, at its election, exercise its option to interview the candidates either by acting as a whole or through a committee, and shall conduct the interviews in open session, consistent with Open Meeting Law requirements. The Board of Higher Education and the Commissioner shall promptly forward any comments on the finalists to the Board of Trustees, for the Board of Trustees' review and consideration prior to voting on a recommended appointment. To the fullest extent possible, the Board of Higher Education and the Commissioner's comments shall be transmitted to the Chair of the local Board of Trustees within two to three business days of the last finalist interview. The Board of Higher Education and the Commissioner's comments shall be limited to their general impressions of the candidates, and shall not include a recommendation of any specific candidate.

In accordance with the Open Meeting Law, the Board of Trustees shall vote to recommend the appointment of a president in open session, with a quorum present. The vote should be conducted by roll call, with the Chair of the Board voting last. If no candidate receives the required majority, the process may be repeated as often as deemed necessary by the Board. To avert potential controversy or legal challenge, the recommended appointee should receive the votes of the majority of the Board's full membership. A Board of Trustees' vote to recommend the appointment of a president will also typically include language which authorizes the Chair of the Board of Trustees to negotiate with the recommended candidate terms of appointment.

F. Reopening a Search

If the Board of Trustees rejects all candidates submitted by the search committee, the Trustees may 1) request that the search committee reevaluate the credentials of other candidates in the pool and submit the name(s) of any additional recommended candidate(s); 2) direct the existing search committee to reopen the search; or 3) appoint a new search committee to conduct a reopened search. The Trustees shall not, however, require the search committee to submit the name of any specific candidate; nor shall the Trustees vote to recommend the appointment of any individual whose name has not been duly submitted by the search committee.

III. Appointment of a President

A. Board of Trustees Procedure for Recommending the Appointment of a Candidate to the Board of Higher Education

Once the Board of Trustees has voted to recommend to the Board of Higher Education the appointment of a president, the Chair of the Board of Trustees shall so notify the Commissioner in writing. The Chair of the Board of Trustees shall also promptly forward to the Commissioner copies of the résumés and other relevant application materials of all finalists interviewed by the Board of Trustees and a summary of the search process, which shall include a statement of the steps taken to ensure affirmative action and a statistical analysis of the applicant pool at each stage of the search process.

The Chair of the Board of Trustees will negotiate with the recommended candidate proposed appointment terms, including compensation terms, consistent with the guidelines in Section IV, below, and shall memorialize the negotiated terms in writing. A template for use in drafting proposed Terms of Appointment shall be provided by the Department of Higher Education staff. The Board of Trustees shall forward to the Commissioner proposed Terms of Appointment, for the Commissioner's review and comment prior to its finalization with the recommended candidate and prior to its execution.

The Board of Trustees shall arrange for a State Police background check, or a similar background check performed by another qualified agency, firm, or individual, on the recommended candidate. A copy of the results of such background investigations shall be forwarded to the Commissioner.

B. Board of Higher Education and Commissioner Review and Approval of the Board of Trustees' Recommended Candidate for Appointment

After a nominee has been selected by the Board of Trustees, the Commissioner shall review the materials submitted by the Board of Trustees in support of the recommended candidate and shall have an opportunity to meet with the presidential candidate recommended by the Board of Trustees.

Within 14 days of receiving the Board of Trustees' submittal, the Commissioner will review the submittal to determine whether it is complete and consistent with the Board of Higher Education guidelines. If not, then the Commissioner may request a meeting with the chair of the Board of Trustees to discuss the submittal further. Upon determination that the Board of Trustees' submittal is complete and consistent with the BHE guidelines, the Commissioner will promptly forward the submittal, along with his/her recommendation, to the Board of Higher Education for consideration and formal action.

The BHE is committed to conducting its final interview and vote on the local Board of Trustees' recommended appointee as expeditiously as possible. The Commissioner, the local board chair and the Chair of the BHE will work together to ensure that BHE action occurs in a timely fashion. The Chair of the BHE will call a special meeting of the BHE, if necessary to help avoid undue delays. At the meeting of the Board of Higher Education during which the presidential appointment is to be acted upon, the Commissioner shall be provided an opportunity to comment on the conduct of the search process and to offer his/her recommendation concerning the proposed appointment. The Board of Higher Education shall also be presented with proposed Terms of Appointment, for review and approval, as well as all other supporting documents submitted by the Board of Trustees, and shall interview the local Board of Trustee's nominee.

The appointment of the president shall not be effective until and unless it is approved by the Board of Higher Education, and any public statements made by the Board of Trustees prior to Board of Higher Education approval shall clearly reflect the same. Any press releases by the local Board of Trustees in this regard shall be coordinated with the Department of Higher Education.

Nothing in these guidelines and procedures shall be deemed to restrict or prohibit the Board of Higher Education from delegating to the Commissioner the authority to approve presidential appointments. Neither shall these guidelines or procedures prohibit the Board of Higher Education from delegating to the Commissioner or a committee of the Board of Higher Education the authority to approve a presidential appointment during the months of July and August or during any other extended period in which the Board of Higher Education is not scheduled to meet.

IV. Terms of Appointment

The Terms of Appointment for all initial presidential appointments are to be developed and negotiated by the local Board of Trustees following these guidelines, and must be approved by a formal vote of the Board of Higher Education, unless otherwise delegated to the Commissioner. Proposed terms of appointment should address all aspects of a president's appointment and must, at a minimum, address compensation packages, including salary and benefits, as well as evaluation processes and notification of removal and termination rights.

A. Compensation for Initial Presidential Appointments

The Board of Higher Education is responsible for setting the compensation, which includes salary and benefits, for the chief executive officer of each institution within the state university system and community college system. G.L. c. 15A, § 9(q).

The Board of Higher Education is committed to an approach to presidential compensation that is set at rates which ensure the recruitment of the best candidates possible, with a sensitivity to public concerns about public salaries. Decisions on

presidential salaries for initial appointments shall be based on the professional experience of the candidate, institutional size, as well as the complexity and particular short-term and long-terms challenges facing the institution. Equity considerations and comparative data on the salary ranges of current, sitting presidents in the Commonwealth's public higher education institutions shall also be taken into account. All compensation proposals shall be consistent with the Board of Higher Education Compensation Guidelines. Proposed presidential compensation packages may include benefits consistent with the Board of Higher Education's Compensation Guidelines, but such benefits must be specifically negotiated and identified in the draft appointment agreement submitted for Board of Higher Education approval.

B. Evaluations and Compensation Adjustments

Annual evaluations, as well as periodic comprehensive evaluations, of presidents shall be conducted by local Boards of Trustees, and shall be required to justify compensation adjustments, including merit increases, consistent with Board of Higher Education policies and procedures, including the Board of Higher Education's Compensation Guidelines. All references in proposed Terms of Appointments to annual and comprehensive evaluations in the Terms of Appointment shall be consistent with Board of Higher Education policies and procedures.

V. Selection of a Acting and/or Interim President

The procedures for a selection of an acting and/or interim (hereinafter "interim") president shall in each instance be determined by the Board of Trustees after consultation with the Commissioner in accordance with the following requirements:

- It is preferable that an interim president should meet the same minimum qualifications as are required of a permanent president. The ultimate decision, however, should be based on the needs of the institution.
- The recommendation to appoint an interim president shall be made by a vote of the Board of Trustees in open session. Written notice of the Trustees' action, along with a copy of the nominee's curriculum vitae and proposed Terms of Appointment, shall be forwarded in timely fashion to the Commissioner.
- The appointment of an interim president shall not be effective until and unless approved by the Commissioner, in consultation with the Chair of the BHE.
- The salary of an interim president shall be set by the Trustees in accordance with the Board of Higher Education's Compensation Guidelines and shall be subject to the approval of the Commissioner, in consultation with the Chair of the BHE.
- An interim president may, at the discretion of the Trustees, be provided with the same benefits as are provided to the permanent president, including a housing allowance (where applicable).

- Except in rare or extraordinary circumstances, an interim president shall not be eligible to be considered for the permanent presidency.
- The term of an interim president shall not exceed one year, except in exceptional circumstances and only with the prior approval of the Commissioner.
- The Terms of Appointment for an interim president shall be set forth in a written contract or letter of appointment, a copy of which shall be provided to the Commissioner for review, comment, and approval prior to its finalization with the proposed interim president and prior to its execution.

VI. Removal

A. Recommended Removal of a President Initiated by the Board of Trustees

A president serves "at the pleasure" of the local Board of Trustees, subject to Board of Higher Education approval, and as such, a Board of Trustees has the authority to remove a sitting president at any time, without cause or explicit reasons, subject to Board of Higher Education approval. G.L. c. 15A, § 21. However, consistent with good practice of presidential evaluation, and except in exigent circumstances and cases of malfeasance, presidential performance issues should typically be identified through the annual evaluation process and the president should typically have an opportunity to address identified areas of concern prior to Board of Trustees action to initiate removal for reasons related to performance.

In accordance with the Open Meeting Law, the Board of Trustees shall vote to recommend the removal of a president in open session, with a quorum present. The vote should be conducted by roll call, with the Chair of the Board voting last. If the vote receives the required majority, the recommendation shall be forwarded to the Commissioner for presentation to the Board of Higher Education for approval, along with any documentation supporting the reasons for the recommended removal. To avert potential controversy or legal challenge, the recommended action should receive the votes of the majority of the Board's full membership.

B. Board of Higher Education Action on a Recommended Removal of a President

The Board of Higher Education Trustees shall review the local Board of Trustees' recommended removal, along with all supporting documentation, and shall vote on the recommend removal of a president in open session, with a quorum present. To avert potential controversy or legal challenge, the recommended action should receive the votes of the majority of the Board's full membership.

Appendix: Board of Higher Education Motion to Approve Guidelines and Procedures

BOARD OF HIGHER EDUCATION

REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO**.: FAAP 13-41

COMMITTEE DATE: June 11, 2013

BOARD DATE: June 18, 2013

APPROVAL OF AMENDED GUIDELINES AND PROCEDURES FOR THE SEARCH, SELECTION, APPOINTMENT AND REMOVAL OF STATE UNIVERSITY AND COMMUNITY COLLEGE PRESIDENTS

MOVED: The Board of Higher Education approves the attached Amended Guidelines and Procedures for the Search, Selection, Appointment and Removal of State University and Community College Presidents, and delegates to the Commissioner the authority to act on behalf of the Board of Higher Education as specified therein.

Authority: G.L. c. 15A, § 6, 9 and 21; Section 172 of Chapter 139 of the Acts of 2012

Contact: Constantia T. Papanikolaou, *General Counsel*

Background

The FY2013 Budget reaffirmed the authority and responsibility of the BHE to issue guidelines and procedures governing the search, selection, appointment, compensation, evaluation and removal of the chief executive officers for both the community colleges and state universities, citing to the BHE's statutory authority to:

- approve presidential appointments and removals (M.G.L. c. 15A, § 21);
- approve and fix presidential compensation (M.G.L. c. 15A, § 9(q)); and
- establish coordination between and among post-secondary public institutions and to resolve conflicts of polices or operations arising in public higher education. (M.G.L. c. 15A, § 9(u)).

See Section 172 of Chapter 139 of the Acts of 2012.

Within this framework, the legislature required the BHE to issue new Presidential guidelines and procedures for community colleges by November, 2012.

On October 16, 2012 the BHE adopted guidelines and procedures governing the search, selection, appointment, and removal of Community College Presidents. During its October 16th meeting, the BHE also passed two companion motions, directing the Commissioner to:

1) explore and formulate, based on the BHE's existing statutory authority, recommendations on guidelines and procedures for the search, selection, appointment, and removal of State University Presidents; and

2) work in consultation with the Executive Committee of the BHE to review the BHE's existing Presidential compensation and evaluation guidelines (as approved in December 2005 and as subsequently amended), and propose any necessary revisions for BHE review and approval in time for implementation during the FY2013 Presidential evaluation process.

In furtherance of the BHE's directive regarding the first companion motion identified above, on November 30, 2012 the Department forwarded to State University Trustees, as a starting point for discussion, the BHE's approved *Guidelines and Procedures for the Search, Selection, Appointment and Removal of Community College Presidents ("Search and Selection Guidelines").*

The Department held a six month comment period on the document, and during that time offered two[1] feedback sessions with State University Trustees and two feedback sessions with Community College Trustees. In addition, the Department received several written comments.

[1] Although two State University feedback sessions were offered-- one on April 18th in Holyoke, and the other on April 22nd in Framingham-- the April 18th session was cancelled due to low registration numbers.

Based on the questions, comments and suggestions received during the Trustee comment period, the Department made several revisions to the *Search and Selection Guidelines*, as summarized in the attached May 29, 2013 memorandum.

In addition, on June 6, 2013 the Commissioner met with members of the BHE Executive Committee to discuss the draft document, along with the proposed revisions. The Executive Committee reviewed the document, suggested further clarifications and expressed general agreement both with the consultative approach taken in drafting the guidelines and the substantive provisions contained in the final version.

Substantive revisions made to the *Search and Selection Guidelines* as a result of this consultative process include the following:

- Consistent with statutory authority and BHE precedent, the Department, in consultation with the Executive Committee, is recommending that the *Search and Selection Guidelines,* which currently apply only to Community College Presidential searches, selections and appointments, also apply to State University Presidential searches, selections and appointments. As reflected in the attached May 29, 2013 memorandum, trustees did not advance any real substantive reasons for a differentiated approach to State University presidential searches, selections, and alternative guidelines were not proposed.

- The following revisions to the *Search and Selection Guidelines* were made to include specific timeframes or otherwise help reduce the possibility of undue delays during the Presidential search, selection and appointment process :

    - Language was added which expresses the BHE's commitment to conduct its final interview and vote on the local Board of Trustees' recommended appointee as expeditiously as possible. Language was also added to state that the Commissioner, the local board chair and the Chair of the BHE will work together to ensure that BHE action occurs in a timely fashion and that the Chair of the BHE will call a special meeting of the BHE, if necessary to help avoid undue delays.

    - Regarding the BHE and Commissioner's interview of the 3 to 5 final candidates, language was added stating that, to the fullest extent possible, the BHE and the Commissioner will transmit their comments to the local board within two to three business days of interviewing the last finalist.

    - Regarding the step which provides the Commissioner and local Board of Trustees an opportunity to review the existing pool of candidates selected for interviews, language was added stating that the Commissioner will make every effort to complete his review within 48 hours of receiving the documents.

- A provision was added to acknowledge exceptions and allow for flexibility in the application of the *Search and Selection Guidelines* in a particular case, upon approval by the Commissioner in consultation with the Chair of the BHE.

- Language was added which expresses a commitment that the Commissioner will seek to appoint a member of the BHE to the search committee.

Consistent with the BHE's statutory authority and FY2013 Budget language, the BHE issues the attached *Search, Selection, Appointment and Removal of State University and Community College Presidents*, and delegates to the Commissioner the authority to act on behalf of the BHE as specified therein. G.L. c. 15A, § 6, 9 and 21.

Open Meeting Law Guide and Educational Materials

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL MAURA HEALEY

JANUARY 2018

TABLE OF CONTENTS

Contents

Open Meeting Law Guide

Appendix

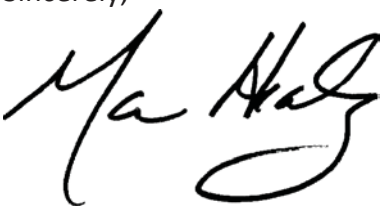
Dear Massachusetts Residents:

One of the most important functions of the Attorney General's Office is to promote openness and transparency in government. Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives. My office is working to achieve that goal through fair and consistent enforcement of the Open Meeting Law, along with robust educational outreach about the law's requirements.

The Open Meeting Law requires that most meetings of public bodies be held in public, and it establishes rules that public bodies must follow in the creation and maintenance of records relating to those meetings. Our office is dedicated to providing educational materials, outreach and training sessions to ensure that members of public bodies and citizens understand their rights and responsibilities under the law.

Whether you are a town clerk or town manager, a member of a public body, or a concerned citizen, I want to thank you for taking the time to understand the Open Meeting Law. If you would like additional guidance on the law, I encourage you to contact my Division of Open Government at (617) 963-2540 or visit our website at www.mass.gov/ago/openmeeting for more information.

Sincerely,



Maura Healey
Massachusetts Attorney General

Attorney General's Open Meeting Law Guide

Overview

Purpose of the Law

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

Attorney General's Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General's Office. G.L. c. 30A, § 19(a). To help public bodies understand and comply with the law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and orders remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

Certification

Within two weeks of a member's election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences of violating it. The certification must be retained where the public body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General's regulations, this Guide, and Open Meeting Law determinations issued to the member's public body within the last five years in which the Attorney General found a violation of the law.

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law. A public body member must sign a new Certificate upon reelection or reappointment to the public body but need not sign a Certificate when joining a subcommittee.

Open Meeting Law Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. The complete law, as well as the Attorney General's regulations, training materials, and determinations and declinations as to complaints can be found on the Attorney General's Open Meeting website, www.mass.gov/ago/openmeeting. Members of public bodies, other local and state government officials, and the public are encouraged to visit the website regularly for updates on the law and the Attorney General's interpretations of it.

Meetings of Public Bodies

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

1) is the communication between or among members of a **public body**;
2) if so, does the communication constitute a **deliberation**;
3) does the communication involve a matter within the body's **jurisdiction**; and
4) if so, does the communication fall within an **exception** listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches[1] of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and

[1] Although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions must follow the Law's requirements.

its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.[2]

What constitutes a deliberation?

The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body's jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For

[2] See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction." The law does not specifically define "jurisdiction." As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body's members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for "quasi-judicial boards or commissions" to apply only to certain state "quasi-judicial" bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as "agencies" for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore,

the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.

Notice

What are the requirements for posting notice of meetings?

Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

What are the requirements for filing and posting meeting notices for local public bodies?

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located. In the event that meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or adopt the municipal website as the official method of notice posting.

Prior to utilizing the municipal website, the Chief Executive Officer of the municipality must authorize or vote to adopt such website as the official method of posting notice. The clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public bodies must consistently use the most current notice posting method on file with the Division. A description of the website, including directions on how to locate notices on the website, must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk's office is located. Note that meeting notices must still be available in or around the clerk's office so that members of the public may view the notices during normal business hours.

What are the requirements for posting notices for regional, district, county and state public bodies?

For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website.

The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings. As an alternative method of notice, a county public body may post notice of meetings on the county public body's website. The county public body must file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

State public bodies must post meeting notices on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the specific webpage location where notices will be posted and of any subsequent changes to that posting location. A copy of each meeting notice must also be sent to the Secretary of State's Regulations Division and should be forwarded to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

Where a public body adopts a website as the official method of posting notices, it must make every effort to ensure that the website is accessible at all hours. If a website becomes inaccessible within 48 hours of a meeting, not including Saturdays, Sundays or legal holidays, the website must be restored within six business hours of the discovery. If the website is not restored within six business hours, the public body must re-post notice of its meeting to another date and time, in accordance with the requirements of the Open Meeting Law.

A note about accessibility

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.[3] The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 963-2939.

[3] The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time, and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list "open session" as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice. If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted. Recording the date and time enables the public to observe that public bodies are complying with the Open Meeting Law's notice requirements without requiring constant vigilance. Additionally, in the event of a complaint, it provides the Attorney General with evidence of compliance with those requirements.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

Executive Session

When can a public body meet in executive session?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

1. **To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

   This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

   While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. **To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;**

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

3. **To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and

voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

4. **To discuss the deployment of security personnel or devices, or strategies with respect thereto;**

5. **To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

6. **To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details

would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

7. **To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;**

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

8. **To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;**

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

9. **To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:**

   (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

   (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. **To discuss 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.

Remote Participation

May a member of a public body participate remotely?

The Attorney General's Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow

individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7.

If the chief executive officer in a municipality authorizes remote participation, that authorization applies to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation and may decide to fund the practice only for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

Note about Local Commissions on Disability: Local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely only if physical attendance would be unreasonably difficult.

What are the acceptable means of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation. Note that accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

1. A quorum of the body, including the chair or, in the chair's absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely; such information must also be recorded in the meeting minutes. The chair's statement does not need to contain any detail about the reason for the member's remote participation.

Members of public bodies who participate remotely may vote and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions but must state at the start of any such session that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair (or, in the chair's absence, person chairing the meeting) may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

Public Participation

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual may not disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove the person. Although public participation is entirely within the chair's discretion, the

Attorney General encourages public bodies to allow as much public participation as time permits.

Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance.

Minutes

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must include:

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely.

While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes, and all documents and exhibits used, are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law. The State and Municipal Record Retention Schedules are available through the Secretary of the Commonwealth's website at: http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A "timely manner" is considered to be within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages minutes to be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within ten days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within ten days of a request.

There are two exemptions to the open session records disclosure requirement: 1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any résumé submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes, or other materials used in an executive session if the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they fall within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.

A public body must respond to a request to inspect or copy executive session minutes within ten days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within ten days, notifying the requestor that it is conducting this review.

Open Meeting Law Complaints

What is the Attorney General's role in enforcing the Open Meeting Law?

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to receive and investigate complaints, bring enforcement actions, issue advisory opinions, and promulgate regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements. The Division of Open Government offers periodic online and in-person training on the Open Meeting Law and will respond to requests for guidance and information from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint ***with the public body*** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a Complaint Form available on the Attorney General's website, www.mass.gov/ago/openmeeting. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to meet to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the complainant. The public body must simultaneously notify the Attorney General that it has responded to the complainant and provide the Attorney General with a copy of the response and a description of any remedial action taken. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so. A public body is not required to respond to unsigned complaints or complaints not made on the Attorney General's complaint form.

The public body may request additional information from the complainant within seven business days of receiving the complaint. The complainant then has ten business days to respond; the public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take remedial action. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

Step 3. Filing a Complaint with the Attorney General's Office

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are ***not*** automatically treated as filed for review by the Attorney General upon filing with the public body. A complainant who has filed a complaint with a public body and seeks further review by the Division of Open Government must file the complaint with the Attorney General after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation or the date that the violation was reasonably discoverable.

When filing the complaint with the Attorney General, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the response of the public body. Note, however, that the Attorney General will not review allegations that were not raised in the initial complaint filed with the public body. Under most circumstances, complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

The Attorney General will review the complaint and any remedial action taken by the public body. The Attorney General may request additional information from both the complainant and the public body. The Attorney General will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The Attorney General may decline to investigate a complaint that is filed with our office more than 90 days after the date of the alleged violation.

May a public body request mediation to resolve a complaint?

If a complainant files five complaints with the same public body or within the same municipality within 12 months, the public body may request mediation upon the fifth or subsequent complaint in order to resolve the complaint. The public body must request mediation prior to, or with, its response to the complaint, and will assume the expense of such mediation. If the parties cannot come to an agreement after mediation, the public body will

have ten business days to respond to the complaint and its resolution will proceed in the normal course.

Mediation may occur in open session or in executive session under Purpose 9. In addition, a public body may designate a representative to participate on behalf of the public body. If mediation does not resolve the complaint to each party's satisfaction, the complainant may file the complaint with the Attorney General. The complaint must be filed within 30 days of the last joint meeting with the mediator.

The mediator will be chosen by the Attorney General. If the complainant declines to participate in mediation after a request by the public body, the Attorney General may decline to review a complaint thereafter filed with our office. A public body may always request mediation to resolve a complaint, but only mediation requested upon a fifth or subsequent complaint triggers the requirement that the complainant participate in the mediation before the Attorney General will review the complaint.

Any written agreement reached in mediation must be disclosed at the public body's next meeting following execution of the agreement and will become a public record.

When is a violation of the law considered "intentional"?

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than $1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An "intentional violation" is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law's requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements, its conduct will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02. A fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel. G.L. 30A, § 23(g); 940 CMR 29.07.

Will the Attorney General's Office provide training on the Open Meeting Law?

The Open Meeting Law directs the Attorney General to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The Attorney General has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, the Attorney General's determination letters resolving complaints, and other resources. The Attorney General offers periodic webinars and in-person regional training events for members of the public and public bodies, in addition to offering a free online training video.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the Attorney General's Division of Open Government. The Attorney General also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel: 617-963-2540
www.mass.gov/ago/openmeeting
OpenMeeting@state.ma.us

Appendix

The Open Meeting Law, G.L. c. 30A, §§ 18-25[4]

Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.

Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session;

[4] NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

1. the general background of the legal requirements for the open meeting law;
2. applicability of sections 18 to 25, inclusive, to governmental bodies;
3. the role of the attorney general in enforcing the open meeting law; and
4. penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

1. the number of open meeting law complaints received by the attorney general;
2. the number of hearings convened as the result of open meeting law complaints by the attorney general;
3. a summary of the determinations of violations made by the attorney general;
4. a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
5. an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
6. the number of actions filed in superior court seeking relief from an order of the attorney general; and
7. any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or

town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the

appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. Executive Sessions

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
    i. to be present at such executive session during deliberations which involve that individual;
    ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
    iii. to speak on his own behalf; and
    iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

    The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
    i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
    ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
10. To discuss 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.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:
1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. Meeting Minutes; Records

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney- client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of

said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g) (1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

2. Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

1. compel immediate and future compliance with the open meeting law;
2. compel attendance at a training session authorized by the attorney general;
3. nullify in whole or in part any action taken at the meeting;
4. impose a civil penalty upon the public body of not more than $1,000 for each intentional violation;
5. reinstate an employee without loss of compensation, seniority, tenure or other benefits;
6. compel that minutes, records or other materials be made public; or
7. prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. Investigation by Attorney General of Violations of Open Meeting Law

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. Regulations; Letter Rulings; Advisory Opinions

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

940 CMR 29.00: Open Meeting Law Regulations

The official regulations are published in the Massachusetts Register. For more information, contact the Secretary of the Commonwealth's State Publications and Regulations Division.

29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body. A public body created by county government with jurisdiction that comprises a single county.

District Public Body. A public body with jurisdiction that extends to two or more municipalities.

Emergency. A sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation. An act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, the public body or public body member that:

(a) acted with specific intent to violate the law;

(b) acted with deliberate ignorance of the law's requirements; or

(c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person. All individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice. To place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body. Has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that Public Body shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office. The election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body. A public body with jurisdiction that extends to two or more municipalities.

Remote Participation. Participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies.

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.

(b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.

(d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

(a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.

(b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.

1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.

(c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices *via* other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.

(d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.

(3) Requirements Specific to Regional or District Public Bodies.

(a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

(a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

(a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

29.04: Certification

(1) For local public bodies, the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall, upon a public body member's qualification for office, either deliver to the public body member, or require the public body member to obtain from the Attorney General's website, the following educational materials:

(a) The Attorney General's Open Meeting Law Guide, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and 940 CMR 29.00.

(b) A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25. Open Meeting Law determinations are available at the Attorney General's website.

(2) Educational materials may be delivered to public body members by paper copy or in digital form.

(3) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(4) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(5) A public body member must sign a new certification upon reelection or reappointment to the public body.

29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.

(4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25 or, if the alleged violation of M.G.L. c. 30A, §§ 18 through 25 could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(7) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered. However, this time may be extended if the Attorney General grants an extension to the public body to respond to a complaint or if the complainant demonstrates good cause for the delay in filing with the Attorney General.

(8) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days.

(9) Mediation to Resolve a Complaint.

(a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and will be selected by the Attorney General.

(b) A public body must request mediation prior to, or with, its response to the complaint. If the mediation does not produce an agreement, the public body will have ten business days from the last joint meeting with the mediator to respond to the complaint.

(c) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.

(d) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), the Attorney General may decline to review the complaint if it is thereafter filed with the Attorney General.

(e) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.

(f) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.

(g) Nothing in 940 CMR 29.05(9) shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).

(h) Nothing in 940 CMR 29.05(9) shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(d).

29.06: Investigation

Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25 has occurred, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

(a) Take testimony under oath;
(b) Examine or cause to be examined any documentary material; or
(c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or in a written determination to resolve the investigation pursuant to 940 CMR 29.07.

29.07: Resolution

(1) No Violation. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has not been violated, the Attorney General shall issue a written determination to the subject of the complaint and copy any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

(a) Informal Action. The Attorney General may resolve the investigation with a letter or other appropriate form of written communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.
(b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:
    1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;

2. attendance at a training session authorized by the Attorney General;
3. nullification of any action taken at the relevant meeting, in whole or in part;
4. that minutes, records or other materials be made public;
5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or
6. other appropriate action.

(c) Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00: *Formal Rules*, as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25 occurred, and whether the public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

(a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
(b) attendance at a training session authorized by the Attorney General;
(c) nullification of any action taken at the relevant meeting, in whole or in part;
(d) imposition of a fine upon the public body of not more than $1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
(e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
(f) that minutes, records or other materials be made public; or
(g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body, subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07, shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring immediate and future compliance pursuant to 940 CMR 29.07(2)(b)1. or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of *certiorari*. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25 pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may, by majority vote of the commissioners at a regular meeting, authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting in accordance with the procedures described in 940 CMR 29.10(7) only if physical attendance would be unreasonably difficult.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

1. telephone, internet, or satellite enabled audio or video conferencing;
2. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines after investigation that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY

940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

Certificate of Receipt of Open Meeting Law Materials

I, _____, who qualified as a member of the
(Name)

_____, on _____, certify pursuant
(Public Body) (Date)

to G.L. c. 30A, § 20(h) and 940 CMR 29.04, that I have received and reviewed copies of the following Open Meeting Law materials:

1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;

2) the Attorney General's Regulations, 940 CMR 29.00–29.11;

3) the Attorney General's Open Meeting Law Guide, explaining the Open Meeting Law and its application; and

4) if applicable, a copy of each Open Meeting Law determination issued by the Attorney General within the last five (5) years to the public body of which I am a member and in which the Attorney General found a violation of the Open Meeting Law.

I have read and understand the requirements of the Open Meeting Law and the consequences of violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes to the Open Meeting Law during my term of office.

_____
(Name)

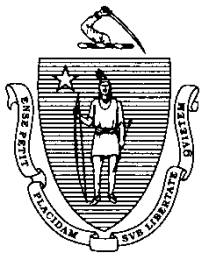
_____
(Name of Public Body)

_____
(Date)

Pursuant to G.L. c. 30A, § 20(h), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

A Guide to the Massachusetts Public Records Law

Updated March 2020



Published by
William Francis Galvin
Secretary of the Commonwealth

For additional educational resources regarding the Public Records Law, please contact the Public Records Division at:

Division of Public Records
One Ashburton Place, Room 1719
Boston, MA 02108
Telephone: (617) 727-2832
Fax: (617) 727-5914
Email: pre@sec.state.ma.us
www.sec.state.ma.us/pre/preidx.htm

The founding fathers of our nation strove to develop an open government formed on the principles of democracy and public participation. An informed citizen is better equipped to participate in that process.

Laws mandating the disclosure of public records have existed in the Commonwealth of Massachusetts since 1851. The federal Freedom of Information Act was signed into law in 1966 by President Lyndon B. Johnson. In 1974, Congress amended the federal Freedom of Information Act in order to make government records more accessible to the public.

The Massachusetts Public Records Law parallels federal law, with some variation. Every government record in Massachusetts is presumed to be public unless it may be withheld under a specifically stated exemption.

As Secretary of the Commonwealth and chief public information officer for the Commonwealth, I am pleased to publish this guide explaining the Public Records Law. The full text of the law is provided, as well as a brief description of each of the exemptions to the law.

Also included is a section of frequently asked questions about a requestor's right to access public records, as well as a government records custodian's duty to respond to those requests.

Any additional questions regarding the Public Records Law should be directed to the Division of Public Records at (617) 727-2832 during regular business hours.

You may access Division of Public Records publications and other information at www.sec.state.ma.us/pre/preidx.htm.

William Francis Galvin
Secretary of the Commonwealth

Table of Contents

Overview

The Massachusetts Public Records Law (Public Records Law) and its Regulations provide that each person has a right of access to public information.[1] This right of access includes the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.[2]

The Public Records Law broadly defines "public records" to include "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 Massachusetts governmental entity.[3]

There are strictly and narrowly construed exemptions and common law privileges to the broad definition of "public records."[4] This guide will briefly review the application of these exemptions as well as explore some of the other issues that arise when a request is made for access to government records.

Definitions

The following are definitions of terms that are commonly used in matters involving the Public Records Law:

Agency. Any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth that is identified in G. L. c. 66, § 6A and c. 4, § 7(26) and makes or receives "public records", as defined in 950 C.M.R. 32.02. Agency includes 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 G. L. c. 32, § 1.

Business Day. Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

Commercial Purpose. The sale or resale of any portion of the public record or the use of information from the public record to advance the requestor's strategic business interests in a manner that the requestor can reasonably expect to make a profit. This could include obtaining names and addresses from the public record for the purpose of solicitation. It does not include

---

[1] G. L. c. 66, § 10(a).
[2] Id; 950 C.M.R. 32.07.
[3] G. L. c. 4, § 7(26).
[4] Id, see also Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980) (the statutory exemptions are to be strictly and narrowly construed).

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.

Custodian. Any governmental entity that makes or receives public records.

Division. Division of Public Records, Office of the Secretary of the Commonwealth of Massachusetts.

Governmental Entity. Any agency or municipality as defined in 950 C.M.R. 32.02. It includes any quasi-governmental agency that is considered a body politic and corporate or public instrumentality. It does not include the legislature and the judiciary.

Municipality. Cities and towns, local housing, redevelopment or similar authorities. A consortium, consolidation or combination of entities within a single political subdivision of the commonwealth or among multiple political subdivisions of the commonwealth shall be deemed a municipality. This office has found that regional school districts and local fire districts should be considered municipalities for the purposes of this definition.

Public Record. 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 a governmental entity unless such materials or data fall within one or more of the exemptions found within G. L. c. 4, § 7(26) or other legally applicable privileges.

Records Access Officer. The employee designated within a governmental entity to perform duties described in 950 C.M.R. 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 requestors to make informed requests regarding the availability of such public records electronically or otherwise.

Requestor. Any person or entity seeking to inspect or obtain copies of public records.

Redact. To delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.

Search Time. The time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record.

Secretary. The Secretary of the Commonwealth of Massachusetts.

Segregation Time. The time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.

Supervisor. Supervisor of Public Records or Supervisor of Records.

Withhold. To not disclose a record under G. L. c. 4, § 7(26) or other legally applicable privileges.[5]

Updated Public Records Law

The Public Records Law and its Regulations were updated with changes effective January 1, 2017. Among other things, the updated law sets limits on fees, provides deadlines for the provision of records, and requires the designation of a "Records Access Officer" (RAO). The updated law also distinguishes between "agencies" and "municipalities" and assigns certain duties to each entity.

For the purposes of this Guide, the terms "RAO," "custodian," "municipality," and "agency" represent various ways to describe the roles and obligations of entities that are subject to the Public Records Law.

The Request

There are no strict rules that govern the manner in which requests for public information should be made. Requests may be made in person or in writing. Written requests may be submitted in person, by mail, facsimile or email.[6] A requestor must provide the RAO with a reasonable description of the desired information.[7]

The requestor is not required to provide any reason for making a request and, generally, the purpose of the request has no bearing on the public status of the record. All requestors must be treated the same with respect to the response to their requests. Given this, the requestor may not be required to identify himself or herself as a condition of obtaining access to the requested records. The limited exception to this general rule will be discussed below in relation to determining whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver.[8]

---

[5] 950 C.M.R. 32.02.
[6] 950 C.M.R. 32.06(1)(c).
[7] 950 C.M.R. 32.06(1)(b).
[8] G. L. c. 66, § 10(d)(viii).

The Response

If the RAO intends to produce records and is able to do so within 10 business days, it must "at reasonable times and without unreasonable delay" permit inspection or furnish a copy of any public record not later than 10 business days following the receipt of the request.[9] The RAO must do so 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) of G. L. c. 66, § 10.[10]

If the agency or municipality does not intend to produce records, or if it is unable to produce records within 10 business because the magnitude or difficulty of the request or if multiple requests from the same requestor unduly burdens the other responsibilities of the agency or municipality, the agency or municipality must provide a written response to the requestor within 10 business days of receiving the request.[11]

The written response may be provided in person or sent via first class or electronic mail, and must include the following, to the extent applicable:

(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 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

---

[9] G. L. c. 66, § 10(a).
[10] G. L. c. 66, § 10(a)(i-iii).
[11] G. L. c. 66, § 10(b).

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 requestor 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 requestor 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 requestor 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.[12]

A denial must detail the specific basis for withholding the requested materials.[13] The denial must include a citation to one of the statutory or common law exemptions upon which the records custodian relies, and must explain with specificity why the exemption applies.[14]

A denial must also advise the requestor of the right to seek redress through the administrative process provided by the Supervisor of Records as well as the judicial remedy available in superior court.[15]

The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received.[16] Consequently, there is no obligation to create a record for a requestor or to honor prospective requests; however, the Regulations do not prohibit an RAO from responding to such requests.

---

[12] G. L. c. 66, § 10(b)(i)-(ix).
[13] G. L. c. 66, § 10(a-b).
[14] G. L. c. 66, § 10(b)(iv).
[15] 950 C.M.R. 32.06(3)(c).
[16] G. L. c. 4, § 7(26) (defining "public records" as materials which have already been "made or received" by a public entity); see also 32 Op. Att'y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information).

Furnishing a segregable portion of a public record shall not be deemed to be creation of a new record.[17] It is also important to note that furnishing an extract of existing data is not considered creation of a new record, as such data exists at the time of the request and is segregable from nonresponsive and exempt data.[18]

Providing Records Electronically

The statutory definition of "public records" does not distinguish between paper records and electronically stored information.[19] Rather, the law provides that all information made or received by a public entity, regardless of the manner in which it exists, constitutes "public records."

Access to a record requested pursuant to the Public Records Law rests on the content of the record. Public records, including emails made or received in an individual's capacity as a government employee, must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request.[20] Whenever original public records are created outside the government offices, they shall be transferred on a regular and frequent basis to secure storage by the entity.

The updated Public Records Law emphasizes producing records efficiently and electronically. As a result, an RAO must provide the public records to a requestor by electronic means unless the record is not available in electronic form or the requestor does not have the ability to receive or access the records in a usable electronic form. If a requestor provides a preferred format for the production of records, the RAO must provide the record in that format, to the extent feasible. If no preferred format is mentioned, then the RAO must provide the record in a searchable, machine readable format.[21]

Agency RAOs must post commonly available public records on its website. Examples of such records include final opinions; decisions; orders; votes from proceedings; annual reports; notices of hearings; winning bids for public contracts; awards of federal, state and municipal government grants; minutes of open meetings; budgets; or any public record information of significant interest that the RAO deems appropriate to post.[22]

A municipal RAO shall post this same information on its website, to the extent feasible.[23]

---

[17] G. L. c. 66, § 6A(d).
[18] See 950 C.M.R. 32.07(1)(f).
[19] G. L. c. 4, § 7(26).
[20] G. L. c. 66, § 10(a); see also Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 289-90 (1979).
[21] G. L. c. 66, § 6A(d).
[22] G. L. c. 66, § 19(b).
[23] 950 C.M.R. 32.04(5)(g).

If the public record requested is available on an appropriately indexed and searchable public website, the RAO may furnish the public record by providing reasonable assistance in locating the requested record on the public website.[24]

Fees

A records custodian may charge a reasonable fee to recover the costs of complying with a public records request.[25] However, it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b), described above.[26]

The updated Public Records Law and its Regulations provide for the following with respect to fees to access public records:

Fees for segregating and redacting

An agency or municipality shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor of Records (Supervisor) through a petition discussed below.[27]

As described in the Definitions section, "segregation time" means the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. Segregation time shall not include time expended to review a record for accuracy and correct errors.[28]

"Redact" means to delete, or otherwise expurgate that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.[29]

The Supervisor's office has found that information that is "required by law" to be segregated or redacted is found in statutes that explicitly indicate that certain records or information are not public records. Some common examples are the student record statute (G. L. c. 71, § 34D), the Criminal Offender Record Information (CORI) Act (G. L. c. 6, § 167), and laws regarding the confidentiality of domestic violence records (G. L. c. 41, § 97D; G. L. c. 41, § 98F; G. L. c. 209A, § 8). These statues operate through Exemption (a) of the Public Records Law as further described below. Segregation or redaction

---

[24] G. L. c. 66, § 6A(d).
[25] G. L. c. 66, § 10(a); see also 950 C.M.R. 32.07.
[26] G. L. c. 66, § 10(e).
[27] G. L. c. 66, §10(d); 950 C.M.R. 32.07(2)(d).
[28] 950 C.M.R. 32.02.
[29] Id.

under the attorney-client privilege has also been found to be "require by law."

Fees for Copies

In addition to the search and segregation fees, records custodians may charge $0.05 for either single and double-sided black and white paper copies or printouts.[30] When the request is for materials that are not susceptible to ordinary means of reproduction, such as photographs or computer tapes, the actual cost of reproduction may be assessed to the requestor.[31] There are also specific statutes that establish fees for copies of public records.[32]

Agencies

Agencies may not assess a fee for the first 4 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Agencies may not assess a fee of more than $25 per hour for the cost to comply with a request for public records.[33]

Municipalities

Municipalities with a population of over 20,000 may not assess a fee for the first 2 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of 20,000 and under may assess a fee, including the first 2 hours, for time spent searching for, compiling, segregating, redacting and reproducing a requested record.[34]

Population data shall be determined by the decennial US. Census and it shall be the burden of the RAO to provide population data information when responding to a request.[35]

A municipality may not assess a fee of more than $25 per hour for the cost to comply with a request for public records unless approved by the Supervisor through a petition discussed below.[36]

---

[30] 950 C.M.R. 32.07(2)(e).
[31] 950 C.M.R. 32.07(2)(h).
[32] See e.g., G. L. c. 262, § 38 (copies of records at the Registry of Deeds).
[33] 950 C.M.R. 32.07(2)(l).
[34] 950 C.M.R. 32.07(2)(m).
[35] Id.
[36] Id.

Remedies for Requestors

Supervisor of Records

If a records custodian denies access to, or cannot produce requested records in 10 business days, a records custodian is required by statute to inform the requestor of the right of appeal to the Supervisor under G. L. c. 66, § 10(A)(a).[37] A requestor who is denied access to any requested information may petition the Supervisor for an appeal of the response, or lack thereof, within 90 days.[38]

The Supervisor, assisted by Public Records Division staff, then reviews the written request, the custodian's written response, and provides a written ruling on the status of the records or the reasonableness of a fee estimate.

The Supervisor must issue a determination within 10 business days of receipt of the appeal.[39] If a custodian does not comply with an order, the Supervisor may notify the Office of the Attorney General for enforcement.[40]

The Supervisor and the Public Records Division staff provide training by request to public entities and associations of public employees seeking information on the proper application of the Public Records Law to its records. Public Records Division staff will answer questions on the phone informally, both from requestors and from government entities.

You may view determinations issued by the Supervisor since 2014 on the Public Records Division website at: http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx.

Superior Court

Notwithstanding the ability to appeal to the Supervisor, a requestor may initiate a civil action to enforce the requirements of the Public Records Law. Under the updated Public Records Law, the superior court may award reasonable attorney fees and costs in certain circumstances.[41]

RAO Petitions

RAOs may petition the Supervisor with respect to assessing fees and seeking an extension of time to produce public records.[42]

---

[37] See G. L. c. 66, § 10(b)(ix).
[38] 950 C.M.R. § 32.08(1)(d)-(e).
[39] G. L. c. 66, § 10(A)(a).
[40] G. L. c. 66, § 10(A)(b).
[41] G. L. c. 66, § 10(A)(c)-(d).
[42] G. L. c. 66, § 10(c), (d)(iv); 950 C.M.R. 32.06(4).

Fee petitions

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 under a petition under G. L. c. 66, § 10(d)(iv).[43] A fee petition must be made within 10 business days after receipt of a request for public records.[44]

A municipal RAO may also petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of $25 per hour for time required to comply with a request.[45]

Filing a petition does not affect the requirement that an RAO shall provide an initial response to a requestor within 10 business days after receipt of a request for public records.[46]

Time petitions

If a custodian is unable to complete the request within the time provided in G. L. c. 66, § 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested record that the custodian intends to provide. A petition for an extension of time must be submitted within 20 business days of receipt of request or within 10 business days after receipt of a determination by the Supervisor that the requested record constitutes a public record.[47]

Upon a showing of good cause, the Supervisor may grant an extension of 20 business days to an agency and 30 business days to a municipality, or longer depending on the circumstances.[48]

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.[49]

---

[43] See G. L. c. 66, § 10(d)(ii)-(iii); 950 C.M.R. 32.06(4).
[44] 950 C.M.R. 32.06(4)(g).
[45] G. L. c. 66, § 10(d)(iv).
[46] 950 C.M.R. 32.06(4)(b).
[47] G. L. c. 66, § 10(c).
[48] Id.
[49] Id.

For more information about petitions, please refer to SPR Bulletin 03-17 at https://www.sec.state.ma.us/pre/prepra/significant-interest/SPR-Bulletin-03-17-Petitions-Bulletin.htm.

Agency RAO Reporting Requirement

Agency RAOs are required to report to the Secretary of the Commonwealth (Secretary) certain information pertaining to requests for public records. This information includes, among other things, the nature of the request, the date of the request and response, the amount of fees assessed, and information regarding the use of administrative and judicial remedies.[50]

Agency RAOs must report this information by using an online form provided on the Secretary's website. This website serves as the form prescribed by the Secretary to accomplish this task as required by G. L. c. 66, § 6A(e). Agency RAOs may complete the online form using the following link: www.sec.state.ma.us/AgencyRAOWeb/RAOAccounts/Welcome.aspx.

The public may search the Agency Public Records Request Database website at: www.sec.state.ma.us/RequestSearchWeb/Webpages/Welcome.aspx.

Exemptions to the Public Records Law

The statutory definition of "public records" contains exemptions providing the basis for withholding records completely or in part.[51] The exemptions are strictly and narrowly construed.[52] Where exempt information is intertwined with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are deleted.[53] A review of the appropriate applications of the exemptions follows.

Exemption (a) – The Statutory Exemption

Exemption (a) applies to records that are:

> *specifically or by necessary implication exempted from disclosure by statute.*[54]

A government entity may use the statutory exemption as a basis for withholding requested materials where the exempting statute expressly states

---

[50] G. L. c. 66, § 6A(e).
[51] G. L. c. 4, § 7(26).
[52] Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. at 625.
[53] G. L. c. 66, § 10(a); Reinstein, 378 Mass. at 289-90 (the statutory exemptions are not blanket in nature).
[54] G. L. c. 4, § 7(26)(a).

or necessarily implies that the public's right to inspect records under the Public Records Law is restricted.[55]

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."[56]

The second category under the exemption includes records deemed exempt under statute by necessary implication.[57] Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities.[58] 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.

For example: Can a requestor have access to reports of rape and sexual assault or attempts to commit such offenses, or abuse perpetrated by family or household members?

G. L. c. 41, § 97D provides that these records, along with 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. However, this statute also lists groups of people and entities that may access these records, including victims and their attorneys, victim-witness advocates, and law enforcement.

Please reference the Appendix of this Guide for other examples of statutes that specifically exempt records from disclosure.

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 performance of necessary governmental functions requires such withholding.*[59]

---

[55] Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).
[56] See, e.g., G. L. c. 41, § 97D (all reports of rape or sexual assault "shall not be public reports").
[57] G. L. c. 4, § 7(26)(a).
[58] See, e.g., G. L. c. 71, §§ 34D and 34E.
[59] G. L. c. 4, § 7(26)(b).

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.[60]

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.[61]

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.

For example: Are certain Department of Correction (DOC) security policies and procedures public?

One of the DOC's primary functions is to maintain secure penal institutions. Information regarding certain procedures used by correctional officers during law enforcement activities may relate solely to the internal workings of the DOC. Moreover, disclosure of this information could prove detrimental to the DOC's law enforcement efforts, as knowledge of the DOC's security response procedures could enable an inmate to circumvent such procedures. Accordingly, Exemption (b) will allow the DOC to withhold portions of the these policies.

Exemption (c) – The Privacy Exemption

Exemption (c), the privacy exemption, is the most frequently invoked exemption. The language of the exemption limits its application 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.*[62]

First clause of Exemption (c)

Exemption (c) is made up of two separate clauses, the first of which exempts

---

[60] Dep't of the Air Force v. Rose, 425 U.S. 352, 362-70 (1976).

[61] See Globe Newspaper Co. v. Boston Retirement Bd., 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).

[62] G. L. c. 4, § 7(26)(c).

personnel and medical files. As a general rule, medical information related to an identifiable individual will always be of a sufficiently personal nature to warrant exemption.[63]

While statutorily exempting personnel information from the expansive definition of public records, the legislature did not explicitly define personnel information.[64] However, judicial decisions acknowledge that the term is neither rigid, nor exact, and that the determination is case-specific.[65] The custodian's classification of materials as "personnel information" is not conclusive.[66] Instead, the nature or character of the documents, as opposed to the documents' label, is crucial to the analysis.[67]

Generally, the first clause applies to "core categories of personnel information that are 'useful in making employment decisions regarding an employee.'"[68] For example, "employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee," may be withheld pursuant to the first clause of Exemption (c).[69]

However, a record is not exempt if it "does not permit the identification of any individual" and is "wholly unrelated to any individual's privacy interest, such as a generic job description or generic qualification requirement for a particular [job]."[70]

Police Internal Affairs Records

The Appeals Court of Massachusetts distinguished "personnel records" from "internal affairs" records. The Appeals Court held that materials in a police internal affairs investigation are different in kind from the ordinary evaluations, performance assessments and disciplinary determinations encompassed in the public records exemption for personnel files or information.[71] The Appeals Court held that officers' reports, witness interview summaries, and the internal affairs report itself do not fall within the personnel information exemption, as these documents relate to the workings and determinations of the internal affairs process whose quintessential purpose is to inspire public confidence.[72]

---

[63] Boston Retirement Bd., 388 Mass. at 442; see also Globe Newspaper Co. v. Chief Med. Examiner, 404 Mass. 132 (1989) (autopsy reports constitute exempt medical information).
[64] G. L. c. 4, § 7(26)(c).
[65] Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass App Ct 1, 5 (2003).
[66] Wakefield Teacher's Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000).
[67] See Worcester Telegram & Gazette Corp., 436 Mass. 378, 386 (2002).
[68] Id. at 5.
[69] Wakefield Teachers Ass'n, 431 Mass. at 798.
[70] Id. at 800.
[71] Id. at 799.
[72] Worcester Telegram & Gazette Corp. 58 Mass. App. Ct. at 8-9.

Second clause of Exemption (c)

The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake.[73] Therefore, determinations must be made on a case by case basis.

This clause does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources.[74]

Examples of the types of personal information which the second clause of this exemption is designed to protect include: marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcohol consumption, family fights, and reputation.[75]

This clause requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield.[76] The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner.[77] The SJC has also found that a public interest, even one unrelated to government operations, may be a factor in determining the weight of the public interest in disclosure.[78]

Public employees have a diminished expectation of privacy in matters relating to their public employment.[79] Consequently, the public will have greater access to information that relates to an individual's public employment than to the same individual's private activities.[80] For example, an individual's public employment salary is a public record, but the source or amount of private income generally is not public information.[81]

---

[73] Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Assistant Comm'r of Real Property Dep't, 380 Mass. at 625.
[74] See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).
[75] Boston Globe Media Partners, LLC v. Dep't of Pub. Health, 482 Mass. 427, 443 n.17 (2019).
[76] PETA, 477 Mass. at 291.
[77] Id. at 292.
[78] Boston Globe Media Partners, LLC, 482 Mass. at 451.
[79] Brogan v. School Comm. of Westport, 401 Mass. 306, 308 (1987).
[80] Hastings & Sons Publ'g. Co. v. City Treasurer of Lynn, 374 Mass. 812, 818 (1978).
[81] Collector of Lynn, 377 Mass. at 156.

For example: Can a public employee's employment application and work evaluation be disclosed?

Under the first clause of Exemption (c), certain personnel records may be withheld, therefore, the records custodian may properly withhold certain employment applications and work evaluations under Exemption (c). However, it may be possible to provide a redacted version of these records if such redactions are made in a manner to avoid identifying the subject of the record.

Candidates for state employment must provide prospective employers with written disclosure of any relative who is also a state employee. The content of this disclosure is considered public under the Public Records Law.[82]

For example: Are settlement agreements exempt under the Public Records Law?

The public interest in the financial information of a public employee outweighs the privacy interest where the financial compensation in question is drawn on an account held by a government entity and comprised of taxpayer funds. Additionally, the disclosure of the settlement amount would assist the public in monitoring government operations. Therefore, exemptions to the Public Records Law will not operate to allow for the withholding of settlement agreements as a whole. However, portions of the agreements, and related responsive records, may be redacted pursuant to specifically-cited exemptions to the Public Records Law.[83]

For example: Are cell phone numbers and personal email addresses of private citizens public?

A private citizen whose cell phone number and personal email address is unpublished may have a reasonable expectation of privacy in this information. Any public interest in the disclosure of cell phone numbers and personal email addresses of citizens likely does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. Therefore, this information can likely be withheld under the second clause of Exemption (c).

Exemption (d) – The Deliberative Process Exemption

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*

---

[82] See G. L. c. 268A, § 6B.

[83] See Globe Newspaper Co. v. Exec. Office of Admin. and Fin., Suffolk Sup. No. 11-01184-A (June 14, 2013).

> *apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.*[84]

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 that are contained within inter-agency or intra-agency memoranda or letters.[85]

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.[86] Only portions of records that possess a deliberative or policymaking character and relate to an ongoing deliberative process are exempt from mandatory disclosure.

The Supreme Judicial Court (SJC) opined on the status of attorney work product under Exemption (d) in *DaRosa v. City of New Bedford*, 471 Mass. 446 (2015). In *DaRosa*, the SJC concluded that "opinion" work product that was prepared in anticipation of litigation or for trial by or for a party or its representative falls within the scope of Exemption (d).[87] It also concluded that "fact" work product under Mass. R. Civ. P. 26(b)(3) that was prepared in anticipation of litigation or trial falls within the scope of Exemption (d) where it is not a reasonably completed study or report or, if it is reasonably completed, where it is interwoven with opinions or analysis leading to opinions.[88]

For example: Are drafts of a strategic plan being developed public?

To the extent that the deliberation remains ongoing, drafts of a strategic plan may be withheld under Exemption (d). However, a records custodian should look to see whether it can release purely factual matters during the deliberation. It should be noted that a change in the status of the deliberation would impact the applicability of this exemption.

Exemption (e)

Exemption (e) allows the withholding of:

> *notebooks and other materials prepared by an employee of the*

---

[84] G. L. c. 4, § 7(26)(d).

[85] Babets v. Sec'y of the Exec. Office of Human Servs., 403 Mass. 230, 237 n.8 (1988); see Boston Globe Media Partners, LLC v. Dep't of Public Health, Suffolk Sup. No. 19-02387 (October 21, 2019) (finding that data files do not fall within Exemption (d), in part, because they are not part of inter-agency or intra-agency memoranda or letters).

[86] Moore-McCormack Lines, Inc. v. I.T.O. Corp. of Baltimore, 508 F.2d 945, 948 (1974) (construing cognate federal provision).

[87] DaRosa v. City of New Bedford, 471 Mass. 446, 448 (2015).

[88] Id.

> *commonwealth which are personal to him and not maintained as part of the files of the governmental unit.*[89]

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 them in preparing reports. The exemption may 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.[90]

For example: A requestor sought all documents from a government entity related to a particular issue. The responsive records included personal notes of the government entity's employee. Are these notes public?

Notes are not public if they are personal in nature, kept by the employee merely to assist them, are not shared with anyone in the department and are not maintained as part of the department's files.

Exemption (f) - The Investigatory Exemption

Exemption (f), the investigatory exemption, provides custodians a basis for withholding:

> *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.*[91]

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.[92] A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities.[93]

---

[89] G. L. c. 4, § 7(26)(e).
[90] Id.
[91] G. L. c. 4, § 7(26)(f).
[92] Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 512 (1995); WBZ-TV4 v. Dist. Attorney for the Suffolk Dist., 408 Mass. 595, 603 (1990).
[93] Bougas v. Chief of Police of Lexington, 371 Mass 59, 62 (1976).

Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses.[94] Exemption (f) invites a "case-by-case consideration" of whether disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest."[95]

For example: If a requested incident report contains witness identities, can a police department use Exemption (f) to withhold the requested report in its entirety?

Generally, a police incident report may be released to a requestor after the records custodian has redacted the exempt portions from the record, such as, medical information and information that may identify a voluntary witness.

Exemption (g)

Exemption (g) 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.*[96]

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 with a contract bid or in compliance with a filing requirement.[97]

For example: Is a Memorandum submitted as an exhibit in an enforcement hearing before an administrative agency a public record?

Although the first criterion may have been met if the Memorandum contained commercial information, the remaining criteria likely cannot be met. This is because the Memorandum was not voluntarily submitted, was not provided for use in developing government policy, and was not submitted upon a promise of confidentiality.

---

[94] Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein, 378 Mass. at 290 n.18.
[95] See Reinstein, 378 Mass. at 289-90.
[96] G. L. c. 4, § 7(26)(g).
[97] Id.

Exemption (h)

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.[98]

Competitive bidding ensures full publicity of the contract and encourages the guarding of the public welfare.[99] Although the competitive bidding process does not have the advantages of more flexible purchasing policies, the legislature has mandated the process to foster honesty and accountability in government.[100] Specifically, 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 person.*[101]

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.[102] 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.

For example: May the records custodian withhold proposal and bid documents until the records custodian has finalized a contract with the construction company or developer?

---

[98] 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).
[99] Id. at 699.
[100] Id. at 701.
[101] G. L. c. 4, § 7(26)(h).
[102] G. L. c. 4, § 7(26)(d).

The *first clause* of Exemption (h) allows the records custodian to withhold proposals and bids from disclosure until the time for the opening bids or until the time for receipt of proposals has expired. Once that occurs, the proposals and bids no longer fall under the protection of Exemption (h) and can no longer be withheld.

For example: May the records custodian withhold any records concerning the evaluations of the bidders and the awarding process, and at what point do the records become public?

The *second clause* of Exemption (h) allows the records custodian to withhold any inter-agency or intra-agency communications that are made in the process of reviewing the bids and proposals, prior to entering into negotiations with, or to award the contract to, a particular person. The records custodian may withhold the records pursuant to Exemption (h) only until the contract has been awarded. Once a decision has been made to enter into negotiations the records custodian can no longer withhold the records.

Exemption (i)

The purpose of Exemption (i) is to provide governmental entities engaged in the acquisition of real property, either through a purchase or an eminent domain proceeding, the same degree of confidentiality that is afforded to private parties. The exemption ensures that the government will not be at a bargaining disadvantage by allowing the other party to use the Public Records Law to gain access to an appraisal prior to completion of negotiations or litigation. 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 terminated; or (3) the time within which to commence such litigation has expired.*[103]

Application of Exemption (i) is limited to situations in which a governmental entity is concerned that disclosure of the subject appraisal will compromise its ability to effectively negotiate a fair purchase or sale price for the property. The legislature defined "appraisal" as any written analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate.[104]

The language of the statute is clear that the three provisions are alternative rather than requisite conditions. Therefore, once one of the three alternatives has occurred, Exemption (i) will no longer serve as a means to withhold the subject appraisal.

---

[103] G. L. c. 4, § 7(26)(i).
[104] G. L. c. 112, § 173 (definition of appraisal).

For example: May a housing authority (records custodian) withhold appraisals pursuant to Exemption (i) where the records custodian has entered into a final agreement with the property owner and the property owner has agreed to forgo all possible eminent domain claims against the housing authority?

Once one of the three provisions of the exemption has occurred, Exemption (i) cannot be used to withhold the subject appraisal. In this case, the parties reached a final agreement regarding the property, therefore, the exemption no longer applied and the records custodian could not continue to withhold the appraisals.

For example: Where a requestor seeks appraisal documents on a parcel for which a negotiated final settlement has been reached, may the records custodian withhold the appraisals on all the parcels of land being acquired for the project until it reaches final agreement on all the parcels and the litigation on the parcels is finalized?

Exemption (i) is parcel specific and the records custodian may only withhold an appraisal until an agreement has been reached, litigation relative to the appraisal has been terminated, or the time within which to commence such litigation has expired. In this situation, the appraisal sought by the requestor pertained to a parcel that had already been acquired, and the records custodian was ordered to produce the appraisal documents for that specific parcel.[105]

Exemption (j)

Exemption (j) allows records custodians of firearm records to withhold:

> *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.*[106]

Exemption (j) allows the identifying data, in particular, the name and address of the licensee to be deleted from the record prior to disclosure. In addition to Exemption (j), there are other statutes that govern the release of firearms records.[107]

---

[105] Coleman v. Boston Redevelopment Auth., 61 Mass. App. Ct. 239 (2004).
[106] G. L. c. 4, § 7(26)(j).
[107] G. L. c. 66, § 10B (discussing the confidentiality of records divulging or tending to divulge the names and addresses of persons who own or possess firearms); G. L. c. 140, §§ 121-131P (discussing sale of firearms).

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 may withhold the entire record, because even if the name and address are redacted, the requestor knows with certainty that this particular record pertains to John Smith.

Exemption (k). Repealed, 1988 Mass Acts 180, § 2.

Although Exemption (k) was repealed, the legislature retained the substance of the exemption, incorporating the language into another section of the General Laws. It reads: "*…[T]hat part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record as defined by clause Twenty-sixth of section seven of chapter four.*[108]

G. L. c. 78, § 7 operates through Exemption (a) of the Public Records Law to provide a basis for denying access to library circulation records.[109]

Exemption (l)

Exemption (l) provides a basis for withholding from disclosure:

> *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.*[110]

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.

For example: May a records custodian withhold a copy of a middle school mid-term examination, when the request is made by a parent of one of the school's students?

Where the school has proven that the test questions administered to this student on this mid-term examination will be used for future examinations, the school may properly withhold the testing materials pursuant to Exemption (l).

---

[108] G. L. c. 78, § 7 (discussing Public Libraries).
[109] G. L. c. 4, § 7(26)(a).
[110] G. L. c. 4, § 7(26)(l).

For example: May a records custodian withhold testing materials, when a request is made for all documents related to the issue of discrimination in the Massachusetts Comprehensive Assessment System (MCAS)?

Pursuant to Exemption (l), the records custodian may properly withhold the test questions and answers, and any other testing materials that are currently used or may be used to administer subsequent MCAS examinations.

Exemption (m)

Exemption (m) applies to:

> *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.*[111]

Although Exemption (m) has yet to be interpreted by any Massachusetts court, the language of the exemption is clear. The exemption pertains to contracts for hospital or healthcare services between a government-operated healthcare facility and a health maintenance organization or health insurance corporation.

To properly claim Exemption (m), the records custodian must meet all four criteria contained in the exemption: (1) the record must be a contract; (2) the contract must be for hospital or related health care services; (3) one of the contracting parties must be a government-operated medical facility; and (4) the party providing services must be one of the entities described by the exemption. If the requested record satisfies all of the criteria, the records custodian may withhold the record pursuant to Exemption (m).

For example: May a city or town withhold records pertaining to the health insurance plans and the costs of providing these health insurance benefits to employees of the city or town pursuant to Exemption (m)?

Exemption (m) specifically applies only to records that are contracts for hospital or related health care services. Additionally, one of the contracting parties must be a government operated medical facility, such as a hospital or clinic, and the party providing the services must be one of the entities described by the exemption. The requested records do not satisfy the criteria of the exemption; therefore, the list of health insurance plans and the costs of

[111] G. L. c. 4, § 7(26)(m).

providing these as employee benefits may not be withheld pursuant to Exemption (m).

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, 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.*[112]

This exemption allows for the withholding of certain records which, if released, will likely jeopardize public safety or cyber security. When analyzing the applicability of Exemption (n), the SJC determined that the first prong of this exemption examines "whether, and to what degree, the record sought resembles the records listed as examples in the statute;" specifically, the "inquiry is whether, and to what degree, the record is one a terrorist 'would find useful to maximize damage.'"[113]

The second prong of Exemption (n) examines "the factual and contextual support for the proposition that disclosure of the record is 'likely to jeopardize public safety.'"[114] The SJC further provides that "[b]ecause the records custodian must exercise 'reasonable judgment' in making that determination, the primary focus on review is whether the custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian's determination given the context of the particular case." Id.

For example: Can a copy of a municipal blast design plan be withheld under Exemption (n)?

Although the requested record may be contemplated by Exemption (n) because a terrorist could use the information on the plan to inflict damage, a records custodian would also need to provide "sufficient factual heft" to establish how disclosure of the information in the plan is likely to jeopardize public safety or cyber security. If the records custodian provides this factual support, portions of this type of record can likely be withheld under Exemption (n).

---

[112] G. L. c. 4, § 7 (26)(n).
[113] PETA, 477 Mass. at 289-90.
[114] Id.

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 6.*[115]

For example: Would the address of a government employee found in payroll records be public?

Exemption (o) applies to the home address, personal email address or home telephone number of government employees. For example, this information could be redacted from records such as government payroll records and/or emails.

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).*[116]

Similar to Exemption (o), this exemption allows the name, home address, personal email address, and home telephone number of a family member of a Commonwealth employee to be redacted.

Exemption (q)

Exemption (q) allows for the withholding of:

---

[115] G. L. c. 4, § 7 (26)(o).
[116] G. L. c. 4, § 7 (26)(p).

> *Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.*[117]

The registry of vital records and statistics maintains a voluntary adoption contact information registry for the purpose of connecting parents listed on the initial birth certificate to any of their children who were adopted by others.[118] The adoption contact registry contains the addresses and other information supplied by parents and adoptees necessary for one to contact the other. Any contact information contained in the adoption contact registry, as well as indices created from this registry, may be withheld under Exemption (q).

Exemption (r)

Exemption (r) applies to:

> *Information and records acquired under chapter 18C by the office of the child advocate.*[119]

The records created and received by the Office of the Child Advocate pursuant to Chapter 18C may be withheld under this exemption.[120]

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 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.*[121]

Exemption (s) relates to certain records of public utility providers.

---

[117] G. L. c. 4, § 7 (26)(q).
[118] G. L. c. 46, § 31.
[119] G. L. c. 4, § 7 (26)(r).
[120] G. L. c. 18(c).
[121] G. L. c. 4, § 7 (26)(s).

Exemption (t)

Exemption (t) applies to:

> *statements filed under section 20C of chapter 32.*[122]

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).[123]

Exemption (u)

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 concerns.*[124]

This exemption applies to certain records in the possession of the University of Massachusetts.

Exemption (v)

Exemption (v) applies to:

> *records disclosed to the health policy commission under subsections (b) and (e) of section 8A of chapter 6D.*[125]

This exemption applies to certain records disclosed to the Health Policy Commission.

---

[122] G. L. c. 4, § 7 (26)(t).
[123] See G. L. c. 32, § 20C.
[124] G. L. c. 4, § 7 (26)(u).
[125] G. L. c. 4, § 7 (26)(v).

Attorney-Client Communications

In *Suffolk Constr. Co. v. Div. of Capital Asset Mgmt*., 449 Mass. 444, 449-50 (2007), the Supreme Judicial Court (SJC) held that confidential communications between governmental entities and their legal counsel undertaken for the purpose of obtaining legal advice or assistance are protected under the normal rules of the attorney-client privilege.

A custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived.[126] Disclosing attorney-client communications to a third party generally undermines the privilege.[127]

In assessing whether a custodian has properly withheld records based on the claim of attorney-client privilege, the Supervisor of Records "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."[128]

Geographic Information Systems (GIS)

A GIS is a computer system designed to store, capture, analyze and display geographically referenced information. Often, the information that comprises Commonwealth or municipal GIS databases is submitted by private surveyors and engineers who exercise intellectual property rights over nonfactual portions of the materials.

While there are no Massachusetts court cases interpreting this issue, it is clear that the legislature did not carve out specific exemptions from the Massachusetts Public Records Law allowing protected intellectual property in the custody of a governmental entity to be withheld from public dissemination. The Public Records Law does not serve to preempt federal intellectual property law, nor does the Public Records Law exonerate those who violate intellectual property rights validly held by private individuals or governmental entities once the public GIS records have been released. As a precaution, records custodians of GIS records are encouraged to indicate on

---

[126] Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 450 n.9 (2007); see also Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies).

[127] Comm'r of Revenue v. Comcast Corp., 453 Mass. 293, 306 (2009).

[128] G. L. c. 66, § 10A(a).

released GIS records that the information contained in the records may be subject to intellectual property protections.

Records Management

As the chief information officer for the Commonwealth, Secretary of the Commonwealth William F. Galvin recognizes the importance of maintaining records properly. With this understanding, the Secretary strongly encourages the creation, adoption and implementation of a formal, written records management program that includes specific standards for both paper and electronic records.

The Records Management Unit (RMU) was created to provide records management services and outreach to all state agencies and municipalities to help them meet state record-keeping standards and requirements. The RMU can provide agencies with retention schedules for specific records, as well as information on proper disposal and destruction of records. If you need additional information or assistance in creating a Records Management Program, please contact the RMU at 617-727-2816.

Records Retention

It is the responsibility of government employees who create, receive and maintain public records to ensure their safekeeping and availability to the public until the retention period for the specific records series has expired.

There are two retention schedules: the Municipal Records Retention Schedule, which applies to all records of municipal government in Massachusetts, and the Statewide Schedule, which applies to all records of state agencies including those of executive departments, constitutional offices, authorities, independent agencies, and state records being managed by contracted service providers.

State agencies must obtain the written permission of the Records Conservation Board (RCB) prior to destroying certain records.[129] The RCB is empowered "to require all departments of the Commonwealth to report to it what series of records they hold, to set standards for the management and preservation of such records, and to establish schedules for the destruction, in whole, or in part, and transfer to the archives or another appropriate division within the office of the state secretary, in whole, or in part, of records no longer needed for current business."[130]

Municipalities must obtain the written permission of the Supervisor of Records prior to destroying certain records.[131]

Retention schedules for state agencies and municipalities, as well as information on records management, including permission forms for disposal

[129] G. L. c. 30, § 42.
[130] Id.
[131] G. L. c. 66, §§ 1, 8.

of records, may be accessed through the Secretary of the Commonwealth's website. For the most up-to-date schedules and forms, please visit the RMU website at http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

The RCB requires that each agency of the Commonwealth submit Form RCB-4 on an annual basis. Similarly, municipalities must submit Form RMU-4. These forms state the name and title of each agency's or municipality's designated records management officer or Records Liaison Officer. These forms are available online at www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

Electronic Records Storage

Records must be maintained according to the retention schedules, based on the content of the record. Records creators are responsible for maintaining an accurate, reliable, trustworthy, and accessible record for the complete required retention period, regardless of format.

If a custodian chooses to digitize a paper record, it must ensure it can maintain the digital file and provide appropriate access to it until the retention period is met. Once digitized, provided there are no statutory requirements to retain the record in a paper format, a custodian may destroy the paper record without requesting permission from the RCB or Supervisor of Records. A custodian will need permission to destroy or delete the final, digitized copy of the record. Please note, some paper records may have inherent evidentiary or historical value that a custodian may want to retain them even after digitization.[132]

The RCB implemented *Electronic Records Management Guidelines* to assist records custodians in maintaining electronic records.[133] Records custodians are encouraged to review the *Statewide Records Retention Schedule* or the *Municipal Records Retention Manual* for more information on retention periods for records. If you have any questions regarding electronic records and storage, please do not hesitate to contact the RMU at 617-727-2816.

---

[132] See Massachusetts Archives, https://www.sec.state.ma.us/arc/arcpdf/Frequently_Asked_Questions_Digital.pdf (last visited April 11, 2019).

[133] See Massachusetts Archives, www.sec.state.ma.us/arc/arcpdf/Electronic_Records_Guidelines.pdf (last visited April 11, 2019).

Maintenance and Storage of Public Records

Public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request.[134]

The Supervisor of Records is responsible for ensuring that the records of the Commonwealth and municipalities are maintained and stored as required by law.[135] In accordance with this duty, the following procedures have been established to ensure security of and access to public records.

1. Records Access Officers (RAOs)

RAOs shall assist the custodian in preserving public records in accordance with all applicable laws, rules, regulations and retention schedules.[136]

2. Original Records Removed from Municipal Offices

a. Whenever original public records are removed from municipal offices for use in the regular course of business to a private office or home, they shall be stored in fire-resistant devices and safes provided by the municipality.[137]

b. If fire-resistant storage outside of the municipal building cannot be ensured, then no original records may be removed. However, the RAO may create copies of records for use in a private office or home.

3. Original Records Created Outside of Municipal Offices

a. Whenever original public records are created outside the municipal offices, they shall be transferred on a regular and frequent basis to secure storage in the municipal building.

b. If secure storage is available in an individual's private office or home, then copies of the records shall be maintained in the municipal building, with the originals stored in secure storage at the records custodian's private office or home.

4. Availability of RAO

Whenever it is necessary to work, or to keep original public records, in a location other than the municipal building, RAOs shall be available

---

[134] G. L. c. 66, § 10(a); see also Reinstein, 378 Mass. at 289-90.
[135] See G. L. c. 66, § 1.
[136] G. L. c. 66, §6A(b); 950 C.M.R. 32.04(5).
[137] G. L. c. 66, § 11.

during regular posted office hours, at a location convenient to the general public, for inspection and copying of the public records.

Please note that in such situations, copies of the public records must also be maintained in the municipal building, in accordance with paragraph 2(b), above.

In those instances in which the governmental entity does not have regular business hours, a written notice must be posted in a conspicuous location, listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.[138]

5. Transfer of Public Records upon Termination of Duties as Government Employee

a. Whenever a government employee relinquishes his office or terminates his duties, he must deliver over to his successor all such public records that he is not authorized by law to retain.[139]

These procedures are designed to ensure the safekeeping of public records so that compliance with the Massachusetts Public Records Law by governmental entities is best accomplished.

[138] 950 C.M.R. 32.04(4).
[139] See G. L. c. 66, § 14.

Frequently Asked Questions

Below are answers to Frequently Asked Questions regarding the Public Records Law. For additional legal and practical considerations, please refer to prior portions of this guide that discuss these matters.

What is the difference between the federal Freedom of Information Act and the Massachusetts Public Records Law?

The federal Freedom of Information Act is a statute that applies to federal records. The Massachusetts Public Records Law applies to records created by or in the custody of a state or local agency, board or other government entity.

Who can help me with questions regarding the Public Records Law?

The Division of Public Records (Division) provides an "attorney of the day" to assist any person seeking information regarding the Public Records Law.

The hours of operation for the Division are Monday-Friday, with the exception of holidays, from 8:45 a.m. to 5:00 p.m. The telephone number for the Division is (617) 727-2832, and the email address is pre@sec.state.ma.us.

What is a "public record?"

Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part.

The legislature created specific statutory exemptions and the courts have recognized common law exemptions, such as the attorney-client privilege. These exemptions permit the agency or municipality to withhold a record from the public. The exemptions to the Public Records Law are described in this guide.

How do I find the records I seek?

A person seeking access to government records must request them directly from the municipality or agency that is the custodian of the requested records.

The Division of Public Records is not a warehouse for government records. The only records kept in the Division are those that are essential to the business operations of the Division or those that are provided to the Division as required by statute.

Does the Public Records Law apply to court, legislative or federal records?

The Public Records Law does not apply to records held by federal agencies, the legislature or the courts of the Commonwealth. Accordingly, the Supervisor of Records is unable to assist requestors seeking such records.

What is a Records Access Officer?

A Records Access Officer (RAO) is the person responsible for responding to requests for public records. Information on how to contact an RAO is usually available on the website for the applicable municipal or state entity holding the records sought by requestors.

What is a records custodian?

A records custodian means any governmental entity that makes or receives public records.

How do I obtain copies of public records?

To obtain a copy of a record, you must make a request to the RAO for the municipal or state agency that you believe has records you are seeking.

What do I do if my request is denied?

An RAO must respond to your request as determined by the Public Records Law. If the RAO fails to respond or denies a request, a requestor may appeal the matter to the Supervisor of Records (Supervisor) within ninety days.

Under the Public Records Access Regulations, all appeals to the Supervisor must include a copy of the original request, any response by the RAO and a statement indicating the reason for the appeal. The requestor must also provide a copy of the appeal petition to the RAO.

May I also go to court to seek public records?

A requestor may also commence a civil action in superior court to enforce the requirements of the Public Records Law. Where applicable, the superior court may award reasonable attorney's fees and costs in cases where the requestor obtains relief.

My appeal was closed because I did not provide the necessary information. What do I do now?

The Supervisor may close an appeal without a finding if a requestor fails to provide a copy of the original request, the response from the RAO, does not provide a copy of the petition for appeal to the RAO, or fails to provide a detailed description of the basis of the appeal.

In such cases, a requestor may re-submit the appeal once the above requirements have been met.

What are the requirements for an RAO's response to a public records request?

An RAO must respond to a request within 10 business days. This response must be in writing and include a variety of components depending on the circumstances; for example, the response can offer to provide records, include a fee estimate for the provision of records, or deny access to records.

If an RAO is denying access to a record, it must 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 which the withholding is based. Any denial must include instructions on how to appeal to the Supervisor of Records.

Must my request be in writing, and do I need to use a specific form?

A written request is not required but is strongly recommended. An oral request made in person is permitted. An RAO is not permitted to require a written request, but may write an oral request on its own form to assist in prompt response. An RAO may not require a requestor to use a specific form, however, it may suggest one.

To appeal an RAO's response to the Supervisor, however, a request must be in writing.

May I appeal a failure to answer a question?

The Public Records Law only applies to records. An RAO is not required by the Public Records Law to answer questions or create a record in response to a request; however, an RAO must provide any records that exist that respond to a question.

May an RAO charge a fee for producing public records?

An RAO may charge and recover a reasonable fee for producing a requested record. If a fee is being assessed to produce records, the Public Records Regulations require that an RAO provides a detailed, written, good faith estimate for the cost of complying with a public record request.

Agencies shall not assess a fee for the first 4 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of over 20,000 shall not assess a fee for the first 2 hours of time spent searching for, compiling, segregating, redacting and

reproducing a requested record. Municipalities with a population of 20,000 and under are permitted to charge for the first 2 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record.

The hourly rate may not be greater than the prorated hourly wage of the lowest paid employee who is capable of performing the task. Generally, an RAO is not permitted to charge an hourly rate in excess of $25.00 per hour to search for records. Municipal RAOs may petition the Supervisor for permission to charge a fee in excess of $25.00 per hour.

Agency and municipal RAOs may petition the Supervisor for permission to assess a fee for time spent segregating and redacting.

The fee estimate must provide the hourly rate and the number of hours required for each portion of the task. An RAO may not recover fees associated with record organization.

If a requestor wishes to review records in the records custodian's office but does not require copies, a records custodian may charge and recover a fee for his or her time spent searching for and redacting the records, provided the redactions are required by law or approved by the Supervisor.

An agency or municipality is permitted to require payment of the estimated fee before commencing work.

All agencies and municipalities are strongly urged to waive the fees associated with access to public records, but are not required to do so under the law.

What is the cost for copies of public records; what about electronic records?

Absent a specifically identified statute or regulation, an RAO may charge no more than $0.05 per page for single and double-sided black and white paper copies or computer printouts.

The Public Records Law and its Regulations apply to all Massachusetts government records, regardless of form, and regardless of the location of the records.

Provision of public records in electronic form is preferred, where available. An RAO is not permitted to assess a copying fee for electronic records. The $0.05 fee applies only to paper copies of records.

When must minutes of an open meeting be made available to the public?

The Open Meeting Law, applicable to public bodies such as select boards for towns, is enforced by the Office of the Attorney General, Division of Open

Government.[140] Any questions regarding the content of minutes, requirements to keep minutes or any procedural aspects of the Open Meeting Law should be addressed to the Division of Open Government.[141]

Does a requestor have greater right of access to records if he is the subject of a record?

Under the Public Records Law, every requestor is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person. Access to a record requested pursuant to the Public Records Law rests on the content of the record.

Some statutes and regulations allow requestors to obtain records in a manner that does not require a request under the Public Records Law.

A list of statutes limiting access to public records is found in the back of this guide. This list includes student records, criminal offender record information, and other records the access to which is limited by law.

Is a requestor required to disclose the intended use of the public record requested?

With the possible exception of situations where the RAO is determining whether the records are being requested for a commercial purpose or determining whether to grant a fee waiver, a records custodian may not ask a requestor the reason for the request or the intended use of the requested records.[142]

How should an RAO respond to an unclear request?

RAOs must help the requestor to determine the precise record or records responsive to a request; however, a requestor must provide a reasonable description of the requested records. If a request is unclear the RAO is expected to seek clarification from the requestor.

Are RAOs required to forward a request for records not in their possession?

A 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.

---

[140] G. L. c. 30A, §§ 18-25.

[141] www.mass.gov/ago/bureaus/government/the-division-of-open-government/.

Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

If the records are not within the possession, custody, or control of the agency or municipality that the RAO serves, the RAO must identify the agency or municipality that may have the public records sought, if known.

Appendix

The provisions in this book are not the official versions of the Massachusetts General Laws (M.G.L.) or Code of Massachusetts Regulations (C.M.R.). Reasonable efforts have been undertaken to assure the validity of the information provided at the time of publishing; however, do not rely on this information without first consulting an official edition of the M.G.L. or C.M.R.

Public Records Law

G. L. c. 4, § 7(26)

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;

(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;

(k) [Stricken.]

(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 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.

(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.

Records Access Officers

G. L. c. 66, § 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 requestor by electronic means unless the record is not available in electronic form or the requestor 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 requestor'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 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 requestor;

(iii) the date on which a public record is provided to the requestor;

(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.

(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 requestor, 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.

Public Inspection and Copies of Records

G. L. c. 66, § 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 requestor, 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 requestor 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 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 requestor 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 requestor 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 requestor 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 section10A.

(c) If the magnitude or difficulty of a request, or the receipt of multiple requests from the same requestor, 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 records access officer shall, upon submitting the petition to the supervisor of records, furnish a copy of the petition to the requestor. 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 requestor, 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 requestor and shall inform the requestor 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:

(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:

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 requestor 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 requestor;

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 requestor and shall inform the requestor 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 requestor, or upon a showing that the requestor 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) as used in 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 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 or 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 requestor 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.

Administrative and Judicial Remedies

G. L. c. 66, § 10A

(a) If an agency or municipality fails to comply with a requirement of section 10 or issues a response the requestor 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 requestor, 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.

(c) Notwithstanding the procedure in subsections (a) or (b), a requestor 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 requestor 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;

(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 requestor, 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 requestor, 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 requestor 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.

Public Records Regulations

950 CMR 32.00: PUBLIC RECORDS ACCESS

Section

32.01: Scope and Purpose

(1) 950 CMR 32.00 describes the practices and procedures of the Division of Public Records relative to the requirements of governmental entities or political subdivisions of the Commonwealth with respect to disclosure of public records, reporting requirements for certain records access officers and ensuring that disputes regarding access to particular records are resolved expeditiously and fairly. 950 CMR 32.00 shall not limit the availability of other remedies provided by law.

(2) The Division of Public Records is under the supervision of the Supervisor of Public Records. The Supervisor may amend and rescind such rules, forms and orders as are contemplated by the provisions of the Massachusetts General Laws and as are necessary to carry out their purposes.

(3) The Supervisor of Public Records may authorize exceptions to 950 CMR 32.00 with respect to any specific requirement provided that such exceptions to 950 CMR 32.00 are in conformity with the provisions of the Massachusetts General Laws.

32.02: Definitions

For the purposes of 950 CMR 32.00 unless the context otherwise requires, the following terms shall have the meanings indicated:

Advisory Opinion. An opinion issued by the Supervisor of

Public Records intended to provide guidance on issues related to public records access and retention.

Agency. Any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth that is identified in M.G.L. c. 66, § 6A and c. 4, § 7, clause Twenty-sixth and makes or receives "public records", as defined in 950 CMR 32.02. Agency includes 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 M.G.L. c. 32, § 1.

Business Day. Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

Commercial Purpose. 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 including in addition to the foregoing, obtaining names and addresses from the public record for the purpose of solicitation. It does 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.

Custodian. Any governmental entity that makes or receives public records.

Division. Division of Public Records, Office of the Secretary of the Commonwealth of Massachusetts.

Governmental Entity. Any agency or municipality as defined in 950 CMR 32.02. It includes any quasi-governmental agency that is considered a body politic and corporate or public instrumentality. It does not include the legislature and the judiciary.

Municipality. Cities and towns, local housing, redevelopment or similar authorities. A consortium, consolidation or combination of entities within a single political subdivision of the commonwealth or among multiple political subdivisions of the commonwealth shall be deemed a municipality.

Public Record. 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 a governmental entity unless such materials or data fall within one or more of the exemptions found within M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges.

Records Access Officer. The employee designated within a governmental entity to perform 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.

Requester. Any person or entity seeking to inspect or obtain copies of public records.

Redact. To delete, or otherwise expurgate that part of a public record that is exempt from disclosure under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges from non-exempt material.

Search Time. The time needed to locate and identify, pull from the files, copy and reshelve or refile a public record. However, it shall not include the time expended to create the original record.

Secretary. The Secretary of the Commonwealth of Massachusetts.

Segregation Time. The time used to review records to determine what portions are subject to redaction or withholding under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.

Supervisor. Supervisor of Public Records or Supervisor of Records.

Withhold. To hold back from disclosure a record under M.G. L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges.

32.03: General Provisions

(1) Division Mailing Address and Electronic Mail Address. All communications shall be addressed or delivered to:

Supervisor of Records
Division of Public Records
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719
Boston, Massachusetts 02108
or: pre@sec.state.ma.us

Electronic communication is strongly encouraged and is the preferred method of correspondence.

(2) Division Business Hours. The regular hours of the Division

are from 8:45 A.M. to 5:00 P.M. each business day.

(3) Computation of Time. Unless otherwise provided, the computation of time referred to in 950 CMR 32.00 shall begin with the first business day following the date of receipt of any request, regardless of physical form. The computation of time for an oral request shall begin with the day the oral request was made to the custodian.

(4) Presumptions. In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.

32.04: Records Access Officers

(1) Each agency and municipality shall designate one or more employees as records access officer(s).

(2) 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.

(3) The designation of a records access officer shall not be construed to prohibit employees who have been previously authorized by the agency or municipality to make public records or information available to the public from continuing to do so in accordance with 950 CMR 32.00.

(4) 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.

(5) A records access officer shall:

(a) 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;

(b) assist persons seeking public records to identify the records sought;

(c) assist the custodian in preserving public records in accordance with all applicable laws, rules, regulations and retention schedules;

(d) 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;

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

(e) to the extent feasible, furnish the public records by providing reasonable assistance in locating the records on an appropriately indexed and searchable public website;

(f) 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;

(g) a municipal records access officer 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.

32.05: Additional Records Access Officer Responsibilities

(1) Agency Records Access Officers. The requirements of 950 CMR 32.05(1) shall apply only to agency records access officers.

(a) agency designation of primary and secondary records access officers; reporting requirements:

1. each agency shall designate one primary records access officer responsible for reporting information to the Secretary pursuant to M.G.L. c. 66, § 6A(e) and 950 CMR 32.05(1)(c).

2. a primary records access officer shall submit a notification of such designation to the Division electronically in a manner determined by the Division.

3. the primary records access officer may notify the secondary record access officers to facilitate reporting such information.

4. the primary records access officer shall electronically notify the Secretary of the designation of secondary records access officers electronically in a manner determined by the Division.

5. the agency shall maintain and update information regarding primary and secondary records access officers electronically, including changes in personnel identified as primary and secondary records access officers, in a manner determined by the Division.

(b) agency records access officers 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.

(c) an agency records access officer 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:

1. the nature of each request and the date on which each 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 requester, if any;

6. records access officer petitions to the Supervisor submitted under M.G.L. c. 66, § 10(d)(iv) and 950 CMR 32.06(4)(g) and (h);

7. requests appealed to the Supervisor under M.G.L. c. 66, § 10A and 950 CMR 32.08(1);

8. the time required to comply with the Supervisor's orders under M.G.L. c. 66, § 10A; and

9. the final adjudication of any associated court proceedings under M.G.L. c. 66, § 10A(d).

(d) the Supervisor may make exceptions to the reporting requirement

in 950 CMR 32.05(1)(c) for particular classes of records, such as:

1. certified copies of records;

2. registry of deeds records;

3. incorporation records;

4. vital records;

5. criminal offender record information requested by the offender, representative, or other authorized recipient.

(e) 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.

(f) 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:

1. final opinions, decisions, orders, or votes from agency proceedings;

2. annual reports;

3. notices of regulations proposed under M.G.L. c. 30A;

4. notices of hearings;

5. winning bids for public contracts;

6. awards of federal, state and municipal government grants;

7. minutes of open meetings;

8. agency budgets; and

9. any public record information of significant interest that the agency deems appropriate to post, such determination to be made by each agency on a case-by-case basis.

(g) 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.

(h) 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.

32.06: Rights of Access

(1) Requests for Public Records.

(a) requests for public records may be made orally in person to a records access officer or custodian or may be written. Telephone requests may be accepted at the discretion of the records access officer.

(b) requests for public records shall include a reasonable description of the requested record to the records access officer so that he or she can identify and locate it promptly.

(c) written requests may be delivered by a requester to the business address or designated website or email address of a records access officer or custodian:

1. by hand;

2. by mail;

3. by electronic mail; or

4. by facsimile, if custodian has facsimile access.

(d) a records access officer shall not require a particular form be used by requesters, but may make forms available for requesters.

(e) a person shall not be required to make a personal inspection of the record prior to receiving a copy.

(f) calculation of time will commence only for requests that are made in accordance with 950 CMR 32.06(1).

(g) a request for records in which an individual, or representative of the individual has a unique right of access by statutory, regulatory, judicial or other applicable means, shall not be considered a request for public records.

(2) Records Access Officer Response to Requests for Records.

(a) a records access officer or designee shall permit inspection or provide or furnish a copy of all public records within the custody and control of the custodian at reasonable times and without unreasonable delay under M.G.L. c. 66, § 10(a).

(b) if applicable, a records access officer shall provide a written response under M.G.L. c. 66, § 10(b) to a request for public records no later than the tenth business day following the receipt of a request notwithstanding the applicability of any petition filed pursuant to 950 CMR 32.06(4).

(c) a records access officer shall not charge a fee for the provision of a public record unless the records access officer responded to the requester within ten business days under M.G.L. c. 66, § 10(b).

(d) if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request, unless an extension of time is permitted in a manner consistent with 950 CMR 32.06(2)(i) and (4).

(e) a written request for records, regardless of the form of delivery, will be deemed received on the first business day following receipt the request by the records access officer; an oral request will be deemed received on the day it was made.

(f) a records access officer may delay provision of records until all fees related to such requests are paid in full by the person seeking access to the requested records in accordance with 950 CMR 32.07.

(g) a records access officer shall, when appropriate, 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.

(h) a records access officer may not require the requester to specify the purpose for a request except:

1. when the requested records concern information which may be exempt from disclosure pursuant to M.G.L. c. 4, § 7(26)(n);

2. to determine whether the records are requested for a commercial purpose; or

3. to determine whether to grant a request for a fee waiver.

(i) a records access officer shall identify a reasonable timeframe in which it shall produce the public records sought in a manner consistent with M.G.L. c. 66, § 10(b)(vi), provided that the requester may voluntarily agree to a response date beyond these timeframes.

(3) Denial by Records Access Officer.

(a) a records access officer shall provide written notice by first class mail or electronic mail to a requester of any denial of access to records.

(b) a records access officer shall provide such written notice of denial of access within ten business days of its receipt of a request for public records in accordance with 950 CMR 32.06(2)(b).

(c) such written notice of denial shall include:

1. the date of the request;

2. identification of any records sought that are not within the possession, custody, or control of the agency or municipality the records access officer serves;

3. identification of the agency or municipality that may be in possession, custody or control of the public record sought, if known to the records access officer;

4. identification of any records, categories of records or portions of records that the agency or municipality intends to withhold;

5. identification of any specific exemption to the Public Records Law or common law privilege that applies to the withhold record or records;

6. identification of the applicability of each cited exemption or privilege to each portion of the withheld record or records;

7. identification of any portions of responsive records that the

agency or municipality intends to produce; and

8. a statement informing the requester of the right of administrative appeal to the Supervisor under 950 CMR 32.08(1) and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court.

(d) where a record has been withheld based on a claim of the attorney-client privilege the records access officer shall provide in its written denial a detailed description of the record, including the names of the author and recipients, and in general terms, the subject matter of the withheld information.

(4) Petition for Modification or Waiver by a Records Access Officer to the Supervisor.

(a) petitions requesting an extension of time to furnish copies of the requested records or waive statutory limits to fees from a records access officer to the Supervisor shall be in writing and delivered to the Supervisor in accordance with 950 CMR 32.03(1). A copy of the petition shall be provided by the records access officer to the requester. The Supervisor shall issue a written determination with findings regarding any such petition within five business days following receipt of a records access officer petition.

(b) petitions filed under 950 CMR 32.06(4) do not affect the requirement that a records access officer shall provide an initial response to a requester within ten business days after receipt of a request for public records, pursuant to 950 CMR 32.06(2)(a) or (b). Failure to comply with 950 CMR 32.06(4) will result in a waiver of the right to assess fees for public records.

(c) all such petitions shall be considered public records both in the custody of the records access officer and the Supervisor.

(d) petitions seeking an extension of time to furnish copies of the requested records must be made by a records access officer within 20 business days after receipt of a request for public records, or within ten business days after the records access officer's receipt of a determination by the Supervisor that a requested record constitutes a public record.

(e) a petition for extension of time described in 950 CMR 32.06(4)(d) shall include a brief narrative detailing why an

extension of time is necessary. Upon a showing of good cause, the Supervisor may grant a single extension. For an agency, such extension may not exceed 20 business days from the date of the grant of the extension by the Supervisor. For a municipality, such extension may not exceed 30 business days from the date of the grant of the extension by the Supervisor.

(f) if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), 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 custodian of its obligation to provide copies of the records sought.

(g) petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days after receipt of a request for public records.

(h) a petition seeking a waiver of statutory limits to fees described in 950 CMR 32.06(4)(g) must be made in accordance with the following:

1. any records access officer may petition the Supervisor to charge for time spent segregating or redacting records.

2. only a municipal records access officer may petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of $25 per hour for time required to comply with a request.

3. records access officers shall not petition the Supervisor seeking a waiver associated with the provisions of 950 CMR 32.07(2)(l)1. and (m)1.

4. a records access officer shall respond to a request within five business days of receipt of the Supervisor's determination regarding a petition submitted under 950 CMR 32.06(4)(g).

32.07: Copies of Records; Fees

(1) Copies of Paper and Electronic Records.

(a) upon request, a requester shall be entitled to receive in hand, by mail, by facsimile or electronically one copy of a public record

or any desired portion of a public record.

(b) as an alternative to obtaining copies of records from a records access officer a requester shall be permitted, to the extent feasible, and at reasonable times:

1. view and inspect records prior to obtaining copies; or

2. use a personal device such as a camera or portable scanner to copy records.

(c) the records access officer shall presume that a requester prefers copies provided in machine-readable electronic form, when electronic form is available, unless the requester specifies an alternative preference.

(d) the records access officer must provide electronic records in native form when possible.

(e) when designing or acquiring an electronic record keeping system or database the records access officer in cooperation with the custodian shall ensure, to the extent feasible that:

1. newly acquired or implemented electronic record keeping systems or databases are capable of providing data in a commonly available electronic, machine readable format; and

2. the newly acquired or implemented electronic record keeping system allows for information storage and retrieval methods permitting retrieval of public portions of records to provide maximum public access.

(f) furnishing a segregable portion of a public record shall not be deemed to be creation of a new record. This applies to a responsive record in the form of an extract of existing data, as such data exists at the time of the request and is segregable from nonresponsive and exempt data.

(2) Fees.

(a) 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, subject to the provisions of 950 CMR 32.04(5)(d). A records access officer is encouraged to inform a requester of the availability of records online to avoid delays and fees associated with the provision

of public records.

(b) if fees are being assessed, a records access officer shall provide a written, itemized, good faith estimate of any fees that may be charged to produce the records prior to complying with a public records request within ten business days.

(c) the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record.

(d) 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 under 950 CMR 32.06(4)(g) and (h).

(e) the charge for black and white paper copies or printouts of records of any size susceptible to ordinary means of production shall not exceed .05¢ per page, for both single and double-sided black and white copies or printouts.

(f) a records access officer shall not assess a copying fee for electronic copies or copies of public records transmitted *via* facsimile.

(g) the actual cost of any storage device or material provided to a person in response to a request for public records may be included as part of the fee.

(h) for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing a copy may be assessed.

(i) a records access officer shall assess no fee greater than the lowest hourly rate of a person capable of compiling, segregating, redacting and reproducing a requested record, subject to the requirements of 950 CMR 32.07.

(j) a records access officer may assess the actual cost of postage to mail copies of public records, provided:

1. the requester specifically requests that records be mailed or is unable to receive copies in person; and

2. the records access officer shall charge the lowest cost available for such mailings, at the discretion of the requester.

(k) Waiver of Fees. Records access officers may waive or reduce the amount of any assessed fee upon a showing that:

1. disclosure of a requested record is in the public interest;

2. the request for records 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.

(l) Agency Records Access Officers.

1. an agency records access officer shall not assess a fee for the first four hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record.

2. an agency records access officer shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

3. an agency records access officer shall assess no fee of more than $25 per hour for the cost to comply with a request for public records.

(m) Municipal Records Access Officers.

1. a municipal records access officer shall not assess a fee for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record in a municipality with a population of over 20,000.

2. a municipal records access officer in a municipality with a population of 20,000 persons or fewer may assess a fee for the first two hours of time spent compiling, segregating, redacting and reproducing a requested record, provided:

i. population data shall be determined by the decennial U.S. Census; and

ii. it shall be the burden of the municipal records

access officer to provide population data information in responses in which it seeks to assess such fees.

3. a municipal records access officer shall assess no fee of more than $25 per hour for the cost to comply with a request for public records unless approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

4. a municipal records access officer shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

(n) Failure to Pay Fee. A records access officer may provide written notice denying access to public records to a requester who has failed to compensate the custodian for previously produced public records, provided:

1. a fee estimate for a previous request was prepared in compliance with 950 CMR 32.00 and the requester agreed to pay the previous fee;

2. the written notice details the reasons for denial, including an itemized list of any balances attributed to previously produced records.

32.08: Appeals

(1) Appeal to the Supervisor.

(a) 950 CMR 32.08 shall not apply to records in which an individual, or a representative of the individual, has a unique right of access to the record through statutory, regulatory, judicial or other applicable means.

(b) a requester may petition the Supervisor for failure by a records access officer to comply with a requirement of 950 CMR 32.00.

(c) an oral request, while valid as a public record request, shall not be the basis of an appeal under 950 CMR 32.08.

(d) petitions for appeal of a response by a records access officer must be made within 90 calendar days of the date of the response by a records access officer.

(e) petitions for appeal of a failure to respond within the timeliness requirements of 950 CMR 32.00 must be made within 90 calendar days of the request.

(f) all petitions for appeal shall be in writing and shall specifically describe the nature of the requester's objections to the response or failure to timely respond.

(g) requesters shall provide to the Supervisor complete copies of all correspondence associated with the petition, including:

1. a complete copy of the letter by which the request was made, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses; and

2. a complete copy of all written responses associated with requests subject to the petition for appeal, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses.

(h) in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition.

(i) if the requester's petition for appeal is related to a previous appeal to the Supervisor, the requester's petition shall refer to the previous appeal number.

(j) petitions under 950 CMR 32.08 received before 4:00 P.M. shall be opened on the day of receipt. Petitions received after 4:00 PM shall be opened on the following business day.

(2) Dispositions of Appeals.

(a) the Supervisor shall issue a written determination regarding any petition submitted in accordance with 950 CMR 32.08(1) not later than ten business days following receipt of the petition.

(b) the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:

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).

(c) upon a determination by the Supervisor that a violation has occurred, the Supervisor shall order timely and appropriate relief.

(3) Hearings and Conferences.

(a) the Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. The decision to hold a hearing shall be solely in the discretion of the Supervisor.

1. said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08.

2. nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.

(b) the Supervisor may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding. The decision to hold a conference shall be solely in the discretion of the Supervisor.

(4) In Camera Inspections and Submissions of Data.

(a) the Supervisor may require an inspection of the requested record(s) in camera during any investigation or any proceeding initiated pursuant to 950 CMR 32.08.

(b) the Supervisor may require the records access officer to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.

(c) the Supervisor does not maintain custody of documents received from a records access officer submitted for an in camera review. The documents submitted for an in camera review do not fall within the definition of public records. M.G.L. c. 4, § 7(26).

(d) upon a determination of the public record status of the documents, they are promptly returned to the custodian, and no copies shall be retained by the Supervisor.

(e) any public record request made to the Division for records being reviewed in camera would necessarily be denied, as the office would not be the custodian of those records.

(f) attorney-client privileged records voluntarily submitted to Supervisor:

1. a records access officer may voluntarily submit documents to the Supervisor for in camera review;

2. such submission shall not waive any legally applicable privileges claimed by the agency or municipality.

(5) Custodial Indexing of Records.

(a) the Supervisor may require a records access officer or custodian to compile an index of the requested records within the context of a public records appeal under 950 CMR 32.08.

(b) said index shall be a public record and shall meet the following requirements:

1. the index shall be contained in one document, complete in itself;

2. the index shall adequately describe each withheld record or redaction from a released record;

3. the index must state the exemption or exemptions claimed for each withheld record or each redaction of a record; and

4. the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt.

(c) nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

32.09: Enforcement of Orders

A records access officer shall promptly take such steps as may be necessary to comply with an order of the Supervisor. If a records access officer fails to comply with an order issued by the Supervisor, the Supervisor, upon the Supervisor's initiative, may notify the Attorney General to ensure compliance.

32.10: Advisory Opinions

Advisory opinions from the Supervisor may be requested. However, it shall be in the Supervisor's discretion whether to issue an advisory opinion. The Supervisor has and will continue to provide a staff member on call every day during regular business hours to offer informal information to any person, whether a requester or custodian.

REGULATORY AUTHORITY

950 C.M.R. 32.00: G. L. c. 66, § 1.

Examples of Exemption (a) Statutes

Abatement Applications: G. L. c. 59, § 60.

Address Confidentiality Program: G. L. c. 9A, § 6.

Affordable Housing Applicant Information: G. L. c. 40T, § 3.

Air Pollution Control (Trade Secrets): G. L. c. 111, § 142B.

Alcohol Treatment Records: G. L. c. 111B, § 11.

Bank Examination Records: G. L. c. 167, § 2.

Bid Information, Trade Contractor Scores: G. L. c. 149A, § 8(f).

Birth Reports: G. L. c. 46, § 4A.

Blind Persons, Commission for the Blind Register: G. L. c. 6, § 149.

Business Schools (Private), Financial Statements: G. L. c. 75D, § 3.

Capital Facility Construction Project Records: G. L. c. 30, § 39R.

Central Registry of Voters: G. L. c. 51, § 47C.

Conflict of Interest, Request for an Opinion: G. L. c. 268A, § 22.

Consumer Protection Investigation: G. L. c. 93A, § 6(6).

Councils on Aging, Names, Addresses and Telephone Numbers of Elderly: G. L. c. 40, § 8B.

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.

Employment Agencies, Data: G. L. c. 140, § 46R.

Employment Security Data: G. L. c. 151A, § 46.

Exemption of Legislature from Public Records Law: G. L. c. 66, § 18.

Extreme Risk Protection Order Records: G. L. c. 140, § 131R.

Evaluations of Special Needs Children: G. L. c. 71B, § 3.

Fetal Death Reports: G. L. c. 111, § 202.

Gas and Electric Affiliated Company Records: G. L. c. 164, § 85.

Genetically Linked Diseases, Testing Records: G. L. c. 76, § 15B.

Hazardous Substances Reports: G. L. c. 111F, § 21.

Hazardous Waste Management Records: G. L. c. 21D, § 6.

Hazardous Waste Facilities: G. L. c. 21C, § 12.

Historical and Archaeological Sites and Specimen Inventory: G. L. c. 9, § 26A (1).

Hospital Records: G. L. c. 111, § 70.

Hospitals, Reports of Staff Privilege Revocation: G. L. c. 111, § 53B.

Impounded Birth Records: G. L. c. 46, § 2A.

Inspector General Investigations, Records: G. L. c. 12A, § 13.

Juvenile Delinquency Case Records: G. L. c. 119, § 60A.

Library Circulation Records: G. L. c. 78, § 7.

Malignant Disease Reports: G. L. c. 111, § 111B.

Massachusetts Commission Against Discrimination Investigatory Files: G. L. c. 151B, § 5.

Massachusetts Technology Development Corporation, Corporate Records: G. L. c. 40G, § 10.

Mental Health Facilities Records: G. L. c. 123, § 36.

Merit Rating Plans, Motor Vehicle Insurance: G. L. c. 6, § 183.

Mortgage Lender and Mortgage Broker Examination Records: G. L. c. 255E, § 8.

Mortgage Loan Originator Examination Records: G. L. c. 255F, § 14(d).

Native American Burial Site Records: G. L. c. 9, § 26A (5).

Natural Heritage Programs, Data Base: G. L. c. 66, § 17D.

Open Meeting Law: G. L. c. 30A, §§ 18-25.

Patient Abuse Information; Intermediate Care Facilities for Mentally Retarded Citizens, Convalescent, Nursing or Rest Homes: G. L. c. 111, § 72I.

Patient's Rights to Confidentiality of Records; Medical and Mental Health Facilities: G. L. c. 111, § 70E.

Protective Services Records, Aged Persons: G. L. c. 19A, § 23.

Public Assistance Records, Aged Persons, Dependent Children, Handicapped Persons: G. L. c. 66, § 17A.

Public Assistance, Wage Reporting System Information: G. L. c. 62E, § 8.

Reports of Rape, Sexual Assault, and Domestic Violence: G. L. c. 41, § 97D.

Records divulging name, home or email address and phone number; persons who own, possess or have license to carry firearms; government personnel: G. L. c. 66, § 10B.

Reyes Syndrome Report: G. L. c. 111, § 110B.

Sex Offender Registry, Requests for Registry Information: G. L. c. 6, § 178I.

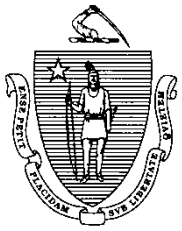
Street Lists, Children Aged 3-17, Court Order Granting Protection: G. L. c. 51, § 4(a), (d).

Student Records: G. L. c. 71, § 34D, 34E.

Tax Returns: G. L. c. 62C, § 21.

Venereal Disease Records: G. L. c. 111, § 119.

Vocational Rehabilitation Records: G. L. c. 6, § 8.



William Francis Galvin
Secretary of the Commonwealth
Division of Public Records
One Ashburton Place, Room 1719
Boston, MA 02108

Westfield STATE UNIVERSITY

PRESIDENTIAL SEARCH COMMITTEE

Documents that might be listed on the Presidential Search Website

Document:	**Detail:**
Job Description/Presidential Profile	Attached: Latest job description from 2015 presidential search
Presidential Search Committee Members	
Presidential Search Committee list of Meetings, Agendas & Minutes	
WittKieffer & Search Committee contact info	
Board of Higher Ed Guidelines for Presidential Searches	
Last regional accreditation report	•Report from April 1-4, 2012 Visit •Letter dated January 24, 2013 •5th Year Letter dated July 11, 2017
University catalogs	Undergraduate and Graduate Catalogues: Links from website: http://catalog.westfield.ma.edu/ click on drop down for graduate: 2018-2019 Graduate Catalog
University's "view-book" (institutional overview)	http://www.westfield.ma.edu/about
Last financial audit	http://www.westfield.ma.edu/images/uploads/administration-finance/Westfield_2019_Financial_Statements.pdf
Budget (these materials would need to be updated)	http://www.westfield.ma.edu/images/uploads/administration-finance/FY20_Budget_Materials.pdf **which includes:** •FY20 Budget Narrative •FY20 Campus Budget •FY20 Detailed Budget by Trust Fund •Schedule of Annual Tuition & Fees •Cabinet Funding Recommendations •FY20 Capital Funding Plan **Plus the attached documents:** •Multi-Year Planning Model (Narrative) 6/ 2019 •Multi-Year Planning Model (Key Assumptions) 6/2019 •Multi-Year Planning Model (Projections) 6/2019

The Horace Mann Center
333 Western Avenue
P.O. Box 1630
Westfield, MA 01086-1630

(413) 572-8574
(413) 579-3030 (f)
westfield.ma.edu

Board of Trustees Bylaws & Minutes	Link to BOT webpage http://www.westfield.ma.edu/presidents-office/board-of-trustees
Strategic Plan 2019-2024	http://www.westfield.ma.edu/images/uploads/strategicplan/StratPlan_Update_ApprovedVers-WEB.pdf
Organizational Charts	
IPEDS data summarized by revenue & expenditure category compared with revenues & expenditures of the institution's national peer group and state peer group	
Student, faculty, & administrative databases or the Fact Book that contains these databases	2017-2018 Draft Fact Book
List of all Governance Committees & members	
Enrollment Numbers	http://www.westfield.ma.edu/offices/assessment-and-institutional-research/institutional-data/common-dataset-for-institutional-enrollment
2017 Postgraduate Report	
CURCA catalog from Spring 2020 Event	
Massachusetts Teachers Association/NEA Massachusetts State College Association (MSCA) Union Contract	•July 1, 2014 to June 30, 2017 •Tentative Agreement March 4, 2019 •Second MOA April 10, 2019 •Third MOA April 10, 2019
Association of Professional Administrators, MTA/NEA (APA) Union Contract	July 1, 2017 to June 30, 2020
American Federation of State and County and Municipal Employees (AFSCME) Union Contract	July 1, 2017 to June 30, 2020
Link to Parenzo Hall Renovation page	http://www.westfield.ma.edu/parenzorenovation
DHE 3/22/19 Statewide Priority Objectives-The Equity Agenda BHE Performance Measurements Reports (Data Dashboards) Background Approval 12/11/18 Link to dashboards: Spotlight Reports:	Attached https://www.mass.edu/bhe/lib/documents/BHE/03_BHE%2019-02%20Performance%20Measurement_FINAL.pdf (background) http://www.mass.edu/datacenter/pmrs/home.asp http://www.mass.edu/datacenter/pmrs/home.asp#spotlight

BHE Guidelines on Presidential Evaluations and Compensation	https://www.mass.edu/bhe/lib/documents/PresidentialCompensationandEvaluationGuidelinesandProcedures-FormattedforPublicDistributionF.pdf
Equal Opportunity, Diversity and Affirmative Action Plan	https://www.westfield.ma.edu/images/uploads/policies/2170_Equal_Opportunity__Diversity_and_Affirmative_Action_Plan_(The_Plan)_(Final)_9-2018.pdf