



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

Rebecca S. Murray
Supervisor of Records

August 15, 2017
SPR17/1046

Lynda A. Kirby
Office Manager
Office of Student Services
Public Schools of Brookline
333 Washington Street
Brookline, MA 02445

Dear Ms. Kirby:

I have received the petition of Jorge Manuel Teixeira appealing the response of the Public Schools of Brookline (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Teixeira requested in electronic form “settlement agreements entered into by your School District with parents and guardians, from January 1, 2011 through today, relative to the provision of special education services and/or educational placement(s) for students with disabilities, redacted of all personally identifying information.” In a response dated July 31 2017, the School provided Mr. Teixeira with a fee estimate for the provision of responsive records.

Fee estimates

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). A municipality must provide a written response within ten business days, which can include an itemized, good faith estimate of any fees that may be charged to produce the records. G. L. c. 66, § 10(b)(viii). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

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

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However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The School's July 31st fee estimate

In its July 31st fee estimate the School indicates it is assessing a fee of \$37.34 per hour for 3.5 hours for "Clerk LK" and \$26.77 per hour for 2.5 hours for "Clerk JT." With respect to copying costs, you indicate Mr. Teixeira will also be charged \$.05 for the 242 pages pursuant to 950 C.M.R 32.07(2)(e). The copying charges also include a clerk's cost of \$37.34 per hour and the School indicates it will take 1.5 hours to complete the work. The total fee estimate the School provided to Mr. Teixeira is \$265.97.

To the best of my knowledge, the School has not submitted a petition to the Supervisor of Records under G. L. c. 66, § 10(d)(iv) for permission to charge more than \$25 per hour or to assess a fee for time spent segregating or redacting records. Further, it is unclear if redaction is required by law, or why the estimated amount of time it is needed to comply with the rest.

It is also unclear why the School is charging for copying costs when Mr. Teixeira requested the information electronically. See G.L. c. 66, §6A(d) ("[t]he 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"); 950 C.M.R. 32.07(2)(f) (a records access officer shall not assess a copying fee for electronic copies).

I understand a staff member of the Public Records Division contacted you and you indicated the School would provide a supplemental response to Mr. Teixeira.

Conclusion

Accordingly, I will consider this appeal closed with the proviso that the School provide Mr. Teixeira with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Jorge Manuel Teixeira