



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Shawn A. Williams
Supervisor of Records

April 20, 2016

SPR16/241

Ms. Judy Belliveau
Assistant Superintendent for Finance and Operations
Wellesley Public Schools
40 Kingsbury Street
Wellesley, MA 02481

Dear Ms. Belliveau:

I have received the petition of Michael DiPronio appealing the response of the Town of Wellesley - Public Schools (Schools) to his March 6, 2016 request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, Mr. DiPronio requested four categories of records. In this request Mr. DiPronio requested a detailed estimate should costs exceed \$500.00. On March 21, 2016 you provided an acknowledgment indicating costs would indeed exceed \$500.00, further stating detailed response would follow. By letter dated March 26, 2016 Mr. DiPronio provided a check for \$500.00 and requested the responsive records be provided. By email dated April 1, 2016 you again explained to Mr. DiPronio that the costs are expected to exceed \$500.00. The Schools further notified Mr. DiPronio that the check would not be deposited until such time as the total estimate was calculated by the Schools and provided to Mr. DiPronio. By letter dated April 1, 2016 Mr. DiPronio appealed, as a response had not been provided within ten days.

Under the Public Records Law and the Access Regulations (Regulations) all requests for public records must be met with a response within ten (10) days of the request. G. L. c. 66, § 10(b); 950 C.M.R. 32.05. The response may be an offer to provide records, a fee estimate for provision of the records, or a denial. The Schools is advised that all records custodians must comply with both the Public Records Law and the Regulations with respect to the timeliness of response.

Subsequent to the opening of this appeal you notified a member of my staff that the Schools will provide a detailed written response to Mr. DiPronio's request. Accordingly, I will consider this administrative appeal closed with the proviso that Schools provide Mr. DiPronio with a detailed response within ten (10) days, made in accordance with the Public Records Law, its Access Regulations and this order.

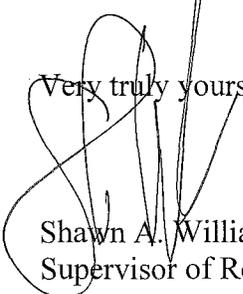
April 20, 2016

If the Schools maintains that any portion of the responsive records are exempt from disclosure it must, within ten (10) days provide to Mr. DiPronio a written explanation, *with specificity*, how a particular exemption applies to each record. To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record. 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.

If there are any fees associated with this response a written, good faith estimate must be provided. G. L. c. 66, § 10(a); see also 950 C.M.R. 32.06(2) (where cost of complying with a request for public records is expected to exceed ten dollars (\$10.00), custodian of records shall provide written good faith estimate). Once the fees are paid, you must provide the responsive records.

To assist the Department in responding to requests for public records I refer you to our publication, *A Guide to the Massachusetts Public Records Law*. This document is available on the Internet, free of charge, at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>. Attorneys and other members of my staff are available during regular business hours to answer general questions regarding the Public Records Law. In addition, members of my staff will visit a records custodian in person to conduct training workshops on the Public Records Law upon request. Please contact my office directly at the telephone number provided in this determination for further information.

Very truly yours,



Shawn A. Williams
Supervisor of Records

cc: Mr. Michael DiPronio



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

Shawn A. Williams
Supervisor of Records

May 25, 2016
SPR16/302

Ms. Judith M. Belliveau
Assistant Superintendent, Finance and Operations
Town of Wellesley – Public Schools
40 Kingsbury Street
Wellesley, MA 02481

Dear Ms. Belliveau:

I have received the May 2, 2016 petition of Michael DiPronio appealing the response of the Town of Wellesley – Public Schools (Public Schools) to provide records responsive to a March 6, 2016 request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, Mr. DiPronio requested a copy of four categories of records. By letter dated April 28, 2016 the Public Schools provided Mr. DiPronio a written estimate for the costs incurred in complying with his public records requests, including fees of \$175.00 per hour for attorney review of records. The Public Schools further indicated that portions of the responsive records would be exempt from disclosure. Mr. DiPronio appealed this response.

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10(c); 950 C.M.R. 32.08(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(c); see also District Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

Failure to timely respond to a request for public records

The Public Schools’ April 28 response was provided fifty-three (53) days after Mr. DiPronio’s March 6 of public records request. Under the Public Records Law and the Access Regulations (Regulations) all requests for public records must be met with a response within ten (10) days of the request. G. L. c. 66, § 10(b); 950 C.M.R. 32.05. **The ten-day provision is a**

maximum, rather than a minimum, time frame for complying with a public records request. The response may be an offer to provide records, a fee estimate for provision of the records, or a denial. The Public Schools is advised that all records custodians must comply with both the Public Records Law and the Regulations with respect to the timeliness of response.

Fee estimate

In your April 28 response you stated that “an attorney rather than an administrator would be required to redact” responsive settlement agreements. Your written estimate assessed ten (10) hours of segregation time at \$175.00 dollars per hour for the Public Schools’ attorney to segregate exempt material from thirty (30) settlement agreements at a total cost of \$1,750.00.

A custodian of records may assess a reasonable fee for complying with a request for public records. G. L. c. 66, § 10(a); see also 950 C.M.R. 32.06(2) (where cost of complying with a request for public records is expected to exceed ten dollars (\$10.00), custodian of records shall provide written good faith estimate). Absent specific statutory authority to the contrary, the fees to be charged for complying with requests for public records are established by the Public Records Access Regulations (Regulations). See 950 C.M.R. 32.06 (fees for public records).

The Regulations provide that in cases where search or segregation time is necessary a custodian of records may charge a pro-rated fee based on the hourly rate of the *lowest paid employee who is capable* of performing the task. 950 C.M.R. 32.06(1)(c). The Regulations define “search time” as the time needed to locate, pull from the file, copy and re-file public records, and “segregation time” as the time used to redact data that is exempt from non-exempt material. 950 C.M.R. 32.03. The costs for search and/or segregation must reflect the actual cost of complying with a particular request. G. L. c. 66, § 10 (a).

Your estimate fails to explain why an administrator, presumably at a significantly lower hourly rate, would be unable to redact the responsive records. The Regulations mandate that “Segregation time,” which is the time it takes to redact exemption data or information from the content of a record must be assessed at the lowest hourly rate of the individual capable of performing the segregation/redactions, not the individual that the Public Schools chooses to conduct the task. There is no provision in the Public Records Law or its Regulations that mandates segregation to be performed by an attorney.

In most cases, and with some guidance, a much lower paid employee is capable of segregating/redacting exempt data from a record. A records custodian must justify why a particular individual at a higher hourly rate is the only individual who can perform the task of segregation. It is presumed reasonable that a lower-paid individual in the Public Schools’ Office where the records are normally located would be capable of performing the task. Therefore, I find that the Public Schools has not met its burden of proving that only an attorney, at a rate of

\$175.00 per hour, is capable of segregating exempt data from the settlement agreements. I find that the Public Schools must revise the hourly rate for segregation.

Denial of access to Records

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10(c); 950 C.M.R. 32.08(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(c); see also District Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

The Public Schools has claimed that the Individual Education Plans (IEPs) are exempt from disclosure pursuant to both the Massachusetts student records laws and regulations and the federal student and parent education record laws. The Public Schools has failed to properly cite exemptions in the Public Records Law and the applicable state and federal laws and regulations that allow the Public Schools to withhold the IEPs. In order to withhold a record under the Public Records Law, the record custodian must specifically state the laws that apply and fully explain how those laws/exemptions allow the custodian to withhold in their entirety or segregate exempt materials within the content of the record(s). I find the Public Schools has not met its burden under the Public Records Law. Further, the Public Schools have failed to explain why responsive records could not be redacted in a manner to omit exempt information. See Champa v. Weston Public Schools, 473 Mass. 86 (2015).

I find the Public Schools has failed to respond to a request for public records. Accordingly, the Public Schools is hereby ordered, within ten (10) days of this order, to provide Michael DiPronio with a response to the request and revised written, good faith estimate, provided in a manner consistent with this order, the Public Records Law, its Regulations and applicable case law. If the Public Schools maintains that any portion of the responsive records are exempt from disclosure it must, within ten (10) days provide to Mr. DiPronio a written explanation, *with specificity*, how a particular exemption applies to each record. To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record. 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.

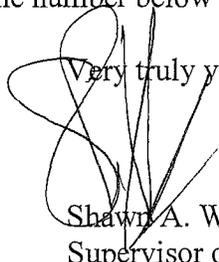
To assist in requesting and in responding to requests for public records I advise a review of publication, *A Guide to the Massachusetts Public Records Law*. This document is also

Ms. Judith M. Belliveau
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available on the Internet, free of charge, at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>. Attorneys on my staff are available during regular business hours to answer general questions regarding the Public Records Law. In addition, members of my staff will visit a records custodian in person to conduct training workshops on the Public Records Law upon request. Please contact my office directly at the telephone number below for further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawn A. Williams". The signature is stylized with large loops and a long vertical stroke.

Shawn A. Williams
Supervisor of Records

cc: Mr. Michael DiPronio