



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

Rebecca S. Murray
Supervisor of Records

February 15, 2019
SPR19/0219

Jennifer Mehigan
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

Dear Ms. Mehigan:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Massachusetts Port Authority (Authority) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Rocheleau requested documents related to payments made for legal settlements and judgments involving the Authority and/or its employees as well as the three most recent annual reports of Authority police.

This request was the subject of a previous appeal. See SPR19/0080 Determination of the Supervisor of Records (January 28, 2019). I closed SPR19/0080 by ordering the Authority to provide Mr. Rocheleau with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations within ten business days.

In his petition for appeal, Mr. Rocheleau indicates the Authority provided hard copies of responsive records to a portion of his request. Mr. Rocheleau explains that he is seeking electronic copies of the responsive records. Additionally, Mr. Rocheleau notes that the Authority has not yet provided additional records responsive.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(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(b)(iv); 950 C.M.R. 32.06(3); see also *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of

establishing the applicability of an exemption). 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.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Compliance with the requirements of providing a response

In Mr. Rocheleau's petition for appeal, he indicates that the Authority provided him with paper copies of records responsive to a portion of his request. He states that he is seeking to obtain electronic copies of the responsive records. Under the Public Records Access Regulations, a records access officer's (RAO) must "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." 950 C.M.R. 32.04(5)(d). It is unclear whether the responsive records are available in electronic form. If the records are available in electronic form, the Authority must provide those records to Mr. Rocheleau. The Authority must clarify this matter.

Additionally, in his petition for appeal, Mr. Rocheleau asserts that the Authority has indicated it is still searching for and compiling records responsive to his request. Pursuant to the Public Records Law, a RAO's written response must be provided within ten business days, and must also comply with the criteria listed in the statute. 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 section 10A.

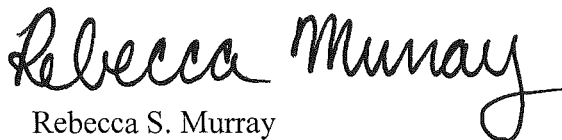
G. L. c. 66, § 10(b).

Although the Authority provided Mr. Rocheleau with a response, it unclear how its response complies with the requirements of G. L. c. 66, § 10(b). The Authority must provide a response to Mr. Rocheleau in compliance with the above mentioned statute without further delay.

Order

Accordingly, the Authority is ordered to provide Mr. Rocheleau 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: Matthew Rocheleau