



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

Rebecca S. Murray
Supervisor of Records

June 21, 2019
SPR19/0883

Julia O'Leary, Esq.
Counsel
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Attorney O'Leary:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Executive Office of Energy and Environmental Affairs (EOEEA) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on November 19, 2018, Mr. Rocheleau requested "[a]ny/all documents/materials, including but not limited to full case files, related to internal investigation and internal/external complaints filed, received, or reported to [] whoever handles internal affairs/internal investigations for the Massachusetts Environmental Police-- including but not limited to cases involving individual officers -- from Jan. 1, 2015 through present."

Previous appeals

This request was the subject of previous appeals. See SPR18/2056 Determination of the Supervisor of Records (January 3, 2019); SPR19/0150 Determination of the Supervisor of Records (February 6, 2019); SPR19/0502 Determination of the Supervisor of Records (March 15, 2019); SPR19/0685 Determination of the Supervisor of Records (April 16, 2019); SPR19/0883 Determination of the Supervisor of Records (May 16, 2019). In my May 16th determination, I ordered the EOEEA to provide Mr. Rocheleau with a response in a manner consistent with the order, the Public Records Law, and its Regulations. Subsequently the EOEEA sought reconsideration of my determination in a letter dated May 30, 2019.

Request for reconsideration

In its May 30th request for reconsideration, the EOEEA asserts that "[i]t appears that [the EOEEA's] letter dated February 28, 2019 and [my] March 15, 2019 determination in a related appeal, SPR 19/0150, were not considered when issuing [the May 16th] determination."

The EOEEA's February 28, 2019 response

In its February 28th response, the EOEEA posits that “[a]s to the names of witnesses and complaining citizens, which appear together with other identifying information as listed above, these redactions are required by law under the Fair Information Practices Act, M.G.L. c. 66A (FIPA). FIPA prohibits the disclosure of ‘personal data.’ . . . Here, the identifying information described above can be readily associated with a particular individual because the information is directly juxtaposed with someone’s name. Even where a name may appear separately, the description of the surrounding circumstances makes it likely that the name will be associated with a particular individual.” The EOEEA explains that “. . . while FIPA contains an exemption for information that is considered a ‘public record,’ the exemption does not apply here because the proposed redactions fall under various public records exemptions. See M.G.L. c. 4, § 7, cl. 26(a) (M.G.L. c. 93H); id., cl. 26(f) (investigatory exemption). . . .”

The EOEEA states that “[i]n addition to FIPA, M.G.L. c. 93H protects against disclosure of any ‘personal information,’ which is defined as ‘a resident’s first name and last name or first initial and last name in combination with any 1 or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver’s license number or state-issued identification card number; or (c) financial account number . . . Id., § 1. . . . Because citizen and witness names are associated with the specific data listed in c. 93H, these redactions are required by law.”

The EOEEA further states that “[a]s to dates of birth and social security numbers of MEP officers, such information is required to be redacted under FIPA (dates of birth) and M.G.L. c. 93H (social security numbers), for the reasons stated above. As for license plates, these will be redacted under the security (‘n’) exemption, which protects records relating to the security or safety of persons or buildings, the disclosure of which, ‘in the reasonable judgment of the record custodian, . . . is likely to jeopardize public safety.’ M.G.L. c. 4, § 7, cl. 26(n). Given the important security interests in nondisclosure, there is no reason that redactions required by the ‘n’ exemption are any less ‘required’ than those falling under other exemptions.”

Additionally, the EOEEA also states that certain records fall within the attorney-client privilege. The EOEEA explains that “. . . [b]ecause the client, here MEP, holds the privilege and has not waived it, this office lacks discretion to disclose these communications and is required to redact them.”

The EOEEA's May 1, 2019 response

In its May 1st response, the EOEEA provides a revised fee estimate, which in addition to the first 4 waived hours spent searching and compiling for records, consists of “5.4 hours to review and redact 108 pages (calculated at an average of 3 minutes/page to review and redact 108 pages, or 324 minutes): 5.4 hours x \$25/hour = \$135,” “30 minutes to review 69 pages to be withheld: .5 hours x \$25/hour = \$12.50” for a “[t]otal fee = \$147.50.”

The EOEEA explains that it has “estimated that these redactions will take approximately three minutes per page; however, some pages may require more than three minutes to review and redact and others may require less. [The EOEEA] believe[s] this amount of time is reasonable where the documents contain highly sensitive investigatory and personal information, such as witness names and social security numbers, which are scattered throughout narrative text and must be painstakingly identified and redacted.”

Fees to search for, compile, segregate, redact or reproduce a record request

The Regulations provide that in cases where necessary to reproduce the requested records a records access officer may charge a fee to search for, compile, segregate, redact or reproduce a record requested based on the hourly rate of the lowest paid employee who is capable of performing the task. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.07(2). Additionally, the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record. Id. An agency may not charge for segregation and redaction unless required by law or a petition has been filed and approved by the Supervisor of Records. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.06(4).

In my March 15th determination, I indicated that “... the EOEEA has demonstrated that certain information by law needs to be redacted...” See SPR19/0502 Determination of the Supervisor of Records (March 15, 2019). Although Exemptions (f) and (n) under the Public Records Law do not on their own require redaction, I find the EOEEA’s explanation of the claimed statutes, including G. L. c. 66A and G. L. c. 93H, in combination sufficiently evidence redaction is required by law. Incorporating my March 15th determination, I find the EOEEA is permitted to charge for redaction. See G. L. c. 66, § 10(d); see also 950 C.M.R. 32.06(4).

In the EOEEA’s May 1st response, it indicated that it would require approximately 5.4 hours to review and redact potentially exempt material from 108 pages before production of responsive records. The EOEEA explains that “... the documents contain highly sensitive investigatory and personal information, such as witness names and social security numbers, which are scattered throughout narrative text and must be painstakingly identified and redacted.” Based on the EOEEA’s May 1st response in combination with its previous responses, I find the EOEEA has established that approximately 3 minutes per page is reasonable to review and redact the responsive records.


Conclusion

Accordingly, the EOEEA is permitted to charge for redaction and is permitted to charge at a rate of 3 minutes to review and redact each page. As such, I find the EOEEA’s May 1st fee estimate totaling \$147.50 is in compliance with the Public Records Law.

Julia O'Leary, Esq.
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Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looped "R" and a long, sweeping "y".

Rebecca S. Murray
Supervisor of Records

cc: Matthew Rocheleau