



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

Rebecca S. Murray  
Supervisor of Records

February 18, 2021  
**SPR21/0343**

Rita Colucci, Esq.  
Salem State University  
352 Lafayette Street  
Salem, MA 01970-5353

Dear Attorney Colucci:

I have received your petition on behalf of the Salem State University (University) requesting an extension of time to produce records and permission to charge for time spent segregating or redacting responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv). As required by law, the University furnished a copy of this petition to the requestor. G. L. c. 66, § 10(c). On February 3, 2021, Ms. Roberta James of the *Massachusetts Teachers Association* requested the following records on behalf of Dr. Norbert Tschakert:

- “1) Any and all communication and documents President . . . initiated or received from . . . (January 1, 2020 to present).
- 2) Any and all communication and documents President . . . initiated or received that reference [an identified individual’s] name, her initials . . ., or her prior position as Dean of the Bertolon School of Business . . . (January 1, 2017 to present).
- 3) Any and all communication and documents Provost . . . initiated or received that reference . . . or her initials . . . (January 1, 2018 to present).
- 4) Any and all communication and documents Provost . . . initiated or received that include the term ‘title IX’ (January 1, 2011 to present).
- 5) Any and all communication and documents sent or received from any SSU email account to [an identified individual] . . . (January 1, 2017 to present).
- 6) Any and all communication and documents sent or received from any SSU email account to [an identified individual] . . . (January 1, 2018 to present).
- 7) Any and all communication and documents initiated or received via any Salem State email account from [an identified individual] . . . (January 1, 2011 to present), except for emails which include [an identified individual] as sender or recipient and except for emails which include Dr. Tschakert as sender or recipient.”

*Petition for an extension of time*

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) 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 there has been a showing of good cause, the Supervisor 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.

G. L. c. 66, § 10(c).

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. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

*Extension of time to produce responsive records*

In its February 11, 2021 petition, the University explains that it did not charge any fees for the first request. For the second request however, the University “. . . did charge a fee to for search and complication of the public records produced.” The University emphasizes that due to “. . . the amount of time it took the university to segregate and redact records . . . from the first two requests . . . it will take a similar amount of time to segregate and redact the records produced [from the] third request.” The University indicated the responsive records were described as “voluminous,” as these requests span many years.

I find that in light of the need to collect and segregate the request, as well as the potential scope of redaction required to prevent unlawful disclosure, the University has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(ii). I hereby grant the University an

extension of 15 business days beyond the time allowed in G. L. c. 66, § 10(b)(vi) (a municipality may provide a timeframe not to exceed 25 business days to produce responsive records). Please note the time may begin to run once the University receives payment. G. L. c. 66, § 10(c).

### ***Petition to Assess Fees***

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 (Supervisor) under a petition under G. L. c. 66, § 10 (d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

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. 950 C.M.R. 32.06(4)(g).

### ***Fee Estimates***

An agency 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). 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).

Agencies may not assess a fee for the first four hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested. G. L. c. 66, § 10(d)(ii). Where appropriate, agencies 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. 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)(ii); 950 C.M.R. 32.06(4).

In its petition, the University states that it “. . . anticipate[s] that many of the records will be exempted from production or require necessary redactions because of protections afforded by the attorney-client privilege.” The University further emphasizes that “. . . other records will meet exemption (c) of G.L. c. 4, section 7(26) in that they will pertain to personnel and medical files.” In light of this, I find the University has met its burden to explain how the request cannot not be prudently completed without redaction or segregation.

### ***Conclusion***

Accordingly, I find the University has established good cause for a time extension of 15 business days as described above. Additionally, in light of the University’s petition, I find the University has met its burden to explain how the response could not be prudently completed without redaction or segregation. To the extent the responsive records contain the exempt information as described above, the University may assess a fee for segregation and redaction. This office encourages Ms. Roberta James and the University to continue to communicate to facilitate providing records more efficiently and affordably.

When preparing a fee estimate for the provision of the requested records, the University is advised to provide a detailed explanation to the requestor indicating why this estimated amount of time is necessary. See G. L. c. 66, § 10(d)(iv) (requiring the amount of the fee must be reasonable). Please note, the Supervisor does not possess the authority to permit the University to charge for the first four hours of employee time. The University must provide a response to Ms. Roberta James within five business days of receipt of this determination. See 950 C.M.R. 32.06(4)(h)(4). Ms. Roberta James may appeal the University’s fee estimate within ninety days. See 950 C.M.R. 32.08(1).

Please note, Ms. Roberta James has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Rita Colucci, 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, looping "M" and a long, sweeping tail on the "y".

Rebecca S. Murray  
Supervisor of Records

cc: Roberta James, *Massachusetts Teachers Association*  
Dr. Norbert Tschakert