



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

Rebecca S. Murray
Supervisor of Records

March 12, 2021
SPR21/0522

Maria Romero, Esq.
Assistant General Counsel
Suffolk County Sheriff's Department
200 Nashua Street
Boston, MA 02114

Dear Attorney Romero:

I have received the petition of Matthew Rocheleau of the *Boston Globe*, appealing the response of the Suffolk County Sheriff's Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 11, 2021, Mr. Rocheleau requested:

Any/all disclosures of immediate family working in Massachusetts state government that were made by individuals who applied for employment with the Suffolk Sheriff's Department between Jan. 1, 2015 and present. This request is seeking records that show: the identity of the job applicant; the job they were applying for; the date they applied; the date they were hired; and all the information they completed on the section of their job application reserved for making such disclosures; however this request is not seeking records for any applicant who left this section of the application blank. If this information is transferred to one or more other records that are different than the original job applications (for example if this information is entered into one or more central databases), please let me know if that is easier to send as that would work as an alternative to copies of the responsive portions of each original application.

The Department responded on January 25, 2021, providing a fee estimate. Objecting to the fees, Mr. Rocheleau petitioned this office and this appeal, SPR21/0522, was opened as a result.

Fee estimate - agencies

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 (4) 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).

The Department's January 25th fee estimate

In its January 25, 2021 fee estimate, the Department states, “[t]he preliminary fee for this request is the sum of two hundred dollars (\$ 200.00), calculated by the time estimate for the lowest paid person that is qualified to comply with the request: 8 hours at \$25 per hour, in addition to the initial 4 hours for a total of 12 hours. A fee has not been assessed on the first 4 hours of work required to comply with the request. . . .”

Although the Department estimates that it requires 12 hours to produce responsive records, it is unclear how this amount of time is necessary to comply with the request. The Department must provide additional information explaining why the estimated amount of time is required and what tasks are involved in these 12 hours. Additionally, in its fee estimate, the Department cites the Regulations regarding photocopying, search time, and segregation time. However, the Department does not specifically state whether its fee estimate is based on these tasks, nor explain how many hours it is allocating to searching, segregating, redacting and photocopying the requested records. See G. L. c. 66, § 10(d)(iv) (requiring the amount of the fee be reasonable).

If the Department intends to assess a fee for segregation and redaction, please note that under the Public Records Law, a fee may 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). Please note that petitions seeking permission to assess fees must be made within ten business days after receipt of a request for public records. See 950 C.M.R. 32.06(4)(g). As such, I find the Department must provide information about whether the responsive records contain information that is required by law to be segregated or redacted, as well as the applicable statutes, if any.

For the reasons discussed above, I find the Department must revise its fee estimate.

Conclusion

Accordingly, the Department 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 (10) 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,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray
Supervisor of Records

cc: Matthew Rocheleau