



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

Rebecca S. Murray
Supervisor of Records

April 6, 2021
SPR21/0730

Rita P. Colluci, Esq.
Vice President and General Counsel
Salem State University
352 Lafayette Place
Salem, MA 01970

Dear Attorney Colluci:

I have received the petition of Naomi Shatz of *Zalkind Duncan + Bernstein* appealing the response of the Salem State University (University) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 9, 2021, Attorney Shatz requested various emails and documents from the University.

The University responded on March 19, 2021. Unsatisfied with the University's response, Attorney Shatz appealed and SPR21/0730 was opened as a result.

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(d)(iv) (written response must "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..."); 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).

Status of the requestor; reason for the request

Please note that the reason for which a requestor seeks access to or a copy of a public record does not afford any greater right of access to the requested information than other persons in the general public. The Public Records Law does not distinguish between requestors. Access to a record pursuant to the Public Records Law rests on the content of the record and not the circumstances of the requestor. See G. L. c. 66, § 10(a); see also Bougas v. Chief of Police of Lexington, 371 Mass. 59, 64 (1976). Therefore, Attorney Shatz's interest in obtaining the records shall have no bearing on the public nature of the record. Where Attorney Shatz seeks the records for a court process, she may have a unique right of access to the records through statutory, regulatory, judicial or other applicable means. See Commonwealth v. Wanis, 426 Mass. 639 (1998). As such, Attorney Shatz may wish to consider another means of seeking to obtain any existing responsive records.

The University's March 19th response

In its March 19th response, the University asserted, "... [o]n behalf of K. Barnes you filed a discrimination charge with the MCAD against the university and its president and provost, docketed as MCAD No. 20BEM01092, EEOC/HUD No. 16C-2020-01469. Both parties have submitted voluminous pleadings to the agency, which has not yet made a determination of probable cause concerning the allegations of K. Barnes. The matter remains pending."

Pending administrative matter

950 C.M.R. 32.06(1)(g) provides in pertinent part:

a request for records in which an individual, or representative of the individual has a unique right of access by statutory, regulatory, judicial or other applicable means, shall not be considered a request for public records

950 C.M.R. 32.08(2)(b) provides in pertinent part:

the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:

1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

In a communication between a University representative and a Public Records Division staff attorney, the University confirmed that the matter is currently pending before the EEOC/HUD. See Kathleen Barnes v. Salem State University, John Keenan and David Silva Docket # - 20BEM01092 EEOC/HUD # - 16C - 2020 - 01469.

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In light of the pending matter, it is my determination that the records at issue in this appeal is the subject of a dispute in an active administrative proceeding. Accordingly, I decline to opine on this matter at this time. See 950 C.M.R. 32.08(2)(b). It should be noted that a change in the status of this action could impact the applicability of 950 C.M.R. 32.08(2)(b).

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: Naomi Shatz, Esq.