



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

Rebecca S. Murray
Supervisor of Records

April 14, 2021
SPR21/0893; SPR21/0894;
SPR21/0895; SPR21/0896

Rita P. Colucci, Esq.
General Counsel
Salem State University
352 Lafayette Street
Salem, MA 01970

Dear Attorney Colucci:

I have received your petitions on behalf of the Salem State University (University) requesting permission to charge for time spent segregating or redacting responsive records under G. L. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, the University furnished a copy of these petitions to the requestor. G. L. c. 66, § 10(c). On March 24, 2021, Joanna Gonsalves submitted four separate requests, including: “a copy of any and all Salem State Board of Trustees (BOT) records in relation to the spreadsheet ‘FY2021 Roster - Board Approved – draft...’”; “...all surrounding documents that the PEC have received or reviewed in relation to this spreadsheet...”; “.... any and all documents pertaining to scenarios that would lay off or retrench any employee of the university...”; and “...a copy of any and all Salem State Budget Office records in relation to the spreadsheet...”

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 an agency’s petition to allow the agency 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 agency 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).

Current Petitions

In its April 7, 2021 petitions, the University requests “permission to charge for segregation and redaction of public records responsive” to these requests. The University indicates “[f]or the past year, employees at Salem State University have made numerous requests for records that are wide in breadth and scope. The nature of the records requested, which involve emails and other documents that contain sensitive information (most of which will fall under exemptions (c) and (d)), require that each record be carefully reviewed to ensure that production of the document is lawful.”

In responses sent to Ms. Gonsalves on April 7, 2021, the University provides fee estimates, as well as explains “...you should know that most, if not all of the records that

you have requested will fall within exemptions (c) and (d) of GL c. 4 section 7(26). The exemptions protect records that are personnel files and data relating to specifically named individuals, the disclosure of which may constitute an unwarranted invasion of personal privacy; and intra-agency documents relating to policy positions that are being developed, respectively. As you know, retrenchments have not been instituted at Salem State. Any documents that might reflect such an action, unfinalized, would fall within exemption (d) and any documents that might name any individuals would fall within exemption (c).”

In light of the University’s petition, I find the University has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). Therefore, the University may assess a fee for the time spent to segregate and redact these requested records.

Conclusion

Accordingly, 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.

Please note, Ms. Gonsalves 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).

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: Joanna Gonsalves