



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

Rebecca S. Murray  
Supervisor of Records

July 13, 2021  
**SPR21/1683**

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

Dear Attorney Colucci:

On July 7, 2021, this office received your petition on behalf of Salem State University (University) seeking 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 their petition to the requestor, Attorney Ryan P. McLane of *McLane & McLane*. Id. On June 28, 2021, Attorney McLane requested nine categories of records concerning the University.

***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).

### ***Fee estimate***

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 CMR 32.06(4).

### ***Current Petition***

In its July 7<sup>th</sup> petition, the University seeks “an extension of time to furnish copies of records described in the attached public records request for records pertaining to the request for financial, communication, and other records related to the University’s operations regarding COVID-19 and the COVID-19 vaccine.” The University petitions “...an extension of 90 days due to the following reasons:

1. The scope and the breadth of the records is significant and places an undue burden on the University’s operations to produce in the allowable timeframe;
2. Certain of the records may not be held by the University and primary record holders will need to be determined;
3. The nature of the records will require both information technology efforts and resources as well as finance office research and review;

4. The timing of the request occurs concurrent with the close of the Commonwealth's fiscal year where finance personnel are largely focused on closing and pre-audit activities that are time sensitive in nature;
5. Many personnel are away from campus due to previously scheduled vacation or personal time given the summer period;
6. In a good faith effort, the University is attempting to satisfy certain terms used by the Requestor, but will need additional time and input from the Requestor as previously sought to meet the requirements of the law;
7. Given the highly sensitive nature of the President's email/correspondence that has been requested, this component alone will require manual review to satisfy the request while protecting through redaction or exemption information that is subject to those allowances under the protections of M.G.L. c. 66, generally. An initial search of these emails based on search terms has produced over 400 discrete records that will require individual review.
8. Should it be determined that the Requestor is seeking additional email correspondence, similar information technology resources and comparable reviews will need to occur to comply with privacy and other exemptions.

The University posits that “[t]his request is premised on the review of records noted above (#7) as well as the fact that these records may be subject to exemptions pursuant to the attorney-client privilege, as well as of MGL c. 4 section 7(26)(d), pertaining to the deliberative process. The nature of the records requested, which involve emails and other documents that contain sensitive information, require that each record be carefully reviewed to ensure that production of the document is lawful. Moreover, as the records being sought are in advance of potential litigation, it is all the more important that the university have the time and resources to thoroughly assess each record for exemptions.”

### ***Conclusion***

In light of the above, I find the University has established good cause to permit an extension of time. See G. L. c. 66, § 10(c)(i)-(iv). I hereby grant the University an extension of 20 business days to furnish copies of records responsive to Attorney McLane's request. See G. L. c. 66, § 10(c). The University is advised it must provide the records in a manner consistent with the Public Records Law and its Access Regulations.

With respect to fees, 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). To the extent the responsive records contain the exempt information as described above, the University may assess a charge for the segregation and redaction of such exempt material.

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Further, this office encourages Attorney McLane and the University to continue to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii)(an agency or municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably). Any fee estimate by the University must be in compliance with this determination, the Public Records Law, and its Access Regulations.

Please note, Attorney McLane 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: Ryan P. McLane, Esq.