



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

Rebecca S. Murray
Supervisor of Records

July 19, 2021
SPR21/1722

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

Dear Attorney Colucci:

I have received your petition on behalf of 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 this petition to the requestor. G. L. c. 66, § 10(c). On June 25, 2021, Norbert Tschakert sent an email to the University regarding “[a]ny and all communication and documents [identified individual] initiated or received that include me or which reference my name or my position as endowed chair (and which I was not already a party to). (April 1, 2018 to present).”

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 Petition

In its July 12, 2021 petition, the University requests “permission to charge for segregation and redaction of public records responsive to this request.” The University indicates that the “nature of the records requested, which may include sensitive information as the records are from the email box of a campus union official, require that each record be carefully reviewed to ensure that production of the document is lawful.” The University explained that “[g]iven the breadth of the request that was made and the amount of time that search, compilation, segregation and redaction takes, pursuant to MGL c. 66, §10(d) and 950 C.M.R. 32.07(2)(d), the university is petitioning you to allow it to charge a fee for time spent segregating and redacting the requested records.”

The University explained it “that the good faith fee estimate for compilation, review, segregation and redaction for such a large number of records, if the university is ordered to produce it, is \$13,900.” The University provided the fee estimate as follows:

Search/Compile: 4200 x 4 minutes = 280 hours x \$25 = \$7000 - \$100 (4 free hours) = \$6900

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Segregation/Redaction: 4200 x 4 minutes = 280 hours x \$25 = \$7000

Total = \$13,900

The University stated “preliminary search for the requested records has turned up 4200 email records, many of which may be subject to exemptions pursuant to the attorney-client privilege, as well as of MGL c. 4 section 7(26)(c), pertaining to personnel matters, among other exemptions.”

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, Mr. Tschakert 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: Norbert Tschakert