



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

Rebecca S. Murray  
Supervisor of Records

September 20, 2021  
**SPR21/1586**

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

Dear Attorney Colucci:

I have received the petition of Salem State University (University) requesting reconsideration of my August 23, 2021 determination related to a request for public records from Ms. Roberta James. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 3, 2021, Ms. Roberta James of the *Massachusetts Teachers Association*, requested the following records on behalf of Dr. Norbert Tschakert:

- 1) Any and all communication and documents President . . . initiated or received from . . . (January 1, 2020 to present).
- 2) Any and all communication and documents President . . . initiated or received that reference [an identified individual's] name, her initials . . ., or her prior position as Dean of the Bertolon School of Business . . . (January 1, 2017 to present).
- 3) Any and all communication and documents Provost . . . initiated or received that reference . . . or her initials . . . (January 1, 2018 to present).
- 4) Any and all communication and documents Provost . . . initiated or received that include the term "title IX" (January 1, 2011 to present).
- 5) Any and all communication and documents sent or received from any SSU email account to [an identified individual] . . . (January 1, 2017 to present).
- 6) Any and all communication and documents sent or received from any SSU email account to [an identified individual] . . . (January 1, 2018 to present).
- 7) Any and all communication and documents initiated or received via any Salem State email account from [an identified individual] . . . (January 1, 2011 to present), except for emails which include [an identified individual] as sender or recipient and except for emails which include Dr. Tschakert as sender or recipient.

### ***Previous petition; appeals***

The requested records were the subject of a fee and time petition and subsequent appeals. See SPR21/0343 Determination of the Supervisor of Records (February 18, 2021); SPR21/0937 Determination of the Supervisor of Records (April 23, 2021); and SPR21/1586 Determinations of the Supervisor of Records (July 12, 2021; August 23, 2021). In my August 23<sup>rd</sup> determination, I found the University had not met its burden to withhold an email record under Exemption (c). Additionally, I found the University had not met its burden of specificity to justify each redaction under Exemption (c). Accordingly, the University was ordered to provide Dr. Tschakert with a response. In an email dated August 27, 2021, the University requests that I reconsider my previous determination.

### ***Status of the requestor***

Dr. Tschakert should be advised 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 requested pursuant to the Public Records Law rests on the content of the record and not the circumstances of the requestor. See *Bougas v. Chief of Police of Lexington*, 371 Mass. 59, 64 (1976). Accordingly, Dr. Tschakert's purpose in making the request has no bearing on the public status of any existing responsive records.

### ***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(b)(iv); 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). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

### ***Reconsideration request***

In its reconsideration letter, the University indicates "Salem State University was recently notified that Norbert Tschakert filed a complaint with the Equal Employment Opportunity Commission against Salem State University. The notice came to the university on August 4, 2021, despite being filed by Norbert Tschakert on June 14, 2021. The case is *Tschakert v. Salem State University*, EEOC Charge No. 523-2021-01586. In many of his previous appeals to the

Supervisor of Records, Norbert Tschakert was explicit in stating that he sought the records because he was the subject of an ongoing Title IX investigation at the university. His complaint at the EEOC is based, in large part, on this Title IX investigation. It is clear that Mr. Tschakert was using the public records request process as a way to engage in pre-litigation discovery. The university objects to providing any further [] records to Mr. Tschakert based on this pending litigation.”

Further, the University states, “. . . as a courtesy to Mr. Tschakert, the university provided records to him without requiring payment up front, but after he agreed to pay the assessed fee. To date, Mr. Tschakert has not paid the fee of \$3900, which was assessed upon the completion of the initial response to his request. Since that time, the university has spent hundreds of hours rereviewing documents pursuant to his last appeal and resubmitting documents to him – a process for which he was not charged any amount of money. Again, to date, Mr. Tschakert has not paid any amount of money for the university’s production of documents. Based on these two reasons, the university respectfully requests that you reconsider the [August 23<sup>rd</sup>] determination.”

***Pending litigation***

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.

***Conclusion***

In light of the pending administrative proceeding, I decline to opine any further on this matter. See 950 C.M.R. 32.08(2)(b). Accordingly, this administrative appeal is closed. 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)(1). If Dr. Tschakert is not satisfied with the resolution of this administrative appeal, he is advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, § 10(A)(c).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Dr. Norbert Tschakert