



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

Rebecca S. Murray  
Supervisor of Records

April 8, 2022  
**SPR22/0794**

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

Dear Attorney Colucci:

I have received your petition on behalf of Salem State University (University) seeking permission to charge for time spent segregating or redacting responsive records. G. L. c. 66, § 10(d)(iv). As required by law, it is my understanding that the University furnished a copy of this petition to the requestor. G. L. c. 66, § 10(d)(iv). In a letter dated March 22, 2022, David Abdown of *Shook, Hardy & Bacon L.L.P* requested:

- 1) All environmental assessments (and data referenced therein) concerning the presence of PCBs at Salem State University;
- 2) All final remediation reports (and data referenced therein) concerning the PCB remediation undertaken at Salem State University;
- 3) All health studies (and data referenced therein) concerning PCB exposure at Salem State University;
- 4) All epidemiological studies (and data referenced therein) concerning PCB exposure at Salem State University;
- 5) All final reports (and data referenced therein) related to PCB blood studies of Salem State University employees and/or occupants;
- 6) All final reports (and data referenced therein) drafted and/or issued by Environmental Health & Engineering of Newton, Massachusetts.

### ***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 (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 C.M.R. 32.06(4).

***Current Petition***

In its petition dated April 4, 2022, the University "...request permission to charge for segregation and redaction of public records responsive to this request."

The University states, "...the requester is seeking records which could include personal and medical information pertaining to specific individuals. The nature of this request and its relationship to personal and medical information requires that the university be careful in its review of the records, as the records may contain information that would fall under exemption (c). 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."

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).

***Conclusion***

Accordingly, it is my determination that given the nature of the requested records and the explanation in its petition, the University is permitted to charge for time spent segregating and redacting the requested records. I encourage the parties to communicate further to enable the Department to provide records in an efficient and affordable manner.

Please note the requestor 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,



Rebecca S. Murray  
Supervisor of Records

cc: David A. Abdow