



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

Manza Arthur
Supervisor of Records

October 28, 2022
SPR22/2397

Diane Andre
Keeper of Records
Records Division
Dartmouth Police Department
1390 Tucker Road
Dartmouth, MA 02747

Dear Ms. Andre:

I have received your petition on behalf of the Dartmouth Police Department (Department) seeking permission to charge for time spent segregating or redacting responsive records and to charge in excess of the statutory fees in responding to a request. G. L. c. 66, § 10(d)(iv). As required by law, it is my understanding that the Department furnished a copy of this petition to the requestor, Sarah Ryley, of *The Boston Globe*. Id. In a request dated October 21, 2022, Ms. Ryley requested:

- [1] Inspections, and any records provided to your agency as a result of inspections[;]
- [2] Referrals and complaints from any person or agency on potential violations of federal or state laws, and records of any action taken[;]
- [3] Investigations[;]
- [4] Records of enforcement actions by your agency, or any other agency that are in your possession.

I note that in an email to this office and the Department on October 24, 2022, Ms. Ryley opposed the Department's petition, arguing:

I disagree that this will take them five hours. There is no need to search MIRCS, as they have already identified the four dealers licensed in their jurisdiction since 2017 and sent me the licensing records....I am only requesting records that are already in DPD's possession, so they do not need to visit the businesses to gather any records.

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).

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

A municipality 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).

Municipalities may not assess a fee for the first (two) 2 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

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)(iii); 950 C.M.R. 32.06(4)

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)(iii); 950 C.M.R. 32.06(4). Petitions relating to fees must be submitted to the Supervisor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Current Petition

In its October 21th petition, the Department explains:

[T]his is one instance where an upward deviation from maximum rate should be made....

With respect to the request, we have the following records: Inspections, and any records provided to your agency as a result of inspections....

However, we will be required to make certain redactions to those records in accordance with the Public Records Law. Exemption (a); applies to records that are “specifically or by necessary implication exempted from disclosure by statute. “Licensing authorities (under G.L. c. 140, § 121) shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said section 121 of said chapter 140, and names and addresses of persons licensed to carry or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in section 167 of chapter 6 and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.” Exemption (j); applies to the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.

The Department further explains:

In order to make these redactions, we are required to devote more than 2 hours of time to search for, compile, segregate, redact and/or reproduce the requested records....

The lowest paid employee who has the necessary skill to complete the search and segregation is Firearms Licensing Officer whose normal hourly rate is \$41.9572. This is due to the fact that only a select number of employees within our department have access to any and all Firearms Inspection Checklists and he is the only employee with access to the Massachusetts Instant Record Check System online database....

The lowest paid employee who has the necessary skill to complete the redaction is the Keeper of Records whose normal hourly rate is \$20.97 . . . the only one[] that can redact these types of requested records due to training and knowledge of the Massachusetts Public Records Law....

In order to comply with the request, it will take approximately 5 (five) hours of search, segregation and redaction time, based upon the following: Search and segregation – 4 hours to compile requested data by accessing the Massachusetts Instant Record Check System online database and internal IMC software to acquire the businesses pertaining to the request, the manual firearms files to search for the requested records, visiting the individual businesses to gather the information requested and 1 hour to copy original documents, redact said copies, and scan requested records to electronic format as requested....

The total number of hours that we intend to charge for are 3 (three) hours.... As a result, we are Petitioning the Supervisor to permit us to charge a fee of \$104.88 for the search and segregation charges associated with this request and response.... In furtherance of this petition, we further state that the fee represents an actual and good faith representation to comply with the request, the fee is necessary, the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records. . . .

I find the Department 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). Further, I find in light of the information provided in the Department's petition, the Department may assess a fee for time spent segregating and redacting responsive records at \$41.9572 per hour. See G. L. c. 66, § 10(d)(iv).

Conclusion

Accordingly, I find the Department has met its burden to explain how the response could not be prudently completed without redaction or segregation. In light of the Department's petition, I find the Department has met its burden to explain how the response could not be prudently completed without assessing a fee in excess of \$25.00. In accordance with the Public Records Law, custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5).

To the extent the responsive records contain the exempt information as described above, the Department may assess a fee for segregation and redaction. Further, I encourage the parties to communicate further to enable the Department to provide records in an efficient and affordable manner. See G. L. c. 66, § 10(b)(vii) (a municipality shall suggest a reasonable modification to the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the municipality to produce records sought more efficiently and affordably).

When preparing a fee estimate for the provision of the requested records, the Department is advised to provide a detailed explanation to the requestor detailing why the amount of time is necessary. See G. L. c. 66, § 10(d)(iv) (requiring the amount of the fee must be reasonable). The Department must provide a response to Ms. Ryley within five business days of receipt of this determination. See 950 C.M.R. 32.06(4)(h)(4). Ms. Ryley may appeal the Department's fee estimate within ninety days. See 950 C.M.R. 32.08(1).

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,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Manza Arthur
Supervisor of Records

cc: Sarah Ryley