



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

Manza Arthur
Supervisor of Records

March 30, 2023
SPR23/0560

Julie A. Ciollo, Esq.
Assistant General Counsel
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 7760
Boston, MA 02116

Dear Attorney Ciollo:

I have received your petition on behalf of the Massachusetts Bay Transportation Authority (MBTA) 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 MBTA furnished a copy of this petition to the requestor. Id. On March 21, 2023, Daniel Kool, of the *Boston Globe*, requested “any and all written complaints to the MBTA regarding The Ride.”

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 March 24, 2023, the MBTA states:

Due to the nature of the requested records, the MBTA expects that numerous responsive records may contain personal and/or medical information of named individuals. Therefore, the MBTA must expend time redacting this information that is protected from disclosure under [Exemption (c)]....

Responsive records may contain medical information about named individuals which, if made public, would result in personal embarrassment to the named individuals. These are highly personal details that are not otherwise available from other sources. There is no prevailing public interest requiring disclosure. In addition, information such as ID numbers, addresses, email addresses and phone numbers would allow for identification of customers who use the RIDE, the MBTA's paratransit service. Revealing the identities of this population, may

result in personal embarrassment to the named individuals. These are highly personal details that are not otherwise available from other sources.

I find the MBTA 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, I find the MBTA 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 MBTA may assess a fee for segregation and redaction. Further, I encourage the parties to communicate further to enable the MBTA 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,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Daniel Kool