



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

Manza Arthur
Supervisor of Records

April 20, 2023
SPR23/0663

Véronique Blanchard
Town Administrator
Town of Conway
32 Main Street
P. O. Box 240
Conway, MA 01341

Dear Ms. Blanchard:

I have received the petition of Devlin Marie Selman appealing the response of the Town of Conway (Town) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 8, 2023, Ms. Selman requested, "...all correspondences between the Town and Nexamp Solar from January 2019 to March 2023."

Prior Petition

This request was the subject of a previous petition for time. See SPR23/0537 Determination of the Supervisor of Records (March 28, 2023). In my March 28th determination, I found that the Town had established good cause to permit an extension of time of 30 business days. The Town provided a response on March 22, 2023. Unsatisfied with the response, Ms. Selman petitioned this office and this appeal, SPR23/0663, was opened as a result.

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 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). 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).

The Town's March 22nd Fee Estimate

In its March 22, 2023 response, the Town provided a fee estimate of \$435.00 and itemized the estimate as follows:

- [1] Record search time, 10 hours at a cost of \$25.00 per hour (\$250.00)
- [2] Record review time for any redactions pursuant to the laws of the Commonwealth, 5 hours at a cost of \$25.00 per hour (\$125.00)
- [3] Record copying time, 2 hours at a cost of \$25.00 per hour (\$50.00)
- [4] Copying costs (\$.05) per page or cost of zip drive or other technical equipment to produce records (\$10.00)

Current appeal

In her appeal, Ms. Selman states, "I request that this high fee be reduced... It would be an unduly burden for my family to pay this extraordinary fee of \$435... it should not take ... 17 hours to complete this request ..."

Although the Town has estimated that the process of searching, reviewing and redacting the responsive records for production will take 17 hours of employee time, it is unclear how the Town requires this many hours to produce responsive records. It is additionally uncertain why it would take 10 hours to search for the responsive records. As such, the Town must provide additional information regarding the tasks involved in producing these records. Also, the Town must clarify if the 17 hours includes the first free 2 hours to search for, compile, segregate, redact or reproduce records. 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).

Further, I find the Town must clarify if the redactions are required by law, and state the applicable statutes, if any. Pursuant to the Public Records Law, a fee may 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). The Town must clarify.

In addition, the Town indicates that it will charge “2 hours at a cost of \$25.00 per hour (\$50.00)” for “record copying time.” However, it is unclear how the Town may assess a fee for record copying time under G. L. c. 66, § 10(d)(iii). See G. L. c. 66, § 10(d)(iv) (requiring the amount of the fee be reasonable).

The Town must further confirm that \$25.00 is the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the responsive records.

For the reasons discussed above, I find the Town must revise its fee estimate or provide further explanation of how the fee assessed in its March 22nd estimate is consistent with G. L. c. 66, § 10(d).

Conclusion

Accordingly, the Town is ordered to provide Ms. Selman with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

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.

Manza Arthur
Supervisor of Records

cc: Devlin Marie Selman