



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

Manza Arthur
Supervisor of Records

April 24, 2023
SPR23/0715

Jeffrey Bridges
Town Administrator
Town of Spencer
157 Main Street
Spencer, MA 01562

Dear Mr. Bridges:

I have received the petition of Joel Hart appealing the response of the Town of Spencer (Town) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 28, 2023, Mr. Hart requested "...the entire 5+ hours of recording of BOS mtg 3/27/2023 from the Spencer cable access footage from the beginning at 6pm to when [town administrator] exits the room and shuts off the lights."

Previous appeal

This request was the subject of a previous appeal. See SPR23/0581 Determination of the Supervisor of Records (April 7, 2023). The Town provided responses on April 10, 2023 and April 14, 2023. Unsatisfied with the responses, Mr. Hart petitioned this office and this appeal, SPR23/0715, was opened as a result.

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 agency or municipality 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(d)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific

exemption or exemptions upon which the withholding is based...”); 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).

The Town’s April 10th and April 14th responses

In its April 10, 2023 response, the Town stated the following:

The Board of Selectmen meeting is being replayed on Spencer Cable Access from the convening of the meeting to the adjournment.

Any recording taking place after the adjournment of the meeting is not a public record.

The Town is not the owner nor has possession of the requested recordings. The recordings are in the possession of Spencer Cable Access.

In its April 14, 2023 response, the Town stated the following:

The Town of Spencer does not have the record you are seeking in this public records request and related appeal, a recording from a separate entity, Spencer Cable Access (SCA), or the ability to request the same. Specifically, SCA is operated entirely independently from the Town of Spencer as a private non-profit organization.

Current appeal

In his appeal, Mr. Hart stated the following:

The March 28, 2023 selectman’s meeting was not properly adjourned and an OML violation has been filed into this matter today...[.] I urge the Secretary of Records to conclude due to an OML violation and not voting to adjourn legally, that the recordings be disclosed and made part of public record for the public to view.

In a conversation between a Town representative and a staff attorney of the Public Records Division, the Town confirmed that the records sought by Mr. Hart are minutes of an executive session of the Town Select Board and therefore relate to Open Meeting Law.

Open Meeting Law

The Town’s response raises issues related to the Open Meeting Law, rather than the Public Records Law. See G. L. c. 30A, § 22(f). Given that an interpretation of the Open Meeting Law falls within the authority of the Office of the Attorney General and not this office, I decline

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to address those issues in this determination. See G. L. c. 30A, § 23. If unresolved issues remain, I encourage the parties to contact the Office of the Attorney General for a determination on the status of the executive session minutes.

Conclusion

Accordingly, I will now consider this administrative appeal closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is written in a cursive, flowing style.

Manza Arthur
Supervisor of Records

cc: Joel Hart