



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

Rebecca S. Murray
Supervisor of Records

February 21, 2018
SPR18/021

Yul-mi Cho, Esq.
Assistant District Attorney
Office of the District Attorney – Bristol District
868 Purchase Street, P.O. Box 973
New Bedford, MA 02740

Dear Attorney Cho:

I have received the petition of Todd Wallack of the *Boston Globe* appealing the response of the Office of the District Attorney – Bristol District (DAO) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Wallack requested “any and all records” pertaining to Aaron Hernandez. Mr. Wallack specified categories of records that should be included with the requested records.

Previous appeals

This request was the subject of previous appeals. See SPR17/706 Determination of the Supervisor of Records (May 26, 2017); SPR17/801 Determination of the Supervisor of Records (June 28, 2017); SPR17/986 Determination of the Supervisor of Records (August 2, 2017); SPR17/1144 Determination of the Supervisor of Records (September 6, 2017); SPR17/1404 Determination of the Supervisor of Records (October 18, 2017); SPR17/1664 Determination of the Supervisor of Records (December 15, 2017).

I previously issued a determination on January 19, 2018 regarding SPR18/021 which ordered the DAO to provide Mr. Wallack responsive records in a manner consistent with this order, the Public Records Law and its Regulations. In an email dated February 6, 2018, Mr. Wallack confirmed that he also objects to the DAO’s latest fee estimate for the production of records. This determination will address this fee estimate.

Fee estimate

The DAO has provided fee estimates for the production of court records. In the DAO’s January 3, 2018 response you indicate that with respect to the previously assessed fee of \$75, “[i]t was necessary under the law to review and redact the records that were previously

provided” and cite to G.L. c. 93H, § 2(c) in support of its position. You also note that “[i]nformation including bank account numbers, dates of birth, and residential addresses - routinely used in financial transactions - were redacted during this process.”

In the DAO’s January 3rd response you further indicate that the DAO is prepared to produce a second installment of records upon receipt of \$875. You explain “[t]here are over 400 motions and memoranda filed in the case under the docket number BRCCR2013-983. [Appendix 47-106] This estimation does not include the photographs and videos that have already been produced.” You also explain that “[t]he court documents, as opposed to the photos and videos, have not been scanned or copied. I will have to retrieve the records in person, scan them individually, then review and redact them page by page. I believe a conservative estimate for completing this task is no fewer than 35 hours. Applying the \$25/hr. rate, \$875 is the cost estimate associated with the production of the remainder of the court records in this case.” You also provided a copy of the docket and suggested Mr. Wallack review it to identify which specific records he is seeking.

In his February 6th email, Mr. Wallack indicates that he “paid the fee under protest” and that the DAO “did not issue the fee estimate within 10 business days of the initial request and never sought a petition from the Supervisor to charge for segregation or redaction.” I understand that on February 16, 2018, the DAO mailed Mr. Wallack a CD containing an installment of responsive records. In a cover letter included with the records, you note “we have now provided to you, from the court’s file, the digital evidence and one of the 9 files. Thus I will continue to work on copying and reviewing the remaining 8 files.” The DAO also asserts “the administrative orders of the supervisor are not a justifiable basis for this office to abandon its duties under the law and, consequently, we cannot produce the records in our possession at this time.”

In an email dated February 21, 2018, Mr. Wallack notes that he continues to object to the fee estimate because “[i]f the documents have already been filed with the court, they should need no additional review or redaction. Moreover, if it would save money, we are happy to receive those records in their original paper form.” He also asserts that the DAO did not petition this office for permission to charge for segregation and redaction time.

It appears the DAO is including time spent segregating or redacting records in this fee estimate. Please be aware, 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).

To the best of my knowledge, the DAO has not submitted a petition under G. L. c. 66, § 10(d)(iv). Please note that petitions seeking permission to assess fees must be made within ten business days after receipt of a request for public records; therefore, the DAO may not currently seek permission to assess fees through a petition under G. L. c. 66, § 10(d)(iv). See 950 C.M.R. 32.06(4)(g). Further, it is unclear how segregation or redaction is required by law in this matter, especially in light of the fact that these records are publically available court documents.

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Therefore, I find the DAO has not met its burden to justify these fees. However, it should be noted that this office encourages the DAO and Mr. Wallack to communicate further to enable the DAO to produce records sought more efficiently and affordably. G. L. c. 66, §10(b)(vii).

Conclusion

Accordingly, the DAO is ordered to provide Mr. Wallack a revised fee estimate in a manner consistent with this order, the Public Records Law and its Regulations within ten 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 that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray
Supervisor of Records

cc: Todd Wallack