



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

Rebecca S. Murray  
Supervisor of Records

July 30, 2018  
**SPR18/1036**

Julie A. Ciollo, Esq.  
Assistant General Counsel  
MBTA Law Department  
10 Park Plaza, Suite 7760  
Boston, MA 02116

Dear Attorney Ciollo:

I have received the petition of Todd Wallack of the *Boston Globe* appealing the response of the Massachusetts Bay Transportation Authority (MBTA) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Wallack requested "a copy of the MBTA Transit Police's log of internal affairs complaints and investigations, including the date the case was opened, the name of the officers involved, the summary of the accusations, status of the case, the resolution/finding/result of the case, and the date the case was resolved." Mr. Wallack indicated he has received similar logs from the Boston Police Department and the Department of State Police. The MBTA responded on July 5, 2018 by providing a fee estimate for the production of records.

***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 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 CMR 32.06(4).

***Current appeal***

In its July 5<sup>th</sup> response the MBTA explains “[i]n consulting with the records custodian on your request, I have learned the following: The MBTA Transit Police Department uses an electronic records database that only allows for a search of records by employee name, not by year. Therefore, it is not possible to run a search for all Internal Affairs matters within a certain time period or for a certain year.” You note that “a search will need to be run for each TPD officer who is or was employed by the Department, and any resulting records will need to be further searched for data matching your request. To give you a sense of the scope of work to be done, there are currently 255 sworn officers within the Transit Police Department, and the records contained within the database go back approximately seven years.”

The MBTA notes that it will take approximately 50 hours of employee time to search for the records due to the available date range and the type of search that must be done. However, you also suggest that “[i]f, in the alternative, you are aware of certain officer names that you would like to be searched within the database, please let me know and I can relay this to the records custodian. This may allow your request to be processed in a more efficient and affordable manner.”

In his appeal petition Mr. Wallack indicates that his request did not specify a particular time range; instead he notes “I am simply asking for an index/log of all the complaints/investigations logged in its database system.” Mr. Wallack explains the MBTA could provide the records “by either exporting its entire database or writing a query to export selected fields, including the date the case was opened, the name of the officers involved, the summary of the accusations, status of the case, the resolution/finding/result of the case, and the date the case was resolved.”

It is not clear why the MBTA cannot provide the requested records in the manner described in Mr. Wallack’s appeal, particularly in light of the fact that the MBTA explained that it maintains an electronic records database regarding internal affairs matters. See G. L. c. 66, § 6A(d) (the records access officer shall, to the extent feasible, provide the public record in the requestor’s preferred format or, in the absence of a preferred format, in a searchable, machine readable format).

Mr. Wallack and the MBTA are encouraged to communicate to facilitate providing responsive records in an efficient and affordable manner. Mr. Wallack may wish to provide the MBTA with examples of what he has received from other records custodians and the MBTA must use its knowledge of the records to facilitate providing any responsive records. G. L. c. 66, § 10(b)(vii) (an agency shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency to produce records sought more efficiently and affordably).

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***Conclusion***

Accordingly, the MBTA is ordered to provide Mr. Wallack a response 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](mailto: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