



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

Manza Arthur
Supervisor of Records

June 24, 2024
SPR24/1787

Denise Quist
Town Clerk
Town of Winthrop
Winthrop Town Hall
One Metcalf Square
Winthrop, MA 02152

Dear Ms. Quist:

I have received the petition of Diana Viens appealing the response of the Town of Winthrop (Town) to a request for public records. See G. L. c. 66 § 10A; see also 950 C.M.R. 32.08(1). On May 18, 2024, Ms. Viens requested, “all communications (leading up to, arriving at, contracting with, and spelling out next steps) relating to the selection of RKG as Winthrop’s 3A zoning consultant firm, including”[:]

- [1] A copy of the request for bids for a new consultant;
- [2] The list of consultant firms this request was provided to, and the method of communication used;
- [3] Any recommendations made to, from, about, in favor, or against use of this consultant firm;
- [4] Any references used (in writing or otherwise) to arrive at the selection of RKG as Winthrop’s consultant firm;
- [5] A list of the individual(s) representing the town of Winthrop in these communications, including the names of those making the final decision to use RKG as our consultant firm.

The Town responded on June 4, 2024. Unsatisfied with the Town’s response, Ms. Viens petitioned this office and this appeal, SPR24/1787, 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. See G. L. c. 66, § 10(b)(iv); 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). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. See G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The City's June 4th Response

In its June 4, 2024 response, the Town states that it provided responsive records to Ms. Viens.

Current Appeal

In her appeal, Ms. Viens states that the Town failed “to provide the requested details (especially the communications) as to the selection of RKG as the Town’s 3A consultant.” She continued, “[n]o where in the documents provided is there any indication of selection of RKG amongst alternatives, nor are there any written correspondence with RKG, amongst Town decision-makers, or contracting, or planning with RKG, or any mention of RKG at all, in the few documents that were provided.”

Upon review of the file and Ms. Viens’ appeal, it is unclear if the Town possesses any additional records responsive to the request. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5). Consequently, the Town must clarify whether additional records exist.

Conclusion

Accordingly, the Town is ordered to provide Ms. Viens with a response to the request, provided 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 the response to this office at pre@sec.state.ma.us.

Denise Quist
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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: Diana Viens