



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

Manza Arthur
Supervisor of Records

November 9, 2023
SPR23/2568

Terry Delehanty
Chief of Police
Winthrop Police Department
3 Metcalf Square
Winthrop, MA 02152

Dear Chief Delehanty:

I have received the petition of Nick Frantz appealing the response of the Winthrop Police Department (Department) to his request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On October 20, 2023, Mr. Frantz requested, “[9.08.030 - Disorderly behavior] is a town ordinance in Winthrop. I’d like to request records documenting circumstances under which the ordinance referenced has been applied, including any citations, requests for criminal complaints, police reports or other documents for the last three years (10-20-2020 through 10-20-2023).” On October 24, 2023, the Department responded and indicated that responsive records could be found in an online portal. The Department then provided a further response on October 24, 2023, indicating that the Department did not have any responsive records to the request. Unsatisfied with the Department’s responses, Mr. Frantz petitioned this office and this appeal, SPR23/2568, 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(b)(iv); 950 C.M.R. 32.06(3); see also *Dist. Att’y 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. 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 Department's October 24th responses

In the Department's October 24, 2023 response, it directed Mr. Frantz to an online database for police logs. Then in a follow up email to Mr. Frantz on October 24th, the Department stated the following:

The Town of Winthrop has no responsive records relative to your request. A public records request seeks "records" that already exist, usually in writing, and/or in one of the formats defined in G.L. c. 4, § 7, cl. 26. The Town of Winthrop is not required to create a record in response to a public records request. Please visit the following link for more information on the Public Records Law in Massachusetts <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>.

In an email provided to this office on November 9, 2023, the Department further stated the following:

Pursuant to the above referenced request for Public Records appeal, please be advised that there are no records regarding circumstances under which the Town Ordinance (9.08.030 - Disorderly Behavior) under which the Ordinance has been applied, including any citations, criminal complaints, Police reports, or other documents for the period of 10/20/2020 - 10/20/ 2023. The Requestor was referred to the Public Logs on the Town of Winthrop's website as a result.

Additionally in a telephone call with a staff member of the Public Records Division, the Department confirmed that it does not have any records responsive to Mr. Frantz's request.

No Duty to Create Records

Please be advised, under the Public Records Law a custodian is not required to create a record in response to a public records request. See G. L. c. 66, § 6A(d). In addition, a public employee is not required to answer questions, or do research, or create documents in response to questions. See 32 Op. Att'y Gen. 157, 165 (May 18, 1977). 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).

Conclusion

Whereas the Department does not possess any records responsive to Mr. Frantz's request, and has no duty to create records responsive to the request, I will now consider this

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administrative appeal closed. If Mr. Frantz is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, § 10(b).

Sincerely,

A handwritten signature in cursive script, appearing to read "Manza Arthur".

Manza Arthur
Supervisor of Records

cc: Nick Frantz