



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

Rebecca S. Murray
Supervisor of Records

June 28, 2021
SPR21/1494

Carla Vitale
Town Clerk
Town of Winthrop
One Metcalf Street
Winthrop, MA 02152

Dear Ms. Vitale:

I have received the petition of Diana Viens appealing the response of the Town of Winthrop (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Viens requested: "...copies of any/all contracts between the Town and any tree removal service companies (and/or company performing tree removal services past or present) or their assigns executed (and including those not yet fully executed but currently in draft or pending execution between 1/1/2020 – 6/10/2021."

The Town provided Ms. Viens with records responsive to her request including contract #2021-34. Unsatisfied with the response, Ms. Viens petitioned the Supervisor of Records (Supervisor), and this appeal was opened.

In her petition, Ms. Viens informed this office that the Town only provided one contract; however, she requested all contracts with tree removal services executed between 1/1/2020-6/10/2021.

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 town 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) (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).

Burden of specificity in responding to a public records request

Based on the Town’s production of records, it is unclear whether the Town is in possession, custody or control of additional contracts responsive to Ms. Viens’ June 3, 2021 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). I find that the Town must clarify this matter.

Conclusion

Accordingly, the Town is ordered to provide Ms. Viens with a response to the request, 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.

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: Diana Viens