



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

Rebecca S. Murray
Supervisor of Records

February 17, 2021
SPR21/0243

Carla Vitale, CMC/CMMC
Town Clerk
Town of Winthrop
One Metcalf Square, Room 5
Winthrop, MA 02152

Dear Ms. Vitale:

I have received the petition of Josh Castellano 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). On January 5, 2021, Mr. Castellano requested copies of building permits, inspection signoffs, certificates of occupancies, and as-built plans for a specific address.

Previous Appeal

This request was the subject of a previous appeal. See SPR21/0135 Determination of the Supervisor of Records (February 2, 2021). In my February 2nd determination, I learned that the Town planned to provide Mr. Castellano with a response and the appeal was closed. The Town provided responses on January 25, 2021, and February 2, 2021. Unsatisfied with the Town's responses, Mr. Castellano petitioned this office and SPR21/0243 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 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); 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.

The Town's January 25th and February 1st responses

The Town responded on January 25, 2021, and provided responsive records. The Town provided additional responsive records on February 1, 2021.

Current Appeal

In his current appeal, Mr. Castellano states the following:

[The provided records] contain[] 43 pages of documents for the property in question. However none of the pages contain the records I requested. Specifically there are no Permits and there are no Inspectional Sign-Offs. The PDF I received consist mostly of Applications for Permits and their supporting documentation. . . I can discern from what was shared that 16 Permits have been issued for this property since 1938. Zero of which are in the records provided. . . .

Based on Mr. Castellano's claim, it is unclear whether the Town possesses additional records responsive to this 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). The Town must clarify whether any further responsive records exist.

Conclusion

Accordingly, the Town is ordered to provide Mr. Castellano with a response to the request, provided 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: Josh Castellano