



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

Rebecca S. Murray
Supervisor of Records

December 21, 2021
SPR21/3277

Denise Quist
Town Clerk
Winthrop Town Hall
1 Metcalf Square
Winthrop, MA 02152

Dear Ms. Quist:

I have received your petition on behalf of the Town of Winthrop (Town) seeking a waiver of statutory limits on fees that may be assessed in responding to the request and permission to charge for time spent segregating or redacting responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, the Town furnished a copy of this petition to the requestor. Id. On December 8, 2021, Joanne Delcore requested:

1. A copy of the Town Clerk's office environment report;
2. Invoice from attorney's office that handled the matter;
3. Emails, notes, or communication sent to The Director and Secretary of the Human Resource office [from identified individuals] from [identified individual] between the months of July 2020 to August 2021.

Petitions to Assess Fees

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 (Supervisor) under a petition under G. L. c. 66, § 10 (d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Fee Estimates

A municipality 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).

Municipalities may not assess a fee for the first (two) 2 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

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)(iii); 950 C.M.R. 32.06(4)

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)(iii); 950 C.M.R. 32.06(4). Petitions relating to fees must be submitted to the Supervisor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Current Petition

In its December 16, 2021 petition to this office, the Town explains it “understands that pursuant to G.L. c. 66, §10(d)(iii), it cannot assess a fee for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by your office. The Town intends, in actual and good faith, to comply with the request.” The Town then states, “the requested records must be redacted where many of the responsive documents will meet the following inclusive, not exhaustive, exemptions set forth in G.L. c. 4, §7(26):

Exemption (a)

- Legal invoices are highly likely to contain information specifically or by necessary implication exempted from disclosure by statute, because they would contain information related to executive session minutes which are exempt from disclosure pursuant to G.L. c. 30A, §22(f).

...

Exemption (c)

- Legal invoices are likely to contain information related to an employee’s personnel/medical issue that required legal consultation. This includes, but is not limited to, employee disciplinary information, employee exposure to COVID-19, subsequent quarantines, and individual accommodations.
- Legal invoices are likely to contain information related to an employee’s medical issues that required legal consultation.
- E-mails to and from the Town’s Human Resources office likely contain personnel and/or medical information that is exempt from disclosure.
- E-mails to and from the Town’s Human Resources office likely contain information that relate to a specifically named individually and constitutes an unwarranted invasion of personal privacy.
- The office environment report likely contains personnel and/or medical information that is exempt from disclosure.
- The office environment report likely contains information that relates to a specifically named individual and constitutes an unwarranted invasion of personal privacy.

...

Attorney-Client Privileged Communications

- It is highly likely that legal invoices will contain information regarding advice provided by attorneys to the Town. These communications will need to be redacted to preserve attorney-client privilege.”

Based on the Town’s petition, I find the Town has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). To the extent the responsive records contain the exempt information as described above, the Town may assess a fee for the segregation and redaction of such exempt material.

Fee in Excess of \$25.00 per hour

In its petition, the Town also states the following concerning its request to charge a fee in excess of \$25.00 per hour:

The Town seeks to assess fees for time spent segregating and redacting records that fall within statutory exemptions beyond Exemption (a) of G.L. c. 4, §7(26) given the likelihood that the aforementioned categories of information need to be redacted. Moreover, the Town seeks to charge a rate in excess of \$25 per hour. Specifically, the Town seeks approval to charge an hourly rate of \$75 per hour. The redaction of the requested documents requires both knowledge in law and knowledge of the facts at issue. Accordingly, this redaction cannot be performed by a Town employee; rather, it must be completed by legal counsel for the Town.

...

The hourly rate associated with the lowest paid employee who has the necessary skill required to perform this task is \$235 per hour. However, the Town is willing to lower the hourly rate to \$75 per hour.

I find the Town has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without assessing a fee in excess of \$25.00 per hour. See G. L. c. 66, § 10(d)(iv). I find the Town may assess a fee limited to \$75.00 per hour for attorney review.

Conclusion

Accordingly, I find to the extent the responsive records contain the exempt information described above, the Town may assess a fee for segregation and redaction. Further, as described above, the Town may assess a fee limited to \$75.00 per hour for attorney review.

Please note Ms. Delcore has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10A.

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: Joanne Delcore