

Frequently Asked Questions

What is the difference between the federal Freedom of Information Act and the Massachusetts Public Records Law?

The federal Freedom of Information Act is a statute that applies to federal records. The Massachusetts Public Records Law applies to records created by or in the custody of a state or local agency, board or other government entity.

Who can help me with questions regarding the Public Records Law?

The Division of Public Records (Division) has always provided an “attorney of the day” to assist any person seeking information regarding the Public Records Law.

The hours of operation for the Division are Monday-Friday, with the exception of holidays, from 8:45 a.m. to 5:00 p.m. The telephone number for the Division is (617) 727-2832, and the email address is pre@sec.state.ma.us.

What is a “public record”

Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part.

Specific statutory exemptions have been created by the legislature. There are non-statutory exemptions as well called common law exemptions. Non-statutory exemptions include the common law attorney client privilege and the work product privilege. These exemptions permit the agency or municipality to withhold a record from the public. A records access officer (RAO) must prove with specificity why it should be allowed to withhold any public record.

The exemptions to the Public Records Law are described in this guide. If an RAO claims an exemption and withholds a record, the RAO has the burden of showing how the exemption applies to the record and why it should be withheld.

How do I find the records I seek?

A person seeking access to government records must obtain them from the government office that created or received the records.

Does the Division of Public Records have my records?

The Division of Public Records (Division) is not a warehouse for government records. The only records kept in the Division are those that are essential to the business operations of the Division.

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To obtain public records a person must directly contact the municipal or state agency office that is the custodian of the sought for records.

Does the Public Records Law apply to court, legislative or federal records?

The Public Records Law does not apply to records held by federal agencies, the legislature or the courts of the Commonwealth. Accordingly, the Supervisor is unable to assist requesters seeking such records.

What is a Records Access Officer?

A Records Access Officer (RAO) is the person responsible for responding to requests for public records. Information on how to contact an RAO is usually available on the website for the applicable municipal or state entity holding the records sought by requesters.

What is a records custodian?

A records custodian means any governmental entity that makes or receives public records.

How do I obtain copies of public records?

To obtain a copy of a record, you must make a request to the RAO for the municipal or state agency that you believe has records you are seeking.

What do I do if my request is denied?

An RAO must respond to your request as determined by the Public Records Law. If the RAO fails to respond or denies a request, a requester may appeal the matter to the Supervisor within ninety days.

Under the Public Records Regulations, all appeals to the Supervisor must include a copy of the original request, any response by the RAO and a statement indicating the reason for the appeal. The requester must also provide a copy of the appeal petition to the RAO.

May I also go to court to seek public records?

A requester may also commence a civil action in superior court to enforce the requirements of the Public Records Law. Where applicable, the superior court may award reasonable attorney's fees and costs in cases where the requestor obtains relief.

My appeal was closed because I did not provide the necessary information. What do I do now?

The Supervisor will close an appeal without a finding if a requester fails to provide a copy of the request or the response. The Supervisor will close an appeal without a finding if the requester fails to provide a copy of the request to the RAO, or fails to provide a copy of the petition for appeal to the RAO.

In such cases, a requester may seek a new appeal, provided the appeal is filed in compliance with the Public Records Regulations.

What are the requirements for an RAO response to a public records request?

An RAO's response must be in writing, and must provide the name of the RAO. The response must include a good faith estimate of any cost of providing the record.

The response must also include a specific exemption to the Public Records Law to justify the denial of access to any record, and an explanation of how that exemption applies to the records. Any denial must include instructions on how to appeal to the Supervisor of Records.

Must my request be in writing, and do I need to use a specific form?

A written request is not required but is strongly recommended. An oral request made in person is permitted. An RAO is not permitted to require a written request, but may write an oral request on its own form to assist in prompt response.

To appeal an RAO response to the Supervisor, however, a request must be in writing.

May I appeal a failure to answer a question?

The Public Records Law only applies to records. An RAO is not required by the Public Records Law to answer questions or create a record in response to a request; however, an RAO must provide any records that exist that respond to a question.

What is the cost for copies of public records; what about electronic records?

Absent a specifically identified statute or regulation, an RAO may charge no more than \$0.05 per page for single and double-sided black and white paper copies or computer printouts. There is no longer a separate charge for police or fire reports, or for computer printouts.

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The Public Records Law and its Regulations apply to all Massachusetts government records, regardless of form, and regardless of the location of the records.

Provision of public records in electronic form is preferred where available. An RAO is not permitted to assess a copying fee for electronic records. The \$0.05 fee applies only to paper copies of records.

Is an RAO required to provide a fee estimate?

The Public Records Regulations require that an RAO provide a detailed, written, good faith estimate for the cost of complying with a public record request.

The fee estimate must contain a statement advising the requester that the actual cost of producing the record might vary once the agency or municipality begins preparing the record. An agency or municipality is permitted to require payment of the estimated fee before commencing work.

All agencies and municipalities are strongly urged to waive the fees associated with access to public records, but are not required to do so under the law.

Public records that are of great interest to a large number of people must be readily available within the office of the RAO and should be provided at a minimum cost, if any. Examples include minutes of board meetings, town meeting documents, warrants, street lists and municipal financial documents. Many of these records are required to be placed on the RAO's website.

May the RAO charge a fee for search and segregation of records?

An RAO may charge and recover a fee for the time spent searching, redacting, photocopying and refiling a record. Agencies shall not assess a fee for the first four hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of over 20,000 shall not assess a fee for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Municipalities with a population of 20,000 and under are permitted to charge for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record.

The hourly rate may not be greater than the prorated hourly wage of the lowest paid employee who is capable of performing the task. Generally, an RAO is not permitted to charge an hourly rate in excess of \$25.00 per hour to search for records. Municipal RAOs may petition the Supervisor for permission to charge a fee in excess of \$25.00.

The fee estimate must provide the hourly rate and the number of hours required for each portion of the task. An RAO may not recover fees associated with record organization.

Agency and municipal RAOs may petition the Supervisor for permission to assess a fee for time spent segregating and redacting.

If a requestor wishes to review records in the records custodian's office but does not require copies, a records custodian may charge and recover a fee for his or her time spent searching for and redacting the records. Access to records viewed in this manner cannot be denied and only minor fees associated with securing the record should be charged.

When must minutes of an open meeting be made available to the public?

The Open Meeting Law, applicable to public bodies such as select boards for towns, is enforced by the Office of the Attorney General, Division of Open Government.¹ Any questions regarding the content of minutes, requirements to keep minutes or any procedural aspects of the Open Meeting Law should be addressed to the Division of Open Government.²

Minutes of open meetings, regardless of form, are public and must be made available in a timely fashion.

There is no requirement that the minutes be transcribed or approved before they are made public. An RAO should clearly mark all such minutes "unofficial."

Pursuant to the Open Meeting Law, minutes of prior open meetings, regardless of form, must be reviewed and accepted promptly. Copies of the minutes of all open meetings should be readily available. Many public bodies are required to post minutes to meetings on the public body's website. RAOs are strongly encouraged to waive all fees associated with the minutes of open meetings.

Minutes of executive session meetings must be reviewed and released regularly and promptly. Executive session minutes must be released to the public as soon as the stated purpose for the executive session protection has ceased.

¹ G. L. c. 30A, §§ 18-25.

² www.mass.gov/ago/bureaus/government/the-division-of-open-government/.

Does a requester have greater right of access to records if he is the subject of a record?

Under the Public Records Law, every requester is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person.

Some statutes and regulations allow requesters to obtain records in a manner that does not require a request under the Public Records Law. It should be noted that once a record is deemed public it may be obtained by anyone upon request.

A list of statutes limiting access to public records is found in the back of this book. This list includes student records, criminal offender record information, and other records the access to which is limited by law.

Is a requester required to disclose the intended use of the public record requested?

With the possible exception of situations where the RAO is anticipating the withholding of records pursuant to Exemption (n) of the Public Records Law, determining whether the records are being requested for a commercial purpose, or determining whether to grant a fee waiver, a records custodian may not ask a requester the reason for the request or the intended use of the requested records.³

How should an RAO respond to an unclear request?

RAOs must help the requester to determine the precise record or records responsive to a request; however, a requester must provide a reasonable description of the requested records. If a request is unclear the RAO is expected to seek clarification from the requester.

What if a records custodian claims that it is not subject to the Public Records Law?

The Public Records Law only applies to Massachusetts governmental entities. The burden lies with the entity to show that the Public Records Law does not apply.

Are RAOs required to forward a request for records not in their possession?

RAOs must use their knowledge of the records to ensure that a request for records is delivered to the appropriate party. A large public records request may include items for which the RAO is not directly responsible, as it may

³ G. L. c. 4, § 7(26)(n); 950 C.M.R. 32.06(2)(h).

include a request for records of another division or department of the RAOs' agency or municipality. An RAO is expected to forward such requests to the appropriate parties in responding to a public records request, and inform the requester he or she has done so.