

TOWN OF SHUTESBURY

PUBLIC RECORDS ACCESS GUIDELINES

voted by the Selectboard May 23 2023

Effective January 1, 2017, the Massachusetts Public Records Law, G.L. c.66 and c.4, §7(26) provides that a municipality must, within 10 business days (Monday through Friday, excluding legal holidays), respond to a request for records by providing access to or a copy of such records, or explaining any delay or denial. These guidelines are intended to assist members of the public seeking access to public records in the custody of the Town of Shutesbury.

Definitions:

Custodian: Any governmental entity that makes or receives public records.

Records Access Officer: The employee designated within a governmental entity to perform duties described in 950 CMR 32.00 including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requesters to make informed requests regarding the availability of such public records electronically or otherwise.

Requester: Any person or entity seeking to inspect or obtain copies of public records.

For a complete list of definitions, refer to 950 CMR 32.00

General Information:

1. Business Hours -The regular business hours of Town Hall are Monday through Friday 8:30 – 4pm, with additional hours on Monday until 6 pm and Thursday 6 – 8 pm.
2. Records Access Officers – The Record Access Officer’s role is to facilitate the response to requests for public records and maintain a log of requests. The Town Clerk/RAO should be included on all email correspondence in response to public record requests. As the Executive branch for the Town of Shutesbury, the Selectboard empowers the Town Clerk, as the primary RAO for the Town of Shutesbury, to be responsible for setting policy concerning public records matters, consistent with state law, and for developing appropriate guidelines for requesting public records and responding to public record requests. The following Records Access Officers (“RAO”) have been designated:

(Contact info subject to change)

For public Fire Department records:

Leonard Czerwonka, Fire Chief - Fire Station, 42 Leverett Rd.

P.O.Box 295 Shutesbury, MA 01072

413 259-1211 firedepartment@shutesbury.org

For public Police Department records:

Kristen Burgess, Police Chief - Town Hall, 1 Cooleyville Rd

P.O.Box 676 Shutesbury, MA 01072

413 259-1279 police.chief@shutesbury.org

For public K-6 School records:
Union 28
18 Pleasant St. Erving, MA 01344

For public 7-12 School records:
Amherst Region Public Schools
170 Chestnut St. Amherst, MA 01002

For other public Town records:
Grace Bannasch, Town Clerk - Town Hall, 1 Cooleyville Rd.
P.O.Box 264 Shutesbury, MA 01072
413 259-1204 townclerk@shutesbury.org
FAX: 413 259-1107

3. Public Records Law Information - General information about the public records law and public records requests is found in the Secretary of the Commonwealth's, "A Guide to the Massachusetts Public Records Law," February 2022 edition, found online at:
<https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Making Public Records Requests:

4. Public Records Requests - Any person may make a public records request:

In person at Town Hall - 1 Cooleyville Rd. Shutesbury, MA 01072

By first class mail addressed to the RAO at the RAO's business address set forth above;

By facsimile addressed to the RAO at the business facsimile number set forth above [if one is provided above]; or

By e-mail addressed to the RAO at the e-mail address set forth above.

5. Requests Encouraged to be in Writing - Although not required, it is strongly encouraged that public records requests be in writing to ensure the most efficient and accurate response. All written public records requests, including via email and facsimile, shall be addressed/directed to an RAO, and contain the requester's name and contact information, so that the RAO is able to provide the required response.
6. Contact Information - Individuals making in-person requests will not be requested or required to give their names or contact information. For in-person requests that require additional time for a comprehensive response, requesters will be advised to check in periodically with the RAO or department from which records are sought, or requesters may voluntarily provide contact information.
7. Specificity of Requests - To facilitate timely responses to public records requests, requests should be as specific as possible, detailing, if known, records custodian(s), and date and subject matter parameters. The more specific the request, the better able the Town will be to respond, as broad requests often require more extensive staff efforts to locate, review and copy all possibly responsive records.

8. Receipt of Requests - Written requests received during normal business hours, as defined in paragraph 1, above, shall be deemed received on the first business day following receipt of the request by the records access officer. Written requests sent via email or facsimile after normal business hours shall not be considered received until the following business day. Business days shall not include Saturdays, Sundays, and legal holidays.
9. Purpose of Request - The RAO will not ask a requester to identify the purpose of the request, but may ask for more information to assist the requester to make an appropriate request and/or to enable the RAO to respond more efficiently.

Responses to Public Records Requests:

10. Fees - If fees will be assessed, a written estimate of the same will be provided by the RAO to the Requester.
11. Response if Longer than 10 Days or Denial in Whole or in Part - If a full response, including provision of records, cannot be made within 10 business days of receipt of the request, the RAO, or designee authorized in writing by the RAO to respond to the request on behalf of the Town, will respond to the requester in writing: explaining the anticipated time frame for complete response; identifying any records that the Town does not have in its custody; identifying records which the Town does not expect will be provided, or that will be redacted, specifying the relevant exemption(s) and application thereof to the requested record or portion thereof; providing a good faith fee estimate; and including a statement of appeal rights. Custodians of public records shall make every reasonable good faith effort to deliver records to the RAO in sufficient time so the RAO can respond to the request. If it is necessary to request a time extension, the RAO shall negotiate with the requestor and, if the requestor does not voluntarily agree to the extension, submit a petition to the Supervisor of Public Records.
12. Clarification of Request - Depending upon the scope of the request, the requester may be asked by the RAO to clarify the request, provide more specific detail, and/or agree to a voluntary extension of time for the Town to respond fully to the request.
13. Publicly Available Records - The Town maintains a searchable website at www.shutesbury.org where certain public records are available for inspection, downloading or printing. If a request seeks documents publicly available on the Town's website, the requester will be directed to the website in satisfaction of the request, unless the requester does not have the ability to receive or access the records in a usable electronic form.
14. Electronic Records Delivery Preference - To the extent feasible, the RAO or designee will provide public records in response to a request by electronic means, unless the record is not available electronically or the requester does not have the ability to receive or access the records electronically. To the extent available and feasible, the RAO will provide an electronic record in the requester's preferred format.
15. Request for Records to be Mailed - Should a requester seek to have responsive records provided by mail, the requester will be charged the actual cost of postage, using the least expensive form of mailing possible, unless the requester requests, and agrees to pay for, an expedited form of mailing and such fees are paid in advance.
16. Creation of Records - The Town is only required to provide records that are in existence at the time of a request and is not required to create a new record to accommodate a specific request.

17. Answering Questions - The Town is not required to answer questions in response to a public records request.
18. Supplementing Responses - The Town is not required to supplement its response to a previous public records request in the event that responsive records are created in the future.
19. Requests for General Records – if a custodian receives a public record request that was not sent to the RAO, and the request is for general or common public records that are easy to provide, the custodian may respond to the request without redirecting the requestor to the RAO so long as the RAO is provided with a copy of the initial request and included on the response.

Categories of Records:

20. Attachment “A” describes with specificity different categories of records maintained by the various Town departments. You may also refer to the Municipal Records Retention Schedule, issued by the Supervisor of Public Records, and found at https://www.sec.state.ma.us/arc/arcpdf/Municipal_Retention_Schedule_20161109.pdf, which schedule identifies various categories of records maintained by municipal departments and so-called “records in common”.
21. Erving School Union # 28 Records - School-related records are generally maintained by Union 28 office for grades K - 6, and requests for such records should typically be directed to the central office.
22. Regional School District Records - School-related records are generally maintained by the Amherst Regional Public Schools for grades 7 through 12, and requests for such records should typically be directed to the District.

Exemptions:

23. Exemptions/Redaction/Withholding - Some public records, or portions of records, may not be provided in response to a public records request because the Town has determined such records to be exempt from disclosure pursuant to the provisions of G.L. c.4, §7(26), the attorney-client privilege, or other applicable exemptions or common law privileges. Redactions shall be made by the RAO or, if there is a legitimate privacy or confidentiality concern, by the custodian with written authorization from the RAO. If the matter is complex, the RAO, with approval from the Town Administrator, may instruct the custodian to forward responsive records to Town Counsel for review and redaction. The RAO shall maintain a log of the location of and reason for redactions, in case an appeal is filed with the Supervisor of Public Records. For more information about exemptions to the Public Records Law, see the Secretary of the Commonwealth’s, “A Guide to the Massachusetts Public Records Law,” February 2022 edition, available at <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Fees:

24. Reasonable Fees - In some circumstances, the Town may assess a reasonable fee for the production of public records.

25. Categories of Permissible Charges - Permissible charges include, but are not limited to:

five cents (\$0.05) per page of black and white printouts or copies;
actual cost for storage devices or materials such as CDs or thumb/flash drives;
actual cost for duplication of records not susceptible to ordinary means of reproduction, such as color copies and large format plans;
postage fees (where applicable; see paragraph 16, above); and
fees for employee time required to satisfy a public records request (see paragraph 26 below).

No copying fee will be charged for records provided in electronic form.

26. Employee Time for Locating and Segregating Records - A fee may be charged for employee time necessary to identify, locate, and compile the records requested. A fee may also be charged for employee time necessary to review, and, as applicable, segregate and/or redact information exempt from public disclosure. The hourly rate for such fees shall be the hourly rate of the lowest paid employee capable of performing the task, provided, however, that this hourly rate shall not exceed twenty-five dollars (\$25.00) per hour, unless the Town has obtained the approval of the State Supervisor of Public Records to charge a higher hourly rate. Depending upon the nature of the request, different rates may be charged for different types of work (i.e., a different hourly rate for search time and a different hourly rate for segregation/redaction time).
27. Small Municipality Exception - As of the 2020 Decennial Census, the Town had 1,717 residents. See <https://www.massachusetts-demographics.com/shutesbury-demographics>. In accordance with 950 CMR 32.07(2)(m)(2), therefore, the Town may assess fees for all employee time, including the first two hours.
28. Requests for Commercial Purposes - Said fee limitations may not apply when a request for records is for a commercial purpose as determined by the State's Supervisor of Records.
29. Petition for Higher Fee - In certain circumstances, the Town may petition the State Supervisor of Public Records for permission to assess fees for employee time at a rate in excess of \$25.00.

Appeals:

30. If a requester wishes to assert a claim that they have been denied access to public records, they may appeal the RAO's determination to the State Supervisor of Records pursuant to 950 CMR 32.08(1). The Supervisor shall make a final determination on the appeal within ten (10) business days of receipt.
31. If the requester is dissatisfied with the determination of the State Supervisor of Records, the requester may appeal to Superior Court. Alternatively, a requester may bypass the Supervisor and go directly to Superior Court.
32. For further information on appeals, see the Secretary of the Commonwealth's "A Guide to the Massachusetts Public Records Law," February 2022 edition, available at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>.

ATTACHMENT “A”

Department/Board - General Description of Public Records Maintained

Example: Town Clerk

Town Meeting Minutes

Town Meeting and Election Warrants

Election Results

Annual Town Report

Street List

Voter Extracts

Dog Owner lists

Business Certificate List

Raffle Permit list

Meeting Notices/Agendas

Meeting Minutes

Meeting Video Recordings

Public Record Requests

Town Bylaws

Conflict of Interest Disclosures

Campaign Finance Reports

Planning and Zoning Board Decisions

State Ethics – Employee Compliance Documents

Committee Charges

Lists of Appointed and Elected Officials