

THE PUBLIC RECORDS LAW – EFFECTIVE JAN. 1, 2017 G.L. c.66, §10 and G.L. c.4, §7(26)

Basic Facts

- A presumption exists that all governmental records are public records subject to mandatory disclosure upon request, unless a statutory exemption is applicable.
- The law applies to any kind of “document” made or received by a public officer or employee, regardless of its format, such as papers, maps, recordings, e-mails, computer generated or stored records, etc.
- The law applies to records in existence and in the custody of the public entity. Therefore, a public entity is not required to either create a record in response to a public records request, or answer questions posed by the requester.
- A public records request may be made in person or in writing; a public entity is not obligated to respond to requests made by telephone only but may do so in its discretion.
- A Records Access Officer (“RAO”) or other custodian of public records is presumed to have superior knowledge of the records in his or her custody or in the custody of the public entity generally, and even if a records request is not precise, RAOs/records custodian should use their superior knowledge of the records to attempt to identify and provide responsive records.
- Generally, requesters may not be asked why they are seeking a particular record, subject to limited statutory exceptions.

The Response

- A public entity **must** respond to a records request within 10 business days following receipt of the request.
- A public entity must provide a written response if any record(s) sought by the requester will not be produced or will be redacted. That written response has specific required elements. *See KP Law reference card, “New Public Records Law - Responding to a Public Records Request” for more information.*
- Pursuant to the Public Records Access Regulations, 950 CMR 32.00 et seq., a public entity may charge a requesting party the following fees:

(1) Photocopies (black and white) single or double sided, \$.05 per page; computer printouts (black and white), \$.05 per page, unless otherwise specified by statute; and for records not susceptible to ordinary means of reproduction, the actual cost to provide a copy.

(2) Search time (i.e., the time necessary to search for and copy responsive records) or segregation time (i.e., the time necessary to delete or redact protected information from records otherwise subject to disclosure); such fee to be determined at the pro-rated hourly rate of the lowest paid employee capable of performing the search, but no more than \$25 per hour. Municipal RAOs may seek permission of the Supervisor of Records to charge a higher rate, however.

NOTE: Municipalities with 20,000 or more residents may not charge for the first two hours of work. Agencies may not charge for the first four hours of work. There may be further limitations upon the time that may be charged for segregation and redaction.

- The analysis a public entity undergoes upon receipt of a public records request is generally the same regardless of the identity of the requester, except in certain limited circumstances, such as where the requester or requester’s representative has a “unique right of access” as a result of statutory, regulatory or other judicial means (i.e., requests for abutters’ lists in land use permitting matters, union information requests pursuant to G.L. c. 150E, and requests from litigants in civil or criminal cases).

Frequently Asserted Exemptions

- Exemption (a) allows withholding of records that are “specifically or by necessary implication exempted from disclosure by statute.”
- Exemption (c) allows withholding of “personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.”
- Exemption (d) allows withholding of “inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.”
- Exemption (e) allows withholding of “notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit.”
- Exemption (f) allows withholding of “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.”
- Exemption (h) allows withholding of “proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.”
- Exemption (i) allows withholding of “appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.”
- Exemption (n) allows a records custodian, who reasonably believes that disclosure is “likely to jeopardize public safety” to withhold records including, but not limited to, “blue prints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety, or cyber security, of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth.”
- Exemption (o) allows withholding of “the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.”