

950 CMR 32.00: PUBLIC RECORDS ACCESS

Section

- 32.01: Scope and Purpose
- 32.02: Definitions
- 32.03: General Provisions
- 32.04: Records Access Officers
- 32.05: Additional Records Access Officer Responsibilities
- 32.06: Rights of Access
- 32.07: Copies of Records; Fees
- 32.08: Appeals
- 32.09: Enforcement of Orders
- 32.10: Advisory Opinions

32.01: Scope and Purpose

(1) 950 CMR 32.00 describes the practices and procedures of the Division of Public Records relative to the requirements of governmental entities or political subdivisions of the Commonwealth with respect to disclosure of public records, reporting requirements for certain records access officers and ensuring that disputes regarding access to particular records are resolved expeditiously and fairly. 950 CMR 32.00 shall not limit the availability of other remedies provided by law.

(2) The Division of Public Records is under the supervision of the Supervisor of Public Records. The Supervisor may amend and rescind such rules, forms and orders as are contemplated by the provisions of the Massachusetts General Laws and as are necessary to carry out their purposes.

(3) The Supervisor of Public Records may authorize exceptions to 950 CMR 32.00 with respect to any specific requirement provided that such exceptions to 950 CMR 32.00 are in conformity with the provisions of the Massachusetts General Laws.

32.02: Definitions

For the purposes of 950 CMR 32.00 unless the context otherwise requires, the following terms shall have the meanings indicated:

Advisory Opinion. An opinion issued by the Supervisor of Public Records intended to provide guidance on issues related to

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Division. Division of Public Records, Office of the Secretary of the Commonwealth of Massachusetts.

Governmental Entity. Any agency or municipality as defined in 950 CMR 32.02. It includes any quasi-governmental agency that is considered a body politic and corporate or public instrumentality. It does not include the legislature and the judiciary.

Municipality. Cities and towns, local housing, redevelopment or similar authorities. A consortium, consolidation or combination of entities within a single political subdivision of the commonwealth or among multiple political subdivisions of the commonwealth shall be deemed a municipality.

Public Record. All books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by a governmental entity unless such materials or data fall within one or more of the exemptions found within M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges.

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.

Redact. To delete, or otherwise expurgate that part of a public record that is exempt from disclosure under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges from non-exempt material.

Search Time. The time needed to locate and identify, pull from the files, copy and reshelve or refile a public record. However, it shall not include the time expended to create the original record.

Secretary. The Secretary of the Commonwealth of Massachusetts.

Segregation Time. The time used to review records to determine what portions are subject to redaction or withholding under M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.

Supervisor. Supervisor of Public Records or Supervisor of Records.

Withhold. To hold back from disclosure a record under M.G. L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges.

32.03: General Provisions

- (1) Division Mailing Address and Electronic Mail Address. All communications shall be addressed or delivered to:
Supervisor of Records
Division of Public Records
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719
Boston, Massachusetts 02108
or: pre@sec.state.ma.us
Electronic communication is strongly encouraged and is the preferred method of correspondence.

32.05: continued

- (a) agency designation of primary and secondary records access officers; reporting requirements:
 - 1. each agency shall designate one primary records access officer responsible for reporting information to the Secretary pursuant to M.G.L. c. 66, § 6A(e) and 950 CMR 32.05(1)(c).
 - 2. a primary records access officer shall submit a notification of such designation to the Division electronically in a manner determined by the Division.
 - 3. the primary records access officer may notify the secondary record access officers to facilitate reporting such information.
 - 4. the primary records access officer shall electronically notify the Secretary of the designation of secondary records access officers electronically in a manner determined by the Division.
 - 5. the agency shall maintain and update information regarding primary and secondary records access officers electronically, including changes in personnel identified as primary and secondary records access officers, in a manner determined by the Division.
- (b) agency records access officers shall electronically report to the Secretary the information described in 950 CMR 32.05(1)(c)1. through 9. in a manner determined by the Secretary.
- (c) an agency records access officer shall report to the Secretary with respect to written requests for public re0 (e)4 (t)-2 (e)4 (r)3 (m)85(cal)-6

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- (h) a records access officer may not require the requester to specify the purpose for a request except:
 - 1. STRICKEN
 - 2. to determine whether the records are requested for a commercial purpose; or
 - 3. to determine whether to grant a request for a fee waiver.
- (i) a records access officer shall identify a reasonable timeframe in which it shall produce the public records sought in a manner consistent with M.G.L. c. 66, § 10(b)(vi), provided that the requester may voluntarily agree to a response date beyond these timeframes.

(3) Denial by Records Access Officer.

- (a) a records access officer shall provide written notice by first class mail or electronic mail to a requester of any denial of access to records.
- (b) a records access officer shall provide such written notice of denial of access within ten business days following receipt of a request for public records in accordance with 950 CMR 32.06(2)(b).
- (c) such written notice of denial shall include:
 - 1. the date of the request;
 - 2. identification of any records sought that are not within the possession, custody, or control of the agency or municipality the records access officer serves;
 - 3. identification of the agency or municipality that may be in possession, custody or control of the public record sought, if known to the records access officer;
 - 4. identification of any records, categories of records or portions of records that the agency or municipality intends to withhold;
 - 5. identification of any specific exemption to the Public Records Law or common law privilege that applies to the withhold record or records;
 - 6. identification of the applicability of each cited exemption or privilege to each portion of the withheld record or records;
 - 7. identification of any portions of responsive records that the agency or municipality intends to produce; and
 - 8. a statement informing the requester of the right of administrative appeal to the Supervisor under 950 CMR 32.08(1) and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court.
- (d) where a record has been withheld based on a claim of the attorney-client privilege the records access officer shall provide in its written denial a detailed description of the record, including the names of the author and recipients, and in general terms, the subject matter of the withheld information.

(4) Petition for Modification or Waiver by a Records Access Officer to the Supervisor.

- (a) petitions requesting an extension of time to furnish copies of the requested records or waive statutory limits to fees from a records access officer to the Supervisor shall be in writing and delivered to the Supervisor in accordance with 950 CMR 32.03(1). A copy of the petition shall be provided by the records access officer to the requester. The Supervisor shall issue a written determination with findings regarding any such petition within five business days following receipt of a records access officer petition.
- (b) petitions filed under 950 CMR 32.06(4) do not affect the requirement that a records access officer shall provide an initial response to a requester within ten business days following receipt of a request for public records, pursuant to 950 CMR 32.06(2)(a) or (b). Failure to comply with 950 CMR 32.06(4) will result in a waiver of the right to assess fees for public records.
- (c) all such petitions shall be considered public records both in the custody of the records access officer and the Supervisor.
- (d) petitions seeking an extension of time to furnish copies of the requested records must be made by a records access officer within 20 business days following receipt of a request for public records, or within ten business days following the records access officer's receipt of a determination by the Supervisor that a requested record constitutes a public record.

32.06: continued

- (e) a petition for extension of time described in 950 CMR 32.06(4)(d) shall include a brief narrative detailing why an extension of time is necessary. Upon a showing of good cause, the Supervisor may grant a single extension. For an agency, such extension may not exceed 20 business days from the date of the grant of the extension by the Supervisor. For a municipality, such extension may not exceed 30 business days from the date of the grant of the extension by the Supervisor.
- (f) if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought.
- (g) petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days following receipt of a request for public records.
- (h) a petition seeking a waiver of statutory limits to fees described in 950 CMR 32.06(4)(g) must be made in accordance with the following:
 - 1. any records access officer may petition the Supervisor to charge for time spent segregating or redacting records.
 - 2. only a municipal records access officer may petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of \$25 per hour for time required to comply with a request.
 - 3. records access officers shall not petition the Supervisor seeking a waiver associated with the provisions of 950 CMR 32.07(2)(l)1. and (m)1.
 - 4. a records access officer shall respond to a request within five business days of receipt of the Supervisor's determination regarding a petition submitted under 950 CMR 32.06(4)(g).

32.07: Copies of Records; Fees

(1) Copies of Paper and Electronic Records.

- (a) upon request, a requester shall be entitled to receive in hand, by mail, by facsimile or electronically one copy of a public record or any desired portion of a public record.
- (b) as an alternative to obtaining copies of records from a records access officer, a requester shall be permitted, to the extent feasible, and at reasonable times:
 - 1. view and inspect records; or
 - 2. use a personal device such as a camera or portable scanner to copy records.
- (c) the records access officer shall presume that a requester prefers copies provided in machine-readable electronic form,

(m) Municipal Records Access Officers.

1. a municipal records access officer shall not assess a fee for the first two hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record in a municipality with a population of over 20,000.
2. a municipal records access officer in a municipality with a population of 20,000 persons or fewer may assess a fee for the first two hours of time spent compiling, segregating, redacting and reproducing a requested record, provided:
 - i. population data shall be determined by the decennial U.S. Census; and
 - ii. it shall be the burden of the municipal records access officer to provide population data information in responses in which it seeks to assess such fees.
3. a municipal records access officer shall assess no fee of more than \$25 per hour for the cost to comply with a request for public records unless approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).
4. a municipal records access officer shall not assess a fee for time spent segregating and redacting a requested record unless such segregation or redaction is required by law or approved by the Supervisor under 950 CMR 32.06(4)(g) and (h).

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32.08: continued

1. said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08.
2. nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.

(b) the Supervisor may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding. The decision to hold a conference shall be solely in the discretion of the Supervisor.

(4) In Camera Inspections and Submissions of Data.

(a) the Supervisor may require an inspection of the requested record(s) in camera during any investigation or any proceeding initiated pursuant to 950 CMR 32.08.

(b) the Supervisor may require the records access officer to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.

(c) the Supervisor does not maintain custody of documents received from a records access officer submitted for an in camera review. The documents submitted for an in camera review do not fall within the definition of public records. M.G.L. c. 4, § 7(26).

(d) upon a determination of the public record status of the documents, they are promptly returned to the custodian, and no copies shall be retained by the Supervisor.

(e) any public record request made to the Division for records being reviewed in camera would necessarily be denied, as the office would not be the custodian of those records.

(f) attorney-client privileged records voluntarily submitted to Supervisor:

1. a records access officer may voluntarily submit documents to the Supervisor for in camera review;
2. such submission shall not waive any legally applicable privileges claimed by the agency or municipality.

(5) Custodial Indexing of Records.

(a) the Supervisor may require a records access officer or custodian to compile an index of the requested records within the context of a public records appeal under 950 CMR 32.08.

(b) said index shall be a public record a a pubodiaac-10 (t) the f pubodilerequ12 BDC -0.0064 (a)-2 (e)4 (x)-1 (R)-3 (32.08.)TJ()TjEMC 9is