

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

Rebecca S. Murray
Supervisor of Records

July 17, 2019
SPR19/1324

Julie Ciollo, Esq.
Assistant General Counsel/Records Access officer
Office of the General Counsel
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 3910
Boston, MA 02116

Dear Attorney Ciollo:

I have received the petition of Colman Herman appealing the response of the Massachusetts Bay Transportation Authority (MBTA) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on June 20, 2019, Mr. Herman requested “. . . hard copies and electronic copies of any and all settlement agreements, exit agreements, severance agreements, separation agreements, and/or the like executed with former employees by the [MBTA].” Mr. Herman mentioned that “[t]his is for the period January 1, 2018 to the present.” The MBTA responded on July 1, 2019, providing a fee estimate. Objecting to the fee, Mr. Herman petitioned this office and this appeal, SPR19/1324, was opened as a result.

Fee estimates – agencies

An agency 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).

Agencies may not assess a fee for the first four hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested. G. L. c. 66, § 10(d)(ii). Where appropriate, agencies 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. 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)(ii); 950 C.M.R.

32.06(4).

The MBTA's July 1st fee estimate

In its fee estimate, the MBTA states that “[i]n order to fully comply with [Mr. Herman’s] request, all responsive agreements must be compiled from various electronic and hard copy sources within the MBTA, reviewed for any applicable exemptions, and redacted in accordance with the Public Records Law.” The MBTA’s fee estimate indicates the following: “[s]earch and compilation time: 2.00 hours[;] [r]edaction (to the extent allowed by Supervisor of Records) time: 9.00 hours[;] Reproduction time: 1.00 hours[;] [t]otal estimated time: 12.00 hours[.]”

The MBTA further states that its hourly rate of \$25.00 per hour, “. . . is 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 the records requested.” The MBTA states that “[n]o fee will be assessed for the first four hours of work. Therefore, the estimated cost of complying with [Mr. Herman’s] request is 8 hours of chargeable work at \$25.00 per hour, or \$200.00.”

Fees to search for, compile, segregate, redact or reproduce a record request

The Regulations provide that in cases where necessary to reproduce the requested records a records access officer may charge a fee to search for, compile, segregate, redact or reproduce a record requested based on the hourly rate of the lowest paid employee who is capable of performing the task. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.07(2). Additionally, the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record. Id. An agency may not charge for segregation and redaction unless required by law or a petition has been filed and approved by the Supervisor of Records. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.06(4).

The MBTA previously submitted a petition related to the ability to assess fees for time spent segregating and/or redacting responsive records. See SPR19/1263 Determination of the Supervisor of Records (June 27, 2019). Please refer to the determination in SPR19/1263 for analysis of this issue.

While I found in SPR19/1263 that the MBTA may assess a charge for the segregation and redaction of exempt material under Exemptions (c) and/or (o) of the Public Records Law, based on the MBTA’s July 1st fee estimate, it is unclear why it requires a total of 9 hours to redact the responsive records. Particularly, it is unclear the number of records the MBTA is looking to redact and the number of pages there are. It is additionally uncertain how many minutes per page the MBTA requires to review the responsive records. The MBTA must clarify these issues.

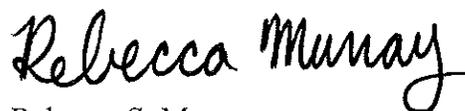
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Conclusion

Accordingly, the MBTA is ordered to provide Mr. Herman with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

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: Colman Herman