



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

Rebecca S. Murray
Supervisor of Records

November 21, 2018
SPR18/1649

Kelly J. Cote, CMC
Town Clerk
Town of Uxbridge
21 South Street
Uxbridge, MA 01569

Dear Ms. Cote:

I have received the petition of Justin Piccirillo appealing the response of the Town of Uxbridge (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on October 15, 2018 Mr. Piccirillo requested a copy of: “all text or other electronic messages made to or from the phone of [an identified employee]– from the dates of Feb 5, 2018 to present.”

In an October 23, 2018 response, the Town provided a fee estimate totaling \$415. The estimate included approximately 15 hours at a maximum rate of \$25.00 per hour. The Town’s estimate also added a fee for: “a software subscription to allow the printing and transposing of the texts at a cost of \$40.00.” Upon receipt of the estimate, Mr. Piccirillo objected to paying the cost of the software subscription. He stated, “[m]unicipalities may not recover fees associated with record organization.” As a result, the Town revised its fee estimate by eliminating the \$40 software subscription charge, and provided a revised cost of \$375.

On November 8th, Mr. Piccirillo petitioned the Supervisor of Records (Supervisor) regarding the October 23rd revised estimate, and this appeal was opened.

Fee Estimates

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

A municipality 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).

Municipalities may not assess a fee for the first (two) 2 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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.* However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor under a petition under G. L. c. 66, § 10(d)(iv).

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 under a petition under G. L. c. 66, § 10(d)(iv). G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

The Town's October 23, 2018 fee estimate

On October 23rd, the Town provided an estimate of 15 hours of time at \$25.00 per hour for a total of \$375.00. The Town's estimate simply states, "[i]t will take approximately 15 hours to process the texts at the maximum rate of \$25 per hour." This estimate did not specify what tasks allowed by the Public Records Law and its Regulations would be undertaken and why the Town estimates that it will take 15 hours to complete the tasks. Nor, did the Town explain which employee's hourly rate was used to calculate the fee and whether that hourly was the lowest paid hourly rate of the employee who was capable of undertaking the tasks involved to produce the records.

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

The Regulations provide that in cases where it is necessary to reproduce the requested records, a records access officer (RAO) 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.*

Employee time

The Regulations provide that a municipality with a population of 20,000 or fewer may assess a fee for the first two hours of work performed. 950 C.M.R. 37.07(2)(m)(2). Population data shall be determined by the decennial U.S. Census and it is the burden of the municipal RAO

to provide such information in its response. 950 C.M.R. 37.07(2)(m)(2)(i-ii). The Town did not indicate whether it is required to waive the first two hours of time due to its population. The Town should indicate its population and whether it may charge for the first two hours of time.

In a November 20th telephone conversation with a Public Records Division staff attorney, you explained that the Town assessed the maximum allowable hourly rate of \$25.00 for the tasks necessary to complete the request, because the employee who will complete the tasks has an hourly rate in excess of the \$25.00 per hour maximum. The Town indicated that the request for the text messages pertains to the Town Manager's cell phone, and therefore, the Town Manager will search for and compile the text messages.

Based on the Town's October 23rd revised fee estimate, it is unclear why the Town requires 15 hours of the Town Manager's time to complete the tasks necessary to provide Mr. Piccirillo with the responsive text messages. Whereas the Town has not met its burden of specificity in assessing the number of hours and explaining why the estimated amount to time is required to produce the records, the Town must provide more detail regarding the tasks and the amount of time for each task undertaken by the Town Manager. The Town's estimate is also uncertain how many hours were allocated to search, compilation and printing or copying of the records. Therefore, the Town must clarify this estimate.

For the reasons discussed above, I find the Town must revise its fee estimate or provide further explanation of how the fee assessed in its October 23 and November 1st revised estimate as to the total amount of \$375 is consistent with G. L. c. 66, § 10(d).

Conclusion

Accordingly, the Town is ordered to provide Mr. Piccirillo with a revised fee estimate for the request, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) 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,



Rebecca S. Murray
Supervisor of Records

cc: Justin Piccirillo