



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

Manza Arthur  
Supervisor of Records

December 19, 2024  
**SPR24/3274; SPR24/3298**

Joanne M. Roomey  
Records Access Officer  
City of Salem – Legal Department  
143 Fort Avenue  
Salem, MA 01970

Dear Ms. Roomey:

I have received the petition of Adam Nuñez appealing the response of the City of Salem (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On October 18, 2024, Mr. Nuñez filed three identical public records requests with the City of Salem – Mayor’s Office, City of Salem-Department of Public Works and the Salem Police Department requesting the following records:

From the dates of June 8, 2024 - June 27, 2024, all email, phone, text, fax, and any other applicable digital, written, or recorded communications, both within and in-between the Salem Police Department, Salem Department of Public Services, and the Salem Mayor’s office, leading up, to that took place during, and took place after, the eventual dispersal and removal of the tent encampment commonly known as the ‘South River encampment,’ ‘Wendy’s encampment,’ or ‘Tent City’ in Salem, Massachusetts on June 26, 2024. Including, but not necessarily limited to, all applicable communications surrounding the dispersal orders posted by the Salem Police Department at the same tent encampment on June 13, 2024 and June 21, 2024, as well as the decision by [an identified individual] to confirm in a story published by the Boston Globe on June 25, 2024 titled, “Salem homeless encampment coming to an end,” that the plan was to sweep the tent encampment “around 10 or 11” on June 26, 2024.

In particular, I am requesting the communication records of [identified individuals][.]

***Previous Appeal***

This request was the subject of a previous appeal. See SPR24/3173 Determination of the Supervisor of Records (November 27, 2024). In my November 27<sup>th</sup> determination, I closed the

appeal after the City provided a response to Mr. Nuñez on November 25, 2024. Unsatisfied with the City's November 25<sup>th</sup> response, Mr. Nuñez appealed, and SPR24/3274, was opened. It is my understanding that the City provided a fee estimate to each of the October 18<sup>th</sup> requests on November 1, 2024.

Subsequently, this office received a petition from Mr. Nuñez on December 9, 2024, appealing the nonresponse of the Salem Police Department (Department) to his October 18<sup>th</sup> request. As a result, SPR24/3298, was opened.

### ***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. See G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

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.

### ***The City's November 1<sup>st</sup> and November 25<sup>th</sup> responses***

In its November 1, 2024 response, the City provided Mr. Nuñez with a fee estimate, stating, "... we are still evaluating your request. Our best estimate for costs at this time based on the current request is approximately four to six hours to search emails. The city does not have a fax archiver. We are presently evaluating our ability to search text messages. Review for redaction of these records would be estimated preliminarily to be ten hours. For a cost total of sixteen hours. At a rate of \$25 per hour, with two-hours free, we presently estimate your cost to be \$350."

In its November 25, 2024 response, the City provided a timeframe for fulfilling the request.

### *Current Appeal*

In his petition to this office, Mr. Nuñez stated “[t]o date, I have yet to receive any response from the Salem Police Department regarding a response to my public records request that was due 12/03/24.” Mr. Nunez further stated, “I would request that fees be waived as this request is in the public interest. I am a journalist that has reported about the ‘South River encampment’ in the past for local papers such as the Daily Item, and the information requested is intended to be used journalistically in a story surrounding the dispersal of the encampment and the community members affected. I do believe this request is in the public interest...”

### *Fee Waivers*

G. L. c. 66, § 10(d)(v) provides the following with respect to waiving a fee for the production of responsive records:

the records access officer may waive or reduce the amount of any fee charged under this subsection upon a showing that disclosure of a requested record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor, or upon a showing that the requestor lacks the financial ability to pay the full amount of the reasonable fee.

Please be advised, although the Supervisor may encourage fees to be waived, the Supervisor may not mandate that a records access officer waive fees assessed for complying with a public records request; rather, as described above, the records access officer *may* waive or reduce the amount of any fee upon a showing of various factors. See G. L. c. 66, § 10 (d)(v); see also 950 C.M.R. 32.07(2)(k).

Where it appears the City provided a fee estimate to fulfill Mr. Nuñez’s request, it is unclear the basis of Mr. Nuñez’s appeal. Mr. Nuñez is advised that all petitions for appeal “shall specifically describe the nature of the requestor’s objections to the response or failure to timely respond.” 950 C.M.R. 32.08(1)(f). If Mr. Nuñez is unsatisfied with the fee estimate provided by the City, he may appeal the City’s fee estimate within 90 days. See 950 C.M.R. 32.08(1).

### *Conclusion*

Accordingly, I will consider this administrative appeal closed.

Joanne Roomey  
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Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is written in a cursive, flowing style.

Manza Arthur  
Supervisor of Records

cc: Adam Nuñez  
James Wellock, Esq.