



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

Manza Arthur
Supervisor of Records

January 10, 2025
SPR24/3443

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 Salem Mayor's Office, 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 Appeals

This request was the subject of previous appeals. See SPR24/3173 Determination of the

Supervisor of Records (November 27, 2024); SPR24/3274 and SPR24/3298 Determination of the Supervisor of Records (December 19, 2024). In my December 19th determination, I found that the basis of Mr. Nuñez's appeal was unclear, and advised that Mr. Nuñez may appeal the City's fee estimate. Subsequently, Mr. Nuñez again petitioned this office, and this appeal, SPR24/3443, was opened as a result.

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. 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.

Fee Estimates - Municipalities

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

The City's November 1st Fee Estimate

In its November 1, 2024 response, the City provides Mr. Nuñez with a fee estimate totaling \$350. The City explains the following regarding its fee estimate:

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.

Additionally, the City offered suggestions to narrow the scope of the request.

Current Appeal

In his appeal petition, Mr. Nuñez explains the following:

In the Salem Police Department's November 1 response, a request to modify my original request was made. While at the time I had denied, in the interest of both lowering potential fees and lessening the burden of the records' custodian, I would like to modify my request to just email communications, given the City's admission of text messages and faxes being harder to search for.

Subsequent to the opening of this appeal, in an email to this office and Mr. Nuñez on December 30, 2024, an attorney for the City states the following:

Incorporating your modification of "just email communications" does not reduce the fee estimate that was provided on 11/1 because, as stated then, that estimate was provided specifically for the email portion of the request and not for all the other mediums of communication requested as we were investigating whether and to what extent those mediums could be centrally searched and produced from or whether they would need to be hand-gathered on individual bases, etc.

In further emails to the City and this office on December 31, 2024 and January 3, 2025, Mr. Nuñez indicates a willingness to further narrow the scope of his request.

Where Mr. Nuñez has shown a willingness to modify the scope of the request, this office encourages Mr. Nuñez and the City to continue communicating directly in order to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (a municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor

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to modify the scope of the request if doing so would enable the municipality to produce the records sought more efficiently and affordably). Any revision to the request would result in the requirement to issue a revised fee estimate.

Conclusion

Accordingly, I will consider this administrative appeal closed. If issues remain after further communication, Mr. Nuñez may file an appeal.

Sincerely,

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

Manza Arthur
Supervisor of Records

cc: Adam Nuñez
James F. Wellock, Esq.