



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

Rebecca S. Murray
Supervisor of Records

June 15, 2021
SPR21/1364

Kate Silvia
Director of Communications
Department of Correction
50 Maple Street
Milford, MA 01757

Dear Ms. Silvia:

I have received the petition of Clarie Masinton appealing the response of the Department of Correction (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 11, 2021, Ms. Masinton requested numerous records regarding video call service in NCI-Norfolk. On April 2, 2021, the Department provided a response indicating that it was processing Ms. Masinton's request. Having not received the requested records, Ms. Masinton petitioned this office and this appeal, SPR21/1364, 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 town 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.

The Department's April 2nd response

In its April 2nd response the Department stated, "... your check was received and we are in the process of redacting the requested records."

G. L. c. 66, § 10(b) provides, in pertinent part, that if the magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality cannot provide records within 10 business days, the agency or municipality must inform the requestor in writing within 10 business days. With respect to the timeframe to produce responsive records, the written response shall:

identify a reasonable timeframe in which the agency or municipality shall produce the public records sought; provided, that for an agency, the timeframe shall not exceed 15 business days following the initial receipt of the request for public records and for a municipality the timeframe shall not exceed 25 business days following the initial receipt of the request for public records; and provided further, that the requestor may voluntarily agree to a response date beyond the timeframes set forth herein.

G. L. c. 66, § 10(b)(vi).

Where Ms. Masinton's request was submitted on March 11, 2021, and the Department has not provided responsive records, I find Department has not met its burden in responding to the request in accordance with G. L. c. 66, § 10(b)(vi). Consequently, I find the Department must provide an estimated date as to when it intends to complete the search and provide the outstanding records. See G. L. c. 66, § 10(a) (records must be provided without unreasonable delay). To the extent possible, the Department must provide responsive records on a rolling basis.

Conclusion

Accordingly, the Department is ordered to provide Ms. Masinton with a response to the request, provided 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: Clarie Masinton