



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

Rebecca S. Murray
Supervisor of Records

November 24, 2020
SPR20/2212

Lt. Kevin Ware
Braintree Police Department
282 Union Street
Braintree, MA 02184

Dear Lt. Ware:

I have received the petition of an anonymous requestor appealing the response of the Braintree Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, the requestor sought “any and all records relating to internal affairs complaints against Braintree Police Department officers between January 1, 2010 - August 8, 2020,” including 9 particular categories of information related to the complaints.

Previous Appeal

This request has been the subject of a previous appeal. See SPR20/1952 Determination of the Supervisor of Records (October 27, 2020). In my October 27th determination, I found that the Department had not met its burden to support its fee estimate of \$3,625. The Department provided a supplemental response on November 10, 2020, providing additional explanation regarding the information it intends to redact from the requested records. Unsatisfied with this response, the requestor petitioned this office and this appeal, SPR20/2212, was opened as a result.

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 fewer. 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 Department's Fee Estimate

In its September 17th fee estimate, the Department estimates that it will require 140 hours to produce responsive records, for a total cost of \$3500. The Department estimates it will produce approximately 100 internal affairs files, with an associated copying cost of \$125, for a total cost for production of records of \$3625.

Fees to search for, compile, segregate, redact or reproduce responsive records

In its November 10, 2020 response, the Department indicates that it has identified information contained in the requested records that subject to redaction pursuant to Exemptions (a), (c), and (f) of the Public Records Law. With respect to Exemption (a), the Department indicates that “the records requested contain information not subject to disclosure as Criminal Offender Record Information (CORI) and Criminal History Record Information (CHRI). . . .” The Department states that “CHRI includes ‘information collected nationwide by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release’ and is contained within Board of Probation and other arrest records and incident reports contained in the documents.”

To the extent that the requested records contain this information, it may permissibly charge for time spent redacting this information. See 950 C.M.R. 32.07(2)(m)(4).

Compliance with G. L. c. 66, § 10(b), (e)

In my October 27th determination, I found it was unclear whether the Department had provided a response to the requestor within ten business days as required by G. L. c. 66, § 10(b), and accordingly whether the Department may permissibly charge a fee to respond to this request. See G. L. c. 66, § 10(e).

In its November 10th response, the Department explains that it received the request on August 11, 2020, and on August 12, 2020 provided a response to the requestor indicating additional time would be required to fulfill the request. G. L. c. 66, § 10(v), (vi).

Calculation of Time to Produce Records

In its fee estimate, the Department states that “the information requested exists in paper form and will require a hand search to identify and segregate responsive documents. Further, as a result of the time period requested, some of the information may be maintained in archives and will need to be retrieved in order to complete the search.” In the Department’s September 14th response, it estimates that it will require 40 hours for the search and segregation of responsive records, and an additional 100 hours for redaction of the records. Despite the Department’s response, I find it is unclear how it arrived at these figures. The Department must provide further information regarding how it calculated this estimate.

Conclusion

Accordingly, the Department is ordered to provide the requestor with a revised fee estimate for this request, in a manner consistent with this order, the Public Records Law and its Regulations as soon as practicable. 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: Records Requestor