

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 32.00: PUBLIC RECORDS ACCESS

Section

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32.01: Scope and Purpose

(1) 950 CMR 32.00 describes the practices and procedures of the Division of Public Records relative to the requirements of governmental entities or political subdivisions of the Commonwealth with respect to disclosure of public records, reporting requirements for certain records access officers and ensuring that disputes regarding access to particular records are resolved expeditiously and fairly. 950 CMR 32.00 shall not limit the availability of other remedies provided by law.

(2) The Division of Public Records is under the supervision of the Supervisor of Public Records. The Supervisor may amend and rescind such rules, forms and orders as are contemplated by the provisions of the Massachusetts General Laws and as are necessary to carry out their purposes.

(3) The Supervisor of Public Records may authorize exceptions to 950 CMR 32.00 with respect to any specific requirement provided that such exceptions to 950 CMR 32.00 are in conformity with the provisions of the Massachusetts General Laws.

32.02: Definitions

For the purposes of 950 CMR 32.00 unless the context otherwise requires, the following terms shall have the meanings indicated:

Advisory Opinion. An opinion issued by the Supervisor of Public Records intended to provide guidance on issues related to public records access and retention.

Agency. Any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth that is identified in M.G.L. c. 66, § 6A and c. 4, § 7, clause Twenty-sixth and makes or receives "public records", as defined in 950 CMR 32.02. Agency includes any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in M.G.L. c. 32, § 1.

Business Day. Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

Commercial Purpose. The sale or resale of any portion of the public record or the use of information from the public record to advance the requester's strategic business interests in a manner that the requester can reasonably expect to make a profit including in addition to the foregoing, obtaining names and addresses from the public record for the purpose of solicitation. It does not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government or for academic, scientific, journalistic, or public research or education.

Custodian. Any governmental entity that makes or receives public records.

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(a) agency designation of primary and secondary records access officers; reporting requirements:

1. each agency shall designate one primary records access officer responsible for reporting information to the Secretary pursuant to M.G.L. c. 66, § 6A(e) and 950 CMR 32.05(1)(c).
2. a primary records access officer shall submit a notification of such designation to the Division electronically in a manner determined by the Division.
3. the primary records access officer may notify the secondary record access officers to facilitate reporting such information.
4. the primary records access officer shall electronically notify the Secretary of the designation of secondary records access officers electronically in a manner determined by the Division.
5. the agency shall maintain and update information regarding primary and secondary records access officers electronically, including changes in personnel identified as primary and secondary records access officers, in a manner determined by the Division.

(b) agency records access officers shall electronically report to the Secretary the information described in 950 CMR 32.05(1)(c) 1. through 9. in a manner determined by the Secretary.

(c) an agency records access officer shall report to the Secretary with respect to written requests for public records and responses to these requests for each calendar year ending December 31st:

1. the nature of each request and the date on which each request was received;
2. the date on which a response is provided to the requester;
3. the date on which a public record is provided to the requester;
4. the number of hours required to fulfill the request;
5. fees charged to the requester, if any;
6. records access officer petitions to the Supervisor submitted under M.G.L. c. 66, § 10(d)(iv) and 950 CMR 32.06(4)(g) and (h);
7. requests appealed to the Supervisor under M.G.L. c. 66, § 10A and 950 CMR 32.08(1);
8. the time required to comply with the Supervisor's orders under M.G.L. c. 66, § 10A; and
9. the final adjudication of any associated court proceedings under M.G.L. c. 66, § 10A(d).

(d) the Supervisor may make exceptions to the reporting requirement in 950 CMR 32.05(1)(c) for particular classes of records, such as:

1. certified copies of records;
2. registry of deeds records;
3. incorporation records;
4. vital records;
5. criminal offender record information requested by the offender, representative, or other authorized recipient.

(e) all information must be provided in accordance with 950 CMR 32.05(1) within ten business days of the last day of the calendar year.

(f) an agency shall provide on a searchable website electronic copies, accessible in a commonly available electronic format, of the following types of records, provided that any agency may withhold any record or portion thereof in accordance with state or federal law:

1. final opinions, decisions, orders, or votes from agency proceedings;
2. annual reports;
3. notices of regulations proposed under M.G.L. c. 30A;
4. notices of hearings;
5. winning bids for public contracts;
6. awards of federal, state and municipal government grants;
7. minutes of open meetings;
8. agency budgets; and
9. any public record information of significant interest that the agency deems appropriate to post, such determination to be made by each agency on a case-by-case basis.

32.05: continued

- (g) an agency shall post records online pursuant to 950 CMR 32.05(1)(f) as soon as practicable on a website maintained by the agency. The website copy shall not be deemed the record copy for retention purposes. 950 CMR 32.05(1)(f) and (g) shall apply only to records made or received on or after January 1, 2017.
- (h) an agency may fulfill the requirements of 950 CMR 32.05(1)(f) and (g) by providing links to other agency websites that provide access to the categories of records described in 950 CMR 32.05(1)(f) 1. through 9.; provided, however, that the website is searchable and provides electronic copies, accessible in a commonly available electronic format.

32.06: Rights of Access

(1) Requests for Public Records.

- (a) requests for public records may be made orally in person to a records access officer or custodian or may be written. Telephone requests may be accepted at the discretion of the records access officer.
- (b) requests for public records shall include a reasonable description of the requested record to the records access officer so that he or she can identify and locate it promptly.
- (c) written requests may be delivered by a requester to the business address or designated website or email address of a records access officer or custodian:
 - 1. by hand;
 - 2. by mail;
 - 3. by electronic mail; or
 - 4. by facsimile, if custodian has facsimile access.
- (d) a records access officer shall not require a particular form be used by requesters, but may make forms available for requesters.
- (e) a person shall not be required to make a personal inspection of the record prior to receiving a copy.
- (f) calculation of time will commence only for requests that are made in accordance with 950 CMR 32.06(1).
- (g) a request for records in which an individual, or representative of the individual has a unique right of access by statutory, regulatory, judicial or other applicable means, shall not be considered a request for public records.

(2) Records Access Officer Response to Requests for Records.

- (a) a records access officer or designee shall permit inspection or provide or furnish a copy of all public records within the custody and control of the custodian at reasonable times and without unreasonable delay under M.G.L. c. 66, § 10(a).
- (b) if applicable, a records access officer shall provide a written response under M.G.L. c. 66, § 10(b) to a request for public records no later than the tenth business day following the receipt of a request notwithstanding the applicability of any petition filed pursuant to 950 CMR 32.06(4).
- (c) a records access officer shall not charge a fee for the provision of a public record unless the records access officer responded to the requester within ten business days under M.G.L. c. 66, § 10(b).
- (d) if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request, unless an extension of time is permitted in a manner consistent with 950 CMR 32.06(2)(i) and (4).
- (e) a written request for records, regardless of the form of delivery, will be deemed received on the first business day following receipt the request by the records access officer; an oral request will be deemed received on the day it was made.
- (f) a records access officer may delay provision of records until all fees related to such requests are paid in full by the person seeking access to the requested records in accordance with 950 CMR 32.07.
- (g) a records access officer shall, when appropriate, suggest a reasonable modification of the scope of the request or offer to assist the requester to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably.

32.06: continued

- (e) a petition for extension of time described in 950 CMR 32.06(4)(d) shall include a brief narrative detailing why an extension of time is necessary. Upon a showing of good cause, the Supervisor may grant a single extension. For an agency, such extension may not exceed 20 business days from the date of the grant of the extension by the Supervisor. For a municipality, such extension may not exceed 30 business days from the date of the grant of the extension by the Supervisor.
- (f) if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought.
- (g) petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days after receipt of a request for public records.
- (h) a petition seeking a waiver of statutory limits to fees described in 950 CMR 32.06(4)(g) must be made in accordance with the following:
 1. any records access officer may petition the Supervisor to charge for time spent segregating or redacting records.
 2. only a municipal records access officer may petition the Supervisor for permission to charge fees in excess of the maximum hourly rate of \$25 per hour for time required to comply with a request.
 3. records access officers shall not petition the Supervisor seeking a waiver associated with the provisions of 950 CMR 32.07(2)(l)1. and (m)1.
 4. a records access officer shall respond to a request within five business days of receipt of the Supervisor's determination regarding a petition submitted under 950 CMR 32.06(4)(g).

32.07: Copies of Records; Fees(1) Copies of Paper and Electronic Records.

- (a) upon request, a requester shall be entitled to receive in hand, by mail, by facsimile or electronically one copy of a public record or any desired portion of a public record.
- (b) as an alternative to obtaining copies of records from a records access officer a requester shall be permitted, to the extent feasible, and at reasonable times:
 1. view and inspect records prior to obtaining copies; or
 2. use a personal device such as a camera or portable scanner to copy records.
- (c) the records access officer shall presume that a requester prefers copies provided in machine-readable electronic form, when electronic form is available, unless the requester specifies an alternative preference.
- (d) the records access officer must provide electronic records in native form when possible.
- (e) when designing or acquiring an electronic record keeping system or database the records access officer in cooperation with the custodian shall ensure, to the extent feasible that:
 1. newly acquired or implemented electronic record keeping systems or databases are capable of providing data in a commonly available electronic, machine readable format; and
 2. the newly acquired or implemented electronic record keeping system allows for information storage and retrieval methods permitting retrieval of public portions of records to provide maximum public access.
- (f) furnishing a segregable portion of a public record shall not be deemed to be creation of a new record. This applies to a responsive record in the form of an extract of existing data, as such data exists at the time of the request and is segregable from nonresponsive and exempt data.

(2) Fees.

- (a) a records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection, subject to the provisions of 950 CMR 32.04(5)(d). A records access officer is encouraged to inform a requester of the availability of records online to avoid delays and fees associated with the provision of public records.

32.07: continued

(n) Failure to Pay Fee. A records access officer may provide written notice denying access to public records to a requester who has failed to compensate the custodian for previously produced public records, provided:

1. a fee estimate for a previous request was prepared in compliance with 950 CMR 32.00 and the requester agreed to pay the previous fee;
2. the written notice details the reasons for denial, including an itemized list of any balances attributed to previously produced records.

32.08: Appeals

(1) Appeal to the Supervisor.

- (a) 950 CMR 32.08 shall not apply to records in which an individual, or a representative of the individual, has a unique right of access to the record through statutory, regulatory, judicial or other applicable means.
- (b) a requester may petition the Supervisor for failure by a records access officer to comply with a requirement of 950 CMR 32.00.
- (c) an oral request, while valid as a public record request, shall not be the basis of an appeal under 950 CMR 32.08.
- (d) petitions for appeal of a response by a records access officer must be made within 90 calendar days of the date of the response by a records access officer.
- (e) petitions for appeal of a failure to respond within the timeliness requirements of 950 CMR 32.00 must be made within 90 calendar days of the request.
- (f) all petitions for appeal shall be in writing and shall specifically describe the nature of the requester's objections to the response or failure to timely respond.
- (g) requesters shall provide to the Supervisor complete copies of all correspondence associated with the petition, including:
 1. a complete copy of the letter by which the request was made, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses; and
 2. a complete copy of all written responses associated with requests subject to the petition for appeal, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses.
- (h) in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition.
- (i) if the requester's petition for appeal is related to a previous appeal to the Supervisor, the requester's petition shall refer to the previous appeal number.
- (j) petitions under 950 CMR 32.08 received before 4:00 P.M. shall be opened on the day of receipt. Petitions received after 4:00 PM shall be opened on the following business day.

(2) Dispositions of Appeals.

- (a) the Supervisor shall issue a written determination regarding any petition submitted in accordance with 950 CMR 32.08(1) not later than ten business days following receipt of the petition.
- (b) the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:
 1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation;
 2. the request is designed or intended to harass, intimidate, or assist in the commission of a crime;
 3. the public records request is made solely for a commercial purpose;
 4. the requester has failed to comply with the provisions of 950 CMR 32.08(2).
- (c) upon a determination by the Supervisor that a violation has occurred, the Supervisor shall order timely and appropriate relief.

(3) Hearings and Conferences.

- (a) the Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. The decision to hold a hearing shall be solely in the discretion of the Supervisor.