

**Town of Mashpee Board of Selectmen
Policy 069**

Public Records Access Policy

I. PURPOSE

The purpose of this policy is to establish guidelines and procedures for receiving, processing, and responding to public records requests.

On June 3, 2016, Governor Baker signed into law a major revision of the Public Records Law, which took effect on January 1, 2017. The new law and regulations made several significant changes to how municipalities respond to public records requests. To facilitate compliance with those changes, the Town has designated/appointed four (4) Records Access Officers (RAO) who are authorized to respond to requests for public records relating to specific functional areas/departments as follows:

- Town Manager or designee
- Chief of Police or designee
- Superintendent of Schools or designee
- Town Clerk

II. POLICY

It is the policy of the Town of Mashpee to comply with all laws and regulations relating to requests for public records. Applicable laws and regulations include, but are not limited to, M.G.L. Chapters 7 and 66, as amended by Chapter 121 of the Acts of 2016, and 950 CMR 21 as enacted by the Office of the Secretary of the Commonwealth.

III. DEFINITIONS

The term "public records" is broadly defined to include all documents generated or received by any government body. Examples of documents include, but are not limited to, meeting minutes, audio recordings of meetings, subpoenas, emails, phone message slips, computer generated documents, and routine correspondence along with any and all attachments such as maps, photographs, financial statements and other reports.

For purposes of this policy, all other definitions found in the Public Records Law, M.G.L. Chapter 4, Section 7, Clause 26 and M.G.L. Chapter 66, Section 10, and Public Records Access Regulations 950 CMR 32 shall be applicable.

IV. PROCEDURE

A. Receipt of Request

1. All public records requests shall be submitted to the appropriate RAO as follows:
 - a) Requests for records relating to personnel, legal, or other matters of a confidential nature shall be processed through the Town Manager or his/her designee.

- b) Requests for Police records shall be processed through the Chief of Police or his/her designee.
 - c) Requests for School records shall be processed through the Superintendent of Schools or his/her designee.
 - d) Requests for all other records shall be processed through the Town Clerk.
2. Neither a request form nor any other type of written request shall be required; however, in all cases, the date of receipt of the request shall be duly noted.
 3. It is the responsibility of the requester to seek a specific and identifiable record.
 4. The respective RAO may contact the requester in order to clarify the request and/or to assist the requester in narrowing or refining the request, but may not inquire as to its purpose or intended use.

B. Response to Request

1. Whenever possible, the respective RAO must permit inspection or furnish a copy of the requested public record within 10 business days. Ten (10) business days begins with the first business day following the date of receipt of a request received via e-mail, letter, telephone, facsimile or in person. For purposes of this policy, "business days" shall be defined as Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m., except legal holidays and any day that Town Hall is closed due to emergency, weather, or other occasion requiring a closure.
2. The respective RAO shall provide the requested public record in an electronic format, unless the record is not available in an electronic format, or the requester does not have the ability to receive or access the records in a useable electronic format.
3. The respective RAO is only required to provide records that are in existence at the time of a request. The respective RAO is not required to create a new record to accommodate a specific request, nor is he/she required to supplement its response to a previous public records request should a responsive record become available in the future.
4. If the respective RAO cannot produce the record within 10 business days, the RAO must respond to the requester in writing, identifying either the reason for withholding the record or a reasonable timeframe in which the RAO will produce the record.
5. If a public records request is particularly complex or burdensome, or if the anticipated response time is more than 25 business days, the respective RAO *may* seek a further extension of up to 30 business days. Requests for further extensions must be made in writing to the Supervisor of Records within 20 business days of receipt of the request, and the requester shall be notified in writing that an extension has been requested. When requesting an extension, the RAO shall demonstrate "good cause" as to why an extension is needed. The Supervisor of Records must provide a response within five business days of receipt of the request. Examples of good cause include:
 - a. Amount of time needed to research or redact records
 - b. Office hours and staff availability
 - c. Efforts undertaken to respond

- d. Volume of existing requests
- e. Frequency of requests, including any series of contemporaneous requests that are frivolous, or intended to intimidate or harass.

If more time is granted, unless otherwise stated by the Supervisor of Records, the last date to provide full response will be 55 business days from the date the public records request was first received.

6. When denying disclosure of a requested record, the respective RAO shall do so in writing, citing the specific "Exemption" being applied under the law. The respective RAO must also inform the requester of his/her right to appeal the denial to the Supervisor of Records or directly to the courts. The respective RAO has the option of seeking an opinion from the Supervisor of Records before rendering a decision regarding the denial of access.
7. The Supervisor of Records' preferred contact method is via email at pre@sec.state.ma.us.

Supervisor of Records
Division of Public Records
Office of the Secretary of State
One Ashburton Place, Room 1719
Boston, MA 02108

C. Processing and Document Fees

1. The Supervisor of Records' Public Access Regulations allowing records custodians to charge five (5) cents for black and white paper copies or computer printouts of records for both single and double-sided sheets was codified and will remain effective with the new law.
2. Beginning January 1, 2017, municipalities with populations of 20,000 or fewer will be permitted to charge for employee time expended in connection with a public records request. Fees will not exceed the actual cost of reproducing, searching for, or complying with the public record request. The Town may assess a fee equal to the hourly rate of the lowest paid employee with the skills necessary to search for, compile, segregate, redact, or reproduce a requested record. However, the fee shall not exceed \$25/hour, unless approved by the Supervisor of Records.
3. Municipalities will be permitted to charge for the actual cost of an electronic storage device when one is provided to the requester in connection with a public records request. A requester may provide his/her own device.
4. Should a requester seek to have records provided by mail, the requester will be charged the actual cost of postage, using the least expensive form of mailing possible, unless the requester agrees to pay for an expedited form of mailing and such fees are paid in advance.
5. If fees are to be charged, the respective RAO shall provide an itemized good-faith estimate to assist the requester in determining whether to cancel, limit the extent of, or proceed with the request. Fees may only be collected if an estimate was provided in writing and agreed to prior to the compilation of documents. The respective RAO may deny a request if fees are not paid prior to release of the records.

6. If the respective RAO fails to either acknowledge, respond to, or comply with a public records request within 10 business days, no fees shall be assessed in connection with the request.

D. Administrative Appeals

If the Town fails to comply with a public records request or exceeds the time to act without written permission from either the requester or Supervisor of Records, the requester may file an appeal to the Supervisor of Records, who will then issue a determination on the public status of the records within 10 business days of receipt of the request for an appeal.

E. Civil Action and Attorney Fees

An individual requestor or the Massachusetts Attorney General, or both, may file a civil action in Superior Court to enforce the requirements of the Public Records Law. In these cases, the burden is on the Town to prove that a record was appropriately withheld. If a requestor prevails in a court action against the Town, the court may award attorney fees or costs to the requester.

The following are enumerated Exemptions to the Public Records Law:

Exemptions

Exemption (a) – The Statutory Exemption, applies to records that are: *specifically or by necessary implication exempted from disclosure by statute* **MGL c. 4, § 7(26) (a)**.

Exemption (b) applies to records that are: *related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.* **MGL c. 4, § 7(26) (b)**.

Exemption (c) – The Privacy Exemption, as it relates to materials relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. **MGL c. 4, § 7(26) (c)**.

Exemption (d) – The Deliberative Process Exemption, provides a limited executive privilege for policy development. It applies to: *inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this sub clause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.* **MGL c. 4, § 7(26) (d)**.

Exemption (e) – Employee’s Personal Notebooks, Notebooks and other materials prepared by an employee of the Commonwealth which are personal to him and not maintained as part of the files of the governmental unit. This category does not include materials that are created by virtue of an individual’s public office. **MGL c. 4, § 7(26) (e)**.

Exemption (f) – The investigatory Exemption, provides custodians a basis for withholding: *investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.* **MGL c. 4, § 7(26) (f)**.

Exemption (g) applies to: *trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this sub clause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit.* **MGL c. 4, § 7(26) (g).**

Exemption (h) serves to protect the integrity of the bidding processes used by the government to procure goods and services by allowing a records custodian to withhold the proposals of early bidders from other interested parties. The exemption allows government officials to review bids and proposals in an insulated environment, but also provides for public review of all evaluative materials once a decision is reached. Competitive bidding ensures full publicity of the contract and encourages the guarding of the public welfare. Although the competitive bidding process does not have the advantages of more flexible purchasing policies, the legislature has mandated the process to foster honesty and accountability in government. Specifically, Exemption (h) applies to: *proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.* **MGL c. 4, § 7(26) (h).**

Exemption (i) to provide governmental entities engaged in the acquisition of real property, either through a purchase or an eminent domain proceeding, the same degree of confidentiality that is afforded to private parties. The exemption ensures that the government will not be at a bargaining disadvantage by allowing the other party to use the Public Records Law to gain access to an appraisal prior to completion of negotiations or litigation. Exemption (i) applies to: *appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.* **MGL c. 4, § 7(26) (i).**

Exemption (j) allows records custodians of firearm records to withhold: *the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.* **MGL c. 4, § 7(26) (j).**

No Exemption (k) – Repealed, 1988 Mass Acts 180, § 2. Although Exemption (k) was repealed, the legislature retained the substance of the exemption, incorporating the language into another section of the General Laws. It reads: “... [T]hat part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record as defined by clause Twenty-sixth of section seven of chapter four.”

G. L. c. 78, § 7 operates through Exemption (a) of the Public Records Law to provide a basis for denying access to library circulation records.

Exemption (l) provides a basis for withholding from disclosure: *questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument.* **MGL c. 4, § 7(26) (l).**

Exemption (m) applies to: *contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self-insured and provides health care benefits to its employees. MGL c. 4, § 7(26) (m).*

Exemption (n) applies to: *records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cyber security or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security. MGL c. 4, § 7(26) (n).*

Exemption (o) applies to: *the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6. MGL c. 4, § 7(26) (o).*

Exemption (p) applies to: *the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in sub clause (o). MGL c. 4, § 7(26) (p).*

Exemption (q) allows for the withholding of: *Adoption contact information and indices herefore of the adoption contact registry established by section 31 of chapter 46. MGL c. 4, § 7(26) (q).*

Exemption (r) applies to: *Information and records acquired under chapter 18C by the office of the child advocate. MGL c. 4, § 7(26) (r).*

Exemption (s) applies to: *trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this sub clause shall not exempt a public entity from disclosure required of a private entity so licensed. MGL c. 4, § 7(26) (s).*

Exemption (t) applies to: *statements filed under section 20C of chapter 32. MGL c. 4, § 7(26) (t).* (Members of public retirement boards are required by statute to file a statement of financial interest with the Public

Employee Retirement Administration Commission. The statement of financial interest document is exempt from disclosure under Exemption (t)

Exemption (u) applies to: *trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.* **MGL c. 4, § 7(26) (u).**

***Adopted by the
Mashpee Board of Selectmen
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