



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

Manza Arthur
Supervisor of Records

April 22, 2024
SPR24/1139

Mark J. Purple
Town Administrator
Town of Southborough
17 Common Street
Southborough, MA 01772

Dear Mr. Purple:

I have received the petition of Attorney Jeremy Silverfine appealing the response of the Town of Southborough (Town) to a request for public records. See G. L. c. 66 § 10A; see also 950 C.M.R. 32.08(1). On March 6, 2024, Attorney Silverfine requested:

[1.] Copies of all communications and documents (including, but not limited to texts and emails, contracts, all records demonstrating compliance with M.G.L. c. 30B)) relative to the contract between the Town of Southborough and Fortinet for any WiFi or other service, from 2014 to present.

[2.] Copies of all communications and documents (including, but not limited to texts and emails, contracts) relative to any bids for the contract with the Town of Southborough for their WiFi service, from 2014 to present.

[3.] Copies of all communications and documents (including, but not limited to texts and emails, advertisement for bids, all bids submitted, RFPs, any memos from the Town as to selection of the WiFi provider, criteria used to select vendor, all records demonstrating compliance with M.G.L. c. 30B) relative to any process for bids for the contract with the Town of Southborough for their WiFi service, from 2014 to present.

The Town provided a response on March 6, 2024. Unsatisfied with the Town's response, Attorney Silverfine petitioned this office and this appeal, SPR24/1139, 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. See 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. See 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 Town’s March 6th response

In its March 6, 2024 response, the Town indicates that the request was passed to the Records Access Officer.

In his appeal petition, Attorney Silverfine contends that he has not received any further response from the Town.

Timeliness of providing 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 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 Attorney Silverfine submitted his request on March 6, 2024, and the Town has not yet provided the responsive records, nor cited an exemption for withholding records, I find the Town has not met its burden in responding to the request in accordance with G. L. c. 66, § 10(b). Consequently, I find the Town must provide an estimated date as to when it intends to complete the search and provide the responsive records. See G. L. c. 66, § 10(a) (records must be provided without unreasonable delay). To the extent possible, the Town must provide responsive records on a rolling basis.

Conclusion

Accordingly, the Town is ordered to provide Attorney Silverfine 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 the response to this office at pre@sec.state.ma.us.

Sincerely,

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

Manza Arthur
Supervisor of Records

cc: Jeremy Silverfine