

Appendix

Public Records Law

G. L. c. 4, § 7(26)

“Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) 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;
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) 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;
- (f) 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;

- (g) 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 subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;
- (h) 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;
- (i) 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;
- (j) 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 therefore, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;
- (l) 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;
- (m) 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 non-profit 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.

- (n) records including, but not limited to, blue prints, 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, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.
- (o) the home 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.
- (p) the name, home 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 subclause (o).

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Public inspection and copies of records

G. L. c. 66, § 10 (2004 ed.)

- (a) Every person having custody of any public record, as defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expenses of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts Bay Transportation Authority Police or any municipal police department or fire department: for preparing and mailing a

motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages, plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

- (b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.
- (c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.
- (d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The commissioner of public safety and his agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefore as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of social services, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

1973 Mass Acts c. 1050, § 6

The provisions of clause twenty-sixth of section seven of chapter four of the General Laws, as amended by section one of this act, shall not be construed to exempt any record which was a public record on the effective date of this act from said clause twenty-sixth.

Public Records Access

950 C.M.R. 32.00; G. L. c. 66, § 1 (2004 ed.)

The Supervisor of Records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

Section

32.01: Authority

32.02: Scope and Purpose

32.03: Definitions

32.04: General Provisions

32.05: Rights to Access

32.06: Fees for Copies of Public Records

32.07: Advisory Opinions

32.08: Appeals

32.09: Enforcement of Orders

(950 CMR 32.10 through 32.90: RESERVED)

32.01: Authority

950 CMR 32.00 is hereby issued by the Supervisor of Public Records under the authority of G. L. c. 66, § 1.

32.02: Scope and Purpose

950 CMR 32.00 shall be construed to ensure the public prompt access to all public records in the custody of state governmental entities and in the custody of governmental entities of political subdivisions of the Commonwealth, and to ensure 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.

32.03: Definitions

As used in 950 CMR 32.00:

Custodian means the governmental officer or employee who in the normal course of his or her duties has access to or control of public records.

Division means the Division of Public Records, Office of the State Secretary.

Governmental Entity means any authority established by the General Court to serve a public purpose, any department, office, commission, committee, council, board, division, bureau, or other agency within the Executive Branch

of the Commonwealth, or within a political subdivision of the Commonwealth. It shall not include the legislature and the judiciary.

Public Records means all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof or of any authority established by the General Court to serve a public purpose, unless such materials or data fall within one or more of the exemptions found within G. L. c. 4, § 7(26).

Search time means the time needed to locate, pull from the files, copy, and reshelve or refile a public record. However, it shall not include the time expended to create the original record.

Segregation time means the time used to delete or expurgate data which is exempt under G. L. c. 4, § 7(26) from non-exempt material which is contained in a paper public record.

Supervisor means Supervisor of Public Records.

32.04: General Provisions

- (1) Office address. All communications shall be addressed or delivered to:

*Supervisor of Records
Office of the State Secretary
One Ashburton Place, Room 1719
Boston, Massachusetts 02108*

- (2) Office hours. The offices of the Division shall be open from 8:45 a.m. to 5:00 p.m. each weekday, Monday-Friday, excluding legal holidays.
- (3) Computation of Time. Computation of any period of time referred to in 950 CMR 32.00 shall begin with the first day following the action which initiates such period of time. When the last day of the period so computed is a day on which the offices of the Division are closed, the period shall run until the end of the following business day.

32.05: Rights to Access

- (1) Access to Public Records. A custodian of a public record shall permit all public records within his or her custody to be inspected or copied by any person during regular business hours. In governmental entities

which do not have daily business hours, a written notice shall be posted in a conspicuous location listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.

- (2) Promptness of Access. Every governmental entity shall maintain procedures that will allow at reasonable times and without unreasonable delay access to public records in its custody to all persons requesting public records. Each custodian shall comply with a request as soon as practicable and within ten days.
- (3) Requests for Public Records. Requests for public records may be oral or written. Written requests may be submitted in person or by mail. It is recommended that a record requester make a written request where there is substantial doubt as to whether the records requested are public, or if an appeal pursuant to 950 CMR 32.08(2) is contemplated. A custodian shall not require written requests merely to delay production.
- (4) Description of Requested Records. Any person seeking access to a public record or any portion thereof shall provide a reasonable description of the requested record to the custodian so that he or she can identify and locate it promptly. A person shall not be required to make a personal inspection of the record prior to receiving a copy of it. A custodian's superior knowledge of the contents of a governmental entity's files shall be used to assist in promptly complying with the request.
- (5) Prohibition of Custodial Requests for Background Information. Except when the requested records concern information which may be exempt from disclosure pursuant to G. L. c. 4, §7(26)(n), a custodian may not require the disclosure of the reasons for which a requester seeks access to or a copy of a public record. A custodian shall not require proof of the requester's identity prior to complying with requests for copies of public records.
- (6) Copies. Upon request, a person at his or her election, shall be entitled to receive in hand or by mail one copy of a public record or any desired portion of a public record upon payment of a reasonable fee as determined by 950 CMR 32.06.

32.06: Fees for Copies of Public Records

- (1) Except where fees for copies of public records are prescribed by statute, a governmental entity shall charge no more than the following fees for copies of public records:

- (a) for photocopies of a public record no more than twenty cents (\$0.20) per page;
 - (b) for copies of public records maintained on microfilm or microfiche no more than twenty-five cents (\$0.25) per page;
 - (c) for requests for non-computerized public records a prorated fee based on the hourly rate of the lowest paid employee capable of performing the task may be assessed for search time and segregation time expenses, as defined by 950 CMR 32.03. In addition, a per page copying fee under 950 CMR 32.06(1)(a) and 950 CMR 32.06(1)(b) may be assessed;
 - (d) for computer printout copies of public records no more than fifty cents (\$0.50) per page;
 - (e) for a search of computerized records the actual cost incurred from the use of the computer time may be assessed;
 - (f) for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing a copy may be assessed.
- (2) Estimates. A custodian shall provide a written, good faith estimate of the applicable copying, search time and segregation time fees to be incurred prior to complying with a public records request where the total costs are estimated to exceed ten dollars (\$10.00).
- (3) Postage. A custodian may assess the actual cost of postage.
- (4) Inspection of Public Records. A custodian may not assess a fee for the mere inspection of public records, unless compliance with such request for inspection involves “search time” in which case a fee under 950 CMR 32.06(1)(c) may be assessed.
- (5) Waiver of Fees. Every custodian, unless otherwise required by law, is encouraged to waive fees where disclosure would benefit the public interest.
- (6) Street Census Computer Tapes and Mailing Labels - Reproduction Fees for City and Town Committee Chairman.

Where “street list” data collected under G. L. c. 51, §§ 6-7, is compiled on computer tapes:

- (a) City or town registrars of voters shall provide, or cause their agents to provide, copies of said computer tapes to the chairman of each city or town committee for a fee of no more than one cent (\$0.01) per name, provided that a minimum fee of no more than ninety dollars (\$90.00) may be assessed. No fee assessed under 950 CMR 32.06(6)(a) shall exceed seven hundred fifty dollars (\$750.00).
- (b) City or town registrars of voters shall provide, or cause their agents to provide, sets of mailing labels made from said computer tapes to the chairman of each city or town committee for a fee of no more than two cents (\$0.02) per label, provided that a minimum fee of no more than fifty dollars (\$50.00) may be assessed.

32.07: Advisory Opinions

Advisory opinions will only be issued upon the Supervisor's initiative.

32.08: Appeals

- (1) **Denial by Custodian.** Where a custodian's response to a record request made pursuant to 950 CMR 32.05(3) is that any record or portion of it is not public, the custodian, within ten (10) days of the request for access, shall in writing set forth the reasons for such denial. The denial shall specifically include the exemption or exemptions in the definition of public records upon which the denial is based. When exemption (a) of G. L. c. 4, § 7(26) is relied upon the custodian shall cite the operational statute(s). Failure to make a written response within ten (10) days to any request for access shall be deemed a denial of the request. The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and G. L. c. 66, § 10(b).
- (2) **Appeal to the Supervisor.** In the event that a person requesting any record in the custody of a governmental entity is denied access, or in the event that there has not been compliance with any provision of 950 CMR 32.00, the requester may appeal to the Supervisor within ninety (90) days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. An oral request, while valid as a public record request pursuant to 950 CMR 32.05(3), may not be the basis of an appeal under 950 CMR 32.08.

It shall be within the discretion of the Supervisor whether to open an appeal concerning a request for public records. The Supervisor may decline to accept an appeal from a requester where the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation. The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the request is designed or intended to harass, intimidate or assist in the commission of a crime. The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the public records request is made solely for a commercial purpose.

Appeals in which there has been no communication from the requester for six (6) months may be closed at the discretion of the Supervisor.

- (3) Disposition of Appeals. The Supervisor shall, within a reasonable time, investigate the circumstances giving rise to an appeal and render a written decision to the parties stating therein the reason or reasons for such decision.
- (4) Presumption. In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.
- (5) Hearings. The Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00. Said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08. Nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.
- (6) In-camera Inspections and Submissions of Data. The Supervisor may require an inspection of the requested record(s) *in camera* during any investigation or any proceeding initiated pursuant to 950 CMR 32.08. The Supervisor may require the custodian to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.

The Supervisor does not maintain custody of documents received from a custodian pursuant to an order by this office to submit records for an *in-camera* review. The documents submitted for an *in-camera* review do not fall within the definition of public records. *See* G. L. c. 66, §10(a) (2004 ed.). Any public record request made to this office for records being reviewed in-camera would necessarily be denied as the office would not be the custodian of those records. *See* 950 CMR 32.03 (defining “custodian” as the government employee who in the normal course of his duties has access to or control over records). Upon a determination of the public record status of the documents, they are promptly returned to the custodian.

- (7) Custodial Indexing of Records. The Supervisor may require a custodian to compile an index of the requested records where numerous records or a lengthy record have been requested. Said index shall meet the following requirements:
- (a) the index shall be contained in one document, complete in itself;
 - (b) the index must adequately describe each withheld record or deletion from a released record;
 - (c) the index must state the exemption or exemptions claimed for each withheld record or each deletion of a record; and,
 - (d) the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt. Nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.
- (8) Conferences. At any time during the course of any investigation or any proceeding, to the extent practicable, where time, the nature of the investigation or proceeding and the public interest permit, the Supervisor, may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding.

32.09: Enforcement of Orders

A custodian shall promptly take such steps as may be necessary to put an order of the Supervisor into effect. The Supervisor may notify the Attorney General or appropriate District Attorney of any failure by a custodian to comply with any order of the Supervisor.

REGULATORY AUTHORITY
G. L. c. 66, § 1; 950 CMR 32.00.

Examples of Exemption (a) Statutes

Abatement Applications: G. L. c. 59, § 60.

Air Pollution Control (Trade Secrets): G. L. c. 111, § 142B.

Alcohol Treatment Records: G. L. c. 111B, § 11.

Bank Examination Records: G. L. c. 167, § 2.

Blind Persons, Commission for the Blind Register: G. L. c. 6, § 149.

Business Schools (Private), Financial Statements: G. L. c. 75D, § 3.

Capital Facility Construction Project Records: G. L. c. 30, § 39R.

Central Registry of Voters: G. L. c. 51, § 47C.

Conflict of Interest, Request for an Opinion: G. L. c. 268A, § 22.

Consumer Protection Investigation: G. L. c. 93A, § 6(6).

Councils on Aging, Names, Addresses and Telephone Numbers of Elderly: G. L. c. 40, § 8B.

Criminal Offender Record Information: G. L. c. 6, § 167.

Delinquency, Sealing by Commissioner of Probation: G. L. c. 276, § 100B.

Department of Social Services, Central Registry: G. L. c. 119, § 51F.

Department of Youth Services Records: G. L. c. 120, § 21.

Drug Addiction Treatment Records: G. L. c. 111E, § 18.

Employment Agencies, Data: G. L. c. 140, § 46R.

Employment Security Data: G. L. c. 151A, § 46.

Exemption of Legislature from Public Records Law: G. L. c. 66, § 18.

Evaluations of Special Needs Children: G. L. c. 71B, § 3.

Executive Sessions: G. L. c. 30A, § 11A; G. L. c. 34, § 9F; G. L. c. 39, § 23B.

Fetal Death Reports: G. L. c. 111, § 202.

Firearms Bureau Records: G. L. c. 66, § 10(d).

Gas and Electric Affiliated Company Records: G. L. c. 164, § 85.

Genetically Linked Diseases, Testing Records: G. L. c. 76, § 15B.

Hazardous Substances Reports: G. L. c. 111F, § 21.

Hazardous Waste Management Records: G. L. c. 21D, § 6.

Hazardous Waste Facilities: G. L. c. 21C, § 12.

Historical and Archaeological Sites and Specimen Inventory: G. L. c. 9, § 26A (1).

Home Addresses and Telephone Numbers of Public Safety Personnel, Victims of Adjudicated Crimes and Persons Providing Family Planning Services: G. L. c. 66, § 10.

Hospital Records: G. L. c. 111, § 70.

Hospitals, Reports of Staff Privilege Revocation: G. L. c. 111, § 53B.

Impounded Birth Records: G. L. c. 46, § 2A.

Inspector General Investigations, Records: G. L. c. 12A, § 13.

Juvenile Delinquency Case Records: G. L. c. 119, § 60A.

Library Circulation Records: G. L. c. 78, § 7.

Malignant Disease Reports: G. L. c. 111, § 111B.

Massachusetts Commission Against Discrimination Investigatory Files: G. L. c. 151B, § 5.

Massachusetts Technology Development Corporation, Corporate Records: G. L. c. 40G, § 10.

Mental Health Facilities Records: G. L. c. 123, § 36.

Merit Rating Plans, Motor Vehicle Insurance: G. L. c. 6, § 183.

Native American Burial Site Records: G. L. c. 9, § 26A (5).

Natural Heritage Programs, Data Base: G. L. c. 66, § 17D.

Patient Abuse Information; Intermediate Care Facilities for Mentally Retarded Citizens, Convalescent, Nursing or Rest Homes: G. L. c. 111, § 72I.

Patient's Rights to Confidentiality of Records; Medical and Mental Health Facilities: G. L. c. 111, § 70E.

Personal Data: G. L. c. 66A, § 1.

Protective Services Records, Aged Persons: G. L. c. 19A, § 23.

Public Assistance Records, Aged Persons, Dependent Children, Handicapped Persons: G. L. c. 66, § 17A.

Public Assistance, Wage Reporting System Information: G. L. c. 62E, § 8.
Rape Reports: G. L. c. 41, § 97D.

Reyes Syndrome Report: G. L. c. 111, § 110B.

Street Lists, Children Aged 3-17, Court Order Granting Protection: G. L. c. 51, § 4(a), (d).

Student Records: G. L. c. 71, § 34D, 34E.

Venereal Disease Records: G. L. c. 111, § 119.

Vocational Rehabilitation Records: G. L. c. 6, § 84.