

Public Records and Security of Personal Information

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Public Employee Retirement Administration Commission

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Public Records – What Are They?

The definition of “public record” contained in G.L. c. 4, § 7, cl. 26 is all encompassing. Every document, paper, record, map, photograph, etc., as defined by law, that is made or received by a government entity or employee is presumed to be a public record. 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 Massachusetts governmental entity is presumed to be a public record. Computer records, electronic mail, video and audiotapes are all public records.

Who Has Access to Public Records and How Do They Get Access?

Anyone who asks for a public record is entitled to receive it. The requester does not have to disclose why they want it or what they intend to do with the records. The request need not be in writing, but in order for the custodian of the records to properly respond, it should be suggested that the request be reduced to writing. The requester must provide a reasonable description of the records sought.

How Must the Custodian Respond to a Request?

The custodian must respond within 10 days with either an offer to provide the records or a detailed denial citing the specific basis for the denial. If a fee in excess of \$10.00 is to be charged, the custodian must give the requester a good faith estimate of the cost. If the request is denied, the denial must include the statutory exemption upon which the denial is based. The denial must also advise the requester of the right to appeal the denial to the Supervisor of Records.

What are the Exemptions?

The exemptions are contained in G.L. c. 4, § 7 (26). A review of the entire list of exemptions should be undertaken, but exemptions that are most relevant to Retirement Boards are records that are:

1. specifically or by necessary implication exempted from disclosure by statute;
2. 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;
3. 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;
4. 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.

Are Minutes of Meetings Public Records?

Minutes of open meetings are public records and are to be made available at the close of the meeting,

regardless of form. The custodian should mark minutes that have not been approved “unofficial”. Minutes of executive sessions become public records and subject to release as soon as the reason stated for the executive session no longer exists.

If the Record Requested Doesn’t Exist, Must It Be Created?

No. The Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received. There is no requirement that a record be created for a requester. The Public Records Access Regulations do not prohibit a custodian from responding to such requests. The custodian has discretion to produce a record, and may charge a reasonable fee for creation of such a record. In creating a new record, the records custodian may charge a fee for the creation of this record on a one-time basis. Any costs due to subsequent requests for this record can be assessed only for production of copies.

Can the Custodian Charge a Fee for Production of Records?

Yes, a reasonable fee may be charged, but the custodian can waive the charge.

A custodian may charge a fee for search and segregation of the records. Search time is the time to locate a record, copy it and return the record to the files. Segregation time is the time to delete information that can’t be released. The custodian can charge the lowest hourly rate of the paid employee capable of conducting the search and segregation. A custodian may charge 20¢ a page for photocopies. A fee of 50¢ a page may be charged for computer printouts. If the records cannot be copied by photocopy, for example tapes or photographs, the custodian can charge the actual cost of reproduction.

What if the Custodian Denies a Request for Public Records?

The requester can appeal to the Supervisor of Records. The appeal must be filed within 90 days and a copy of the request and the denial must be included with the letter of appeal.

Where Can Additional Information be Obtained?

The Secretary of State has published an excellent Guide to the Massachusetts Public Records Law. It can be accessed through the Secretary’s web site at:

<http://www.sec.state.ma.us/index.htm>

What is the New Law Regarding Security of Personal Information?

G.L. c. 93H, was enacted in recognition of serious concerns about identity theft. While some of the more rigorous requirements of the regulations enacted by the Massachusetts Office of Consumer Affairs and Business Regulation (201 CMR 17.00) do not apply to municipalities, the security standards contained in the regulations offer guidance. Governor Patrick issued Executive Order No. 504, “Order Regarding the Security and Confidentiality of Personal Information” mandating certain actions by Executive Department agencies. This Order also provides guidance that will be helpful to Retirement Boards.

The presentation that will follow deals with this important aspect of Retirement Board operations.

How to Identify, Maintain, and Safeguard Personal Information