



# MACRS

## PUBLIC RECORDS: AN OVERVIEW



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## Creation of a Public Record

- A public record is very easily created in Massachusetts.
- The definition of a “public record” is extremely broad.
- Public Record Law contained at G.L. c. 66.
- “Public Record” definition appears in G.L. c. 4, Sect. 7, Clause 26

## G.L. c. 4, Sect. 7, Clause 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, or 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 section 1 of chapter 32, unless such materials or data fall within...[certain] statutory exemptions...

## Section 4 of Chapter 38 of the Acts of 2013 (effective July 1, 2013)

- **SECTION 4.** Section 7 of chapter 4 of the General Laws is hereby amended by inserting after the word “purpose”, in line 137, as appearing in the 2010 Official Edition, the following words:—, or 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 section 1 of chapter 32.

# Presumption

- It is presumed a particular record is public. The burden is on the custodian to prove one of the statutory exemptions apply.
- Given the statutory presumption in favor of disclosure, application of the exemptions are narrowly construed.

# Exemptions

- The law provides for 20 different categories of exemptions, including:
  - Retirement Board member's Statement of Financial Interests (SFI)
  - Personnel and medical files or information
  - The home address and home telephone number of a public employee

# The Guiding Principles

- All records that are created or kept in the files of a Retirement Board are presumed to be public records.
- If a document or portion of a document is not a public record, your duty is to safeguard the information.

## Key Phrases from Definition

- “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...”



## A Public Records Request

- Any requests for documents should be treated as a public records request.
- Custodian may not inquire as to why the record or records are being sought.
- Request need not be in writing.

## Public Records Response

- 10 days to provide the documents to the requester.
- The response sent within 10 days may be a denial.
- If a record does not exist, no duty to create it.

## Public Records Questions

- If you are not sure whether a document is a public record, the Supervisor of Public Records may provide an informal opinion.
- Pursuant to 950 CMR 32.07, “Advisory opinions will only be issued upon the Supervisor’s initiative.”

# Charging Someone for a Public Record

- A person who requests public records can be assessed costs in connection with the production of the documents. The pertinent regulations [950 CMR 32.06] allow a custodian to charge for the cost of searching for the records and segregating materials that are not subject to release. This charge is the hourly rate of the lowest paid employee capable of performing the task. Search time is the time needed to find the record, take it from the file, copy it and return it to the file. Segregation time is the time needed to delete or redact exempt items from the record.

## Other Costs

- In addition to the cost for searching and segregating, a custodian may charge 20¢ per page for photocopies and 25¢ per page for microfilm copies. The maximum that can be charged for computer printouts is 50¢ per page. If the records are not the sort that can be photocopied, actual reproduction costs can be charged.
- If the cost will exceed \$10, the custodian must provide the requester with a good faith written estimate.

## Denial of Public Records Request

- Specific legal basis for denial must be provided.
- Exemption which applies must be identified.
- Requester must be advised of Appeal Rights to the Supervisor of Public Records.