

## MEMORANDUM

To: Cabinet Secretaries  
From: Charles D. Baker, Governor  
Date: July 30, 2015  
Re: Public Records Requests

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Three years ago, a national consortium of good government and media groups gave the Commonwealth a failing grade for its public access to information. Our administration is committed to improving state government's previous poor transparency rankings. To do that, we must comply with, and even exceed, the requirements of our public records law as interpreted by the Secretary of the Commonwealth and the Supreme Judicial Court. While diligent efforts are made every day across the Executive Branch to respond to a large number of public records requests, we can improve our approach so as to reduce delays and costs that burden accessibility.

We also want to provide access in the most helpful way. An inefficient electronic mail storage system currently frustrates the ability of agencies to search and retrieve emails efficiently. Hopefully we can reduce this limitation. MassIT has already started to pilot agency-wide search capability, and will continue to do so throughout the rest of 2015 and the first half of 2016. This new tool will begin to ease the stress of broad email searches.<sup>1</sup>

We know too that requesters want to receive information in electronic, searchable formats. That makes sense. Software tools are available that allow for conversion of electronic documents to a format that permits, when necessary in accordance with applicable law, redaction of personally identifiable information, while still allowing for full text searching. Additionally, to increase responsiveness and create efficiencies, we want to encourage public posting of frequently requested records and data. Mass IT will support you on these initiatives.

This Memorandum provides guidance for the Executive Branch that reflects best practices from around the country. It is intended to help us be reasonable, fair and open – even when requests for records are hard to understand, broad in scope and difficult to fulfill.

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<sup>1</sup> We have launched the program, generally by Secretariat, with several state entities (MassIT, Division of Administrative Law Appeals, Civil Service Commission, George Feingold Library, and Appellate Tax Board) now using MassVault. We will continue roll-out this summer to the A&F central office, the Governor's Office, the Gaming Commission, and several Education agencies. We also will begin the first phase of ongoing work this summer at EOHHS. Implementation at the state's District Attorneys' offices and several EOPSS agencies is slated for this fall. We continue to refine details of the full FY16 roll-out plan as relevant technical and business decisions are reached.

Accordingly, all Secretariats and Agencies should:

**1. Designate a Records Access Officer**

Every secretariat and agency must designate a Records Access Officer (“RAO”) who will receive and track public records requests. The RAO’s contact information should be posted on the agency’s website, along with helpful instructions on how to submit a public record request. The ANF RAO should convene periodic meetings with the other secretariat RAOs to share best practices.

**2. Establish a Public Records Requests Tracking System**

The RAO should establish an internal tracking system that records the agency’s progress in responding to a public record request to ensure compliance with this Memorandum and the public records law. The Governor’s Legal Office will provide an electronic version of its system, if that’s helpful.

**3. Contact Records Requester Early**

The RAO should determine within five days<sup>2</sup> of receiving a public records request whether the agency believes it will take longer than ten days and/or cost in excess of \$10 to produce responsive documents. If that is the case, the RAO should contact the requester by that fifth day to confirm that the agency fully understands the request and optimal search terms, and to see if the requester wants to adjust the request in any way, maybe by narrowing its scope. This should give the agency the chance to agree with the requester on a reasonable and fair production plan.

**4. Waive Search and Retrieval Fees**

While permissible under the public records law to recover costs, agencies should not charge for time spent to inspect, search for, retrieve or redact documents for straightforward requests. Charging for those activities is reasonable if requests are broad in scope or likely to require an extensive collection or redaction effort or produce a large number of documents/pages. In that case, the first four hours of agency work should be performed at no cost; after that, the agency may charge up to \$25 per hour, but not in excess of actual costs, for any work performed by the employee(s) best suited to respond to the request. This should be explained to the requester in advance, as described in Section 3.

**5. Time to Respond to Public Records Requests**

Current practice is to respond to straightforward requests within ten days, and in any event, to correspond to the requester in that period of time to report on the status of the matter. For more voluminous requests, production of records often takes significantly longer than ten days. It is important that we strike the right balance and set clear standards for our response time.

While we should work to produce documents promptly, we cannot exhaust unreasonably valuable personnel time for public records production, including required redaction of documents to prevent the disclosure of confidential, privileged or personal information, at

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<sup>2</sup> “Days” for purposes of this Memorandum means “business days.”

the expense of other important state work. Accordingly, no more than eight hours per week of agency work is required to be dedicated to fulfilling a public record request, or series of related requests, from a single requester. Anticipated time needed to fulfill a request in light of this restriction should be explained to the requester in advance, as described in Section 3. It may make sense to share documents with the requester in stages. Should a response go unfulfilled after eight weeks from the date of the request, the agency must contact the requester as required in Section 6.

Requests for entire, or nearly entire, databases of information do not need to meet the timeframes set out in this Memorandum, but should production require more than eight weeks to fulfill, the agency must contact the requester in writing as required in Section 6. Any time necessary to remove any personal and other protected information from such databases should be charged at up to \$40 per hour, but not in excess of actual costs.

While we are committed to transparency and a fair, more standardized approach to government's obligations under the public records law, we will support agencies challenged by requests lacking a reasonable description of the requested records, so broad in scope as to be unreasonable, or which are made for an otherwise inappropriate purpose.

#### **6. Charge Standardized Production Costs**

It makes sense to standardize production costs. For instance, tying time and cost for production to the number of documents/pages requested should incentivize requesters to carefully develop a records request and narrow its scope. The following guidelines apply. For more detailed guidance, see the attached cost chart.

- For both cost savings and environmental purposes, we should encourage production of electronic documents only. No "duplication" costs may be charged for producing electronic documents. An agency may be reimbursed for the cost of a disc, thumb-drive or other storage device needed to transmit the requested documents. If the requester seeks hard copies of requested documents, agencies should charge 10 cents per page, for both single- and double-sided copies. For copies in color, agencies should charge 50 cents per page.
- Requests for one - four precisely defined documents should be produced respectively at no cost within three - nine days of receipt of the request.
- Agencies are not required to create records or synthesize data in response to a public record request, although they may decide to do so to be helpful if production costs are reasonable.
- Production should be completed within eight weeks. Any extension of that time period must be explained to the requester in writing.

#### **7. Produce Electronically Searchable Documents**

If technically feasible, documents should be produced in an electronic, searchable format that permits, when necessary in accordance with applicable law, redaction. This can be accomplished with certain desktop software for a reasonable investment. For further guidance, contact the Governor's Legal Office.

**8. Coordinate with Related Executive Office and the Governor's Legal and Press Offices Regarding:**

- Any non-routine public records request;
- Any public record request search and production anticipated to exceed eight weeks, requiring a written notice requester under Section 6;
- Any application of an exemption to the public records law under G.L. c. 4, §7 (26) that the requester disputes or that results in an appeal to the Secretary of the Commonwealth or a Massachusetts court; and
- When an agency is otherwise unable to comply with this Memorandum.

**9. Post Frequently Requested Public Records and Information**

To create efficiencies and improve accessibility, agencies should post frequently requested public records and information on their website.

**10. Effective Date**

The terms of this Memorandum are intended to take effect immediately, with the understanding that the first four weeks will be used to put necessary procedures and systems in place. Public record requests made subsequent to that four week period will be subject to the terms of this Memorandum. As we gain experience with the practices set out in this Memorandum, we may update our procedures from time to time.

By following these guidelines, we can improve how we do business as a state, making public information easier to access and sort. Questions should be directed to my Legal Office, at the attention of Lon Povich, Governor's Chief Legal Counsel.

0.1 0.5 PRR Production Cost Chart -- Based on Hours of Labor and Volume of Material Requested  
(\$25/hr, 4 hours free)

Hours of Labor \ Sheets of Paper	*Specific Documents Exemption	electronic only**	B/W 0 - 100	B/W 125	B/W 250	B/W 300	B/W 500	COLOR 500	B/W 1000	B/W 1500	COLOR 1500	B/W 5000
< 1 hr ***	<b>(FREE*) See Note Below</b>	FREE***	\$0.00 - \$10	\$12.50	\$25.00	\$30.00	\$50.00	\$250.00	\$100.00	\$150.00	\$750.00	\$500.00
1 hr ***		FREE***	\$0.00 - \$10	\$12.50	\$25.00	\$30.00	\$50.00	\$250.00	\$100.00	\$150.00	\$750.00	\$500.00
2 hrs ***		FREE***	\$0.00 - \$10	\$12.50	\$25.00	\$30.00	\$50.00	\$250.00	\$100.00	\$150.00	\$750.00	\$500.00
3 hrs ***		FREE***	\$0.00 - \$10	\$12.50	\$25.00	\$30.00	\$50.00	\$250.00	\$100.00	\$150.00	\$750.00	\$500.00
4 hrs ***		FREE***	\$0.00 - \$10	\$12.50	\$25.00	\$30.00	\$50.00	\$250.00	\$100.00	\$150.00	\$750.00	\$500.00
(< 2 days) 5		\$25.00	\$25 - \$35	\$37.50	\$50.00	\$55.00	\$75.00	\$275.00	\$125.00	\$175.00	\$775.00	\$525.00
(< 2 days) 6		\$50.00	\$50 - \$60	\$62.50	\$75.00	\$80.00	\$100.00	\$300.00	\$150.00	\$200.00	\$800.00	\$550.00
(< 2 days) 7		\$75.00	\$75 - \$85	\$87.50	\$100.00	\$105.00	\$125.00	\$325.00	\$175.00	\$225.00	\$825.00	\$575.00
(< 2 days) 8		\$100.00	\$100 - \$110	\$112.50	\$125.00	\$130.00	\$150.00	\$350.00	\$200.00	\$250.00	\$850.00	\$600.00
(< 2 days) 9		\$125.00	\$125 - \$135	\$137.50	\$150.00	\$155.00	\$175.00	\$375.00	\$225.00	\$275.00	\$875.00	\$625.00
(< 2 days) 10		\$150.00	\$150 - \$160	\$162.50	\$175.00	\$180.00	\$200.00	\$400.00	\$250.00	\$300.00	\$900.00	\$650.00
(< 2 days) 11		\$175.00	\$175 - \$185	\$187.50	\$200.00	\$205.00	\$225.00	\$425.00	\$275.00	\$325.00	\$925.00	\$675.00
(< 2 days) 12		\$200.00	\$200 - \$210	\$212.50	\$225.00	\$230.00	\$250.00	\$450.00	\$300.00	\$350.00	\$950.00	\$700.00
(< 2 days) 13		\$225.00	\$225 - \$235	\$237.50	\$250.00	\$255.00	\$275.00	\$475.00	\$325.00	\$375.00	\$975.00	\$725.00
(< 2 days) 14		\$250.00	\$250 - \$260	\$262.50	\$275.00	\$280.00	\$300.00	\$500.00	\$350.00	\$400.00	\$1,000.00	\$750.00
(< 2 days) 15		\$275.00	\$275 - \$285	\$287.50	\$300.00	\$305.00	\$325.00	\$525.00	\$375.00	\$425.00	\$1,025.00	\$775.00
(2 days) 16		\$300.00	\$300 - \$310	\$312.50	\$325.00	\$330.00	\$350.00	\$550.00	\$400.00	\$450.00	\$1,050.00	\$800.00
(3 days) 24		\$500.00	\$500 - \$510	\$512.50	\$525.00	\$530.00	\$550.00	\$750.00	\$600.00	\$650.00	\$1,250.00	\$1,000.00

Formulas:

>> 10 cents per black/white printed sheet (whether double or single sided); 50 cents per color printed sheet

>> \$25/hour for every hour of actual work performed by a state employee in excess of 4 hours

\*1, 2, 3, and 4 precisely defined document(s) will be electronically produced respectively within 3, 5, 7, and 9 days, free of charge

\*\*Requesters for electronic materials may be charged a fee for hard drives/disks/etc. used in transmittal

\*\*\*No labor cost may be charged for requests where all records can be found, redacted, and produced in less than 4 hours of dedicated work by one state employee