



## Responding to Requests for Member Information



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## Introduction

- Every government record is presumed to be public unless a specific exemption applies.
- Electronic records are treated the same as paper records for disclosure purposes, which includes:
  - Email communications
  - Text messages

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## What is a Public Record?

- "Public records" are broadly defined to include all documentary materials or data, regardless of physical form or characteristics, created or received by any officer or employee of any town of the Commonwealth to serve a public purpose, unless falling within a statutory exemption. G. L. c. 4, s. 7(26).
  - The use of personal email addresses by government officials, employees, and/or board and commission members while conducting any day-to-day business of a government entity renders the emails public records.

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## Presumption

- It is presumed a particular record is public. The burden is on the Board to prove one of the statutory exemptions apply.
- Given the statutory presumption in favor of disclosure, application of the exemptions are narrowly construed.
- If a document or portion of a document is not a public record, it is the Board's duty is to safeguard that information.

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## Requests

- A person may request copies of, or access to, public records:
  - In person, during regular business hours
  - In writing via:
    - Letter
    - Fax
    - Email
  - By Telephone
    - This is optional - Board is not required to accept.

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## Response to Requests

- The Board must permit inspection or provide a copy of requested public records within a default time period of **10 business days**.
  - If the initial response is not provided within 10 business days, the Board **cannot** assess a fee.
  - The initial response can be that the Board needs more time to comply with the records request – must state timeframe needed.
- Records should be provided electronically if available in an electronic format.

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## Response to Requests

- If the Board denies access to records:
  - Cite exemption.
  - Clearly state why the exemption applies to the records.
  - Inform requestor of right to appeal to Supervisor of Records.

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### NOTES:



## G.L. c. 4, s. 7(26) – Exemptions Overview

- The law provides for 22 different categories of exemptions, including:
  - Retirement Board member's Statement of Financial Interests (SFI)
  - Personnel and medical files or information
  - The home address and telephone number of a public employee
- Burden is on the Board to claim an exemption:
  - Must state why the exemption applies to the portions withheld.
  - Applicable only to exempt portion of record.

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## G.L. c. 4, s. 7(26) – Exemption (a)

- A statute or other law specifically or by implication permits or requires non-disclosure.
  - Criminal Offender Record Information
  - Executive session records for public bodies subject to the Open Meeting Law
  - Domestic Relations Orders (“DROs”)
    - Superior Court Standing Order 3-08: Impoundment of Qualified Domestic Relations Orders, Domestic Relations Orders, and Orders Commonly Known as *Mangiacotti* Orders

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## G.L. c. 4, s. 7(26) – Exemption (b)

- Records related to personnel rules and practices.
- Release of records would interfere with necessary governmental function.
  - Law enforcement personnel policies

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## G.L. c. 4, s. 7(26) – Exemption (c)

- Personnel records (does not apply to certain law enforcement records)
  - Retirement Applications – certain parts
  - PERAC/Retirement Board Forms – certain parts
  - Disciplinary information
  - Financial Information
- Medical records

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### NOTES:

## G.L. c. 4, s. 7(26) – Exemption (c) (Cont'd)

- Records containing intimate personal details
  - Family disputes, reputation, government assistance
- Veterans' Records
- DROs

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## G.L. c. 4, s. 7(26) – Exemptions (d) and (e)

- Policy positions being developed
  - May only withhold records until decision is made.
  - Exemption does not apply to factual information.
- Personal notes that are not maintained in government files
  - Exemption is waived once records are shared.

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## G.L. c. 4, s. 7(26) – Exemption (h)

- Bids and proposals
  - May be withheld until the time for bidding expires.
- Evaluations of bids and proposals
  - May be withheld until final decision.

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## G.L. c. 4, s. 7(26) – Exemption (i)

- Appraisals of real property acquired or to be acquired until:
  - Final agreement.
  - Litigation has concluded.
  - Time for litigation has expired.

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### NOTES:



## G.L. c. 4, s. 7(26) – Exemption (n)

- Applies to records related to:
  - Security measures
  - Emergency preparedness
  - Cyber Security
- Disclosure must be deemed to jeopardize public safety or cyber security.

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## G.L. c. 4, s. 7(26) – Exemptions (o) and (p)

- Permits withholding of records disclosing home address, personal email, and home telephone number of government employees or family members.
- PERAC's longstanding position has been that this also applies to retired members.

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## G.L. c. 4, s. 7(26) – Exemption (t)

- Statement of financial interest forms submitted by members of public retirement boards.

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## Final Thoughts

- The Public Records Law begins on the premise that all records are public records.
- HOWEVER, the Board's duty is to safeguard the information of their members.
  - Board should use due diligence in reviewing requests and determining if any exemptions apply.
- When in doubt, contact the Division of Public Records for assistance.

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### NOTES:

## Resources

- Public Records Division
  - [sec.state.ma.us/pre](https://sec.state.ma.us/pre)
  - Email: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)
  - Phone: (617) 727-2832 – ask for the Attorney of the Day
- *A Guide to the Massachusetts Public Records Law*
  - [sec.state.ma.us/pre/prepdf/guide.pdf](https://sec.state.ma.us/pre/prepdf/guide.pdf)

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## **COMMONWEALTH OF MASSACHUSETTS**

### **Public Employee Retirement Administration Commission**

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