



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

June 12, 2025
SPR25/1544

Justine Caggiano
Town Administrator
Town of Hardwick
307 Main Street
Gilbertville, MA 01031

Dear Ms. Caggiano:

I have received the petition of Jeffrey Smith appealing the response of the Town of Hardwick (Town) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 25, 2025, Mr. Smith requested:

[1] Any documentation relating to the audit of the town conducted by the former Town Administrator in 2022.

[2] Any documentation relating to the reduced PILOT payment from Eagle Hill School for 2022, especially any notes or communications with the former Town Administrator or Select Board members. If the PILOT agreement with Eagle Hill School has been reviewed by the Town's lawyers within the past year, I'd like a copy of any related documentation.

[3] All emails, text messages, and telephone records for any account or device used for Town Business by the following Town Officials between October 1, 2024 and February 13, 2025: [identified individuals].

[4] All emails, text messages, and telephone records for any account or device used for Town Business by the following Town Officials between January 1, 2022 and July 31, 2022: [identified individuals].

For telephone records, I am specifically requesting call logs that include the date, time, duration, and the number dialed or received...

The Town provided responses on February 27, 2025 and March 18, 2025. Unsatisfied with the Town's responses, Mr. Smith petitioned this office and this appeal, SPR25/1544, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Town's February 27th and March 18th Responses

On February 27, 2025, the Town sent a fee estimate of \$300 for the request and stated, "I tried to be very conservative in preparing this invoice as our IT and Town Counsel will also be spending a considerable amount of time and resources....Once we have payment, we would be happy [to] spend the time in good faith filling your request[.]"

On February 28, 2025, Mr. Smith stated, "I understand that this request will take some time to fulfill, certainly beyond the 10 days for typical requests, due to the nature of the information beginning gathered (phone bills, text messages, emails, etc). I would appreciate you keeping me informed periodically as you make progress on gathering the information." Mr. Smith subsequently submitted the fee payment on March 3, 2025 via a check that cleared his account on April 21, 2025.

Following an update inquiry from Mr. Smith, a Town official responded on March 18, 2025, "I am working with Town Counsel and our IT vendors. I am unsure at this time of how long it will take. I do not want to give you a false timeframe if I am waiting on other people. As soon as I have anything to tell you, I will definitely let you know..."

On May 23, 2025, following an apparent meeting between Mr. Smith and a Town official, in two separate emails to the Town, Mr. Smith stated:

I have evaluated the file that was provided on my USB drive. While it does contain a 1GB file that further contains 1,922 PDF files, this seems to be an incomplete set of data. This method of delivering the email messages seems to neglect the full email headers as well as any attached documents. These should be included in the data I am requesting. Additionally, it seems that there are missing emails. Would you please confirm exactly who has provided the information and who has not?

...[T]hese items are still outstanding, too[:]

[1] Any documentation relating to the audit of the town conducted by the former Town Administrator in 2022.

[2] Any documentation relating to the reduced PILOT payment from Eagle Hill School for 2022, especially any notes or communications with the former Town Administrator or Select Board members.

[3] If the PILOT agreement with Eagle Hill School has been reviewed by the Town's lawyers within the past year, I'd like a copy of any related documentation.

Current Appeal

In his appeal petition, Mr. Smith states, "[a]lthough my check was submitted on March 3, 2025, it did not clear my account until April 21, 2025. At this time, I am still waiting for the request to be fulfilled and my emails are not being answered. I am writing to request that the Supervisor of Public Records enforce compliance and order the town to produce the complete records or justify the delay in providing them."

Based on the Town's responses and the information provided in Mr. Smith's appeal petition, it is unclear whether the Town possesses additional records responsive to the request. Specifically, the Town must clarify whether it possesses the requested documentation Mr. Smith claims is missing from the file he was provided. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). To the extent that the referenced records exist, I find the Town must provide an estimated date as to when it expects to complete its review and provide the requested records. See G. L. c. 66, § 10(a) (records must be provided without unreasonable delay). To the extent possible, the Town must provide the remaining responsive records on a rolling basis.

Conclusion

Accordingly, the Town is ordered to provide Mr. Smith with a response to his request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is

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preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us. Mr. Smith may appeal the substantive nature of the Town's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Jeffrey Smith