



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

Manza Arthur
Supervisor of Records

July 29, 2025
SPR25/2078

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

Dear Ms. Caggiano:

I have received the petition of Jeffery 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...

Previous Appeal

This request was the subject of a previous appeal. See SPR25/1544 Determination of the Supervisor of Records (June 12, 2025). In my June 12th determination, I ordered the Town to clarify whether it possesses additional responsive records. The Town responded on July 1, 2025. Unsatisfied with the Town's response, Mr. Smith petitioned this office and this appeal, SPR25/2078, 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 July 1st Response

In its July 1, 2025 response, the Town stated, "...all of the records were provided that exist on a flash drive to the requestor."

Current Appeal

In his appeal petition, Mr. Smith stated, "...the USB drive only contains some emails (I was never told exactly which person's emails were included, everything is in a single PST file), but none of the other documents requested. If the other documents didn't exist, I would like a refund of my \$300."

In a telephone conversation between the Town and this office on July 21, 2025, the Town confirmed that it possesses no additional records responsive to Mr. Smith's request.

Fee Waivers

G. L. c. 66, § 10(d)(v) provides the following with respect to waiving a fee for the production of responsive records:

the records access officer may waive or reduce the amount of any fee charged under this subsection upon a showing that disclosure of a requested record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor, or upon a showing that the requestor lacks the financial ability to pay the full amount of the reasonable fee.

Please note that although the Supervisor may encourage fees to be waived, the Supervisor may not mandate that a records access officer waive fees assessed for complying with a public records request; rather, as described above, the records access officer *may* waive or reduce the amount of any fee upon a showing of various factors. See G. L. c. 66, § 10 (d)(v); see also 950 C.M.R. 32.07(2)(k).

In this case, where it appears Mr. Smith has paid the fee, and the Town has provided responsive records, I am unable to assist Mr. Smith in regard to this aspect of his appeal petition.

No Duty to Create Records

Please be advised, under the Public Records Law a custodian is not required to create a record in response to a public records request. See G. L. c. 66, § 6A(d). In addition, a public employee is not required to answer questions, or do research, or create documents in response to questions. See 32 Op. Att’y Gen. 157, 165 (May 18, 1977). Further, 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).

Conclusion

Given that the Town has confirmed that it possesses no additional records responsive to Mr. Smith’s request, and this office has no authority to compel the Town to create records, I will now consider this administrative appeal closed. If Mr. Smith is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth of Massachusetts. See G. L. c. 66, § 10A(c) (pursuing administrative appeal does not limit availability of applicable judicial remedies).

Justine Caggiano
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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: Jeffery Smith