



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

Manza Arthur
Supervisor of Records

August 29, 2025
SPR25/2445

Ryan Witkos
Town Clerk
Town of Hardwick
307 Main Street
Gilbertville, MA 01031

Dear Mr. Witkos:

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 July 1, 2025, Mr. Smith requested:

- [1] All text messages for the Town Administrator between July 1, 2023 and July 1, 2025[;]
- [2] All telephone call records for the Town Administrator between July 1, 2023 and July 1, 2025[;]
- [3] All emails for the Town Administrator:
 - [a] Between July 1, 2023 and October 1, 2024[;]
 - [b] Between February 13, 2025 and July 1, 2025[.]

Prior Appeal

This request was the subject of a prior appeal. See SPR25/2213 Determination of the Supervisor of Records (August 7, 2025). In my August 7th determination, I found that where the Town had received payment of a reasonable fee, it must provide Mr. Smith with the responsive records.

The Town responded on August 5 and August 18, 2025. Unsatisfied with the Town's responses, Mr. Smith petitioned this office and this appeal, SPR25/2445, 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 August 5th and August 18th Responses

In its August 5, 2025 response, the Town informed Mr. Smith that responsive records were available for pickup. Subsequently on August 5th, the Town provided Mr. Smith with responsive records.

In its August 18, 2025 response, the Town clarified that it possessed no additional records responsive to the request. The Town stated that any deleted text messages “... were transitory in nature and need not be retained. See Records Retention Schedule 01.022 Correspondence (d) Transitory Messages – *Retain until administrative use ceases. Permission from Supervisor not required for destruction.*”

Current Appeal

In his August 19, 2025 petition to this office, Mr. Smith contended that responsive text messages were improperly deleted from a personal cell phone following the Town’s receipt of his public records requests, and that the Town had failed to provide him with logs, metadata, or backups of the responsive text messages. Mr. Smith further sought a refund of “... \$150 (SPR25/2213) and \$300 (SPR25/2078) for records that have not been fully provided.”

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 be advised, 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 a 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; Records Management

In an August 21, 2025 telephone conversation with this office, the Town confirmed that it had provided Mr. Smith with all responsive records in its possession.

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). The duty to comply with requests for records extends only 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).

However, the Town is further advised that public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request. See G. L. c. 66, § 10(a); see also Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979). For further guidance in records management and retention, the Town may contact the Records Management Unit (RMU) at 617-727-2816. The RMU operates under the authority of the Supervisor of Records, assisting state and local government entities in creating, managing, securing, and preserving records needed to conduct business and protect the rights and obligations of citizens and government. Training workshops on records management are conducted upon request. Safeguards must be instituted by the Town to ensure that all records are retained in accordance with both applicable law as well as the retention schedules promulgated by this office. See G. L. c. 66, § 8; G. L. c. 66, § 13 and G. L. c. 66, § 15.

Issue Previously Addressed

Mr. Smith is advised that to the extent he is seeking assistance related to the February 25, 2025 request at issue in SPR25/2078, such issues were previously addressed in my July 29th determination. See SPR25/2078 Determination of the Supervisor of Records (July 29, 2025) (finding that the Town had provided all responsive records in its possession and that I was unable to assist with Mr. Smith’s request for a refund of paid fees). Consequently, I am unable to issue a second determination at this time.

Conclusion

Given that all existing responsive records have been provided, 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. See G. L. c. 66, §§ 10(b)(ix), 10A(c) (pursuing administrative appeal does not limit availability of judicial remedies).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur", written in a cursive style.

Manza Arthur
Supervisor of Records

cc: Jeffery Smith