

**PUBLIC RECORDS PROCEDURE CHECKLIST  
FOR RECORDS ACCESS OFFICER(S) of MUNICIPALITIES**

**An Act to Improve Public Records  
Chapter 121, Acts of 2016**

Chapter 121, Acts of 2016 (the “Public Records Act”) was enacted by the Massachusetts Legislature and signed into law by Governor Baker on June 3, 2016. Most of its provisions become effective on January, 2017. The Public Records Act inserts a new section 6A into G. L. c. 66 (the Public Records Law) that requires for the first time that each municipality designate one or more Records Access Officers (RAOs) to assist records requestors, to coordinate responses to requests and to prepare guidelines for access to public records held by the municipality. The municipal clerk, his or her designees and any other persons appointed by the Chief Executive of the municipality, serve as RAOs for the municipality. This checklist is intended to provide a starting point for municipal RAOs to comply with the minimum statutory procedures required by the Public Records Act, but does not address procedures for appeal by requestors to the Supervisor or to Court. The statute prevails over any inconsistencies in this checklist due to paraphrasing of requirements. This checklist may be supplemented or superseded by regulations to be promulgated by the Supervisor of Public Records, a draft of which has been released.

**1. Receipt of Request for Public Records**

- a. Verify request received by hand, by mail or by email.<sup>1, 2</sup>
- b. Review request to determine if records “reasonably described.”<sup>3</sup> RAO may request clarification from requestor.
- c. Determine and record due date for production of records or response (10 business days following the date of receipt).<sup>4, 5, 6</sup>

---

<sup>1</sup> G. L. c. 66, §10(a), as amended by St. 2016, c. 121. Subsequent citations will be made to G. L. c. 66 only, which will be assumed to include the amendments to that chapter made by St. 2016, c. 121.

<sup>2</sup> While the Public Records Act provides that requests “may be delivered to the records access officer by hand or first class mail . . . , or via electronic mail,” the draft regulations issued by the Supervisor of Records continue to allow in-person verbal requests. Under current law and the draft regulations, verbal requests would not trigger the right by a requestor to appeal to the Supervisor.

<sup>3</sup> G. L. c. 66, §10(a)(i).

<sup>4</sup> G. L. c. 66, §10(a).

## **2. Initial Processing of Request prior to 10<sup>th</sup> Business Day**

- a. Do records requested exist within the possession, custody or control of the municipality or municipal agency for which RAO is responsible? <sup>7</sup>
- b. If RAO is responsible for a department or agency within the municipality, should requestor be referred to RAO of another department, or to the municipal clerk?
- c. Send copy of request, and/or contact municipal employees and board members who may have custody of requested records.
- d. If records exist, how many business days will likely be required to search, compile and reproduce records? The municipal RAO has the right to an additional 15 business days after the initial 10 business days, <sup>8</sup> if the magnitude or difficulty of the request, or multiple requests from the same requestor, unduly burdens the other responsibilities of the municipality and therefore the municipality is unable to produce the records within 10 business days of the request. Therefore, consider the following:
  - i. Based on nature of request, assess magnitude (volume) of requested records.
  - ii. Based on nature of request, assess difficulty of compliance with request.
  - iii. Determine whether records likely to be found in multiple locations, or held by multiple persons.
  - iv. Has requestor made multiple recent requests, such that request could be considered harassment?
  - v. Are email records requested? Make preliminary determination of search methodology or search terms for responsive email records and resulting volume or difficulty in producing them.
  - vi. Based on nature of request, will any requested records likely be withheld as exempt or attorney-client privileged?
  - vii. Will substantial redaction of records be necessary to protect exempt or privileged material?
  - viii. Will other immediate responsibilities and priorities limit the availability or time of staff or other persons, such as volunteer board members, who are needed to fulfill request, and therefore impair ability to respond to records request within 10 business days?
  - ix. Determine if fee should be assessed requestor (see Section 7 on fees).
  - x. If fee is to be assessed, estimate amount of fee, and provide as soon as possible to requestor.

---

<sup>5</sup> Under most statutory regimes, computation of time should begin the business day following the date received. The Supervisor's draft regulations adhere to this common standard.

<sup>6</sup> Under the Supervisor's draft regulations, "business day" is defined to exclude Saturdays, Sundays, legal holidays and other days that the municipal office is unexpectedly closed.

<sup>7</sup> G. L. c. 66, §10(a)(ii).

<sup>8</sup> State agency RAOs are limited to an additional 5 business days, or 15 total, following the initial request.

- e. If available as electronic records, records should be provided to requestor in the requested electronic format or in a standard, machine searchable electronic format, unless records are held only as paper records, or requestor is unable to receive or access electronic records.<sup>9</sup>
  - i. Are records held in electronic media, or only as paper hard copies?
  - ii. Has requestor specified that electronic records should be provided in any particular electronic format?
  - iii. Has requestor indicated inability to receive or access records if provided in electronic format?
- f. If more than 10 business days are likely to be needed to comply with request, or if records will likely be withheld or redacted, draft response letter to requestor.

### **3. Production of Records**

- a. If no additional time beyond 10 business days will be needed nor records withheld or redacted, communicate to requestor no later than the 10<sup>th</sup> business day following receipt of the request that records are ready for inspection, retrieval or delivery.
- b. When records are available on public website, provide access information to requestor for such records.<sup>10</sup>
- c. Collect fee, if any, prior to providing records to requestor.<sup>11</sup>
- d. Make records available for inspection, for pickup or delivery by mail, email or facsimile, as the requestor requests, in electronic format unless exceptions to production in electronic format apply.<sup>12</sup>
- e. Document date records provided, number of hours of all municipal employees and board members to fulfill request, and fees, if any, charged.<sup>13</sup>

### **4. Additional Time for Production and Withholding Records**

- a. When additional time is needed to produce the records, or records are to be withheld (or redacted), send letter by mail, email or facsimile no later than 10<sup>th</sup> business day after receipt of request. Letter should include the following:<sup>14</sup>
  - i. Confirm receipt of request;

---

<sup>9</sup> G. L. c. 66, §6A(d).

<sup>10</sup> G. L. c. 6A(d).

<sup>11</sup> G. L. c. 66, §10(a)(iii).

<sup>12</sup> G. L. c. 66, §6A(d).

<sup>13</sup> Although only RAOs of state agencies are required to document this information, G. L. c. 6A(e), municipal RAOs are encouraged to do so in the event requesters appeal determinations to the Supervisor, or other inquiries are made concerning the management of records requests..

<sup>14</sup> G. L. c. 66, §10(b)

- ii. Identify records or categories of records not within municipality's possession, custody or control;
- iii. Identify any other agency, if known, that may hold records requested;
- iv. Identify records, categories or portions of records intended to be withheld and reasons and specified exemptions for non-disclosure; if subsequent detailed review of records reveals additional records, categories or portions of records to be withheld or redacted in accordance with state and federal law, supplement this response to identify such records and reasons for non-disclosure;
- v. Identify records, categories and portions of records to be produced, and describe in detail why magnitude or difficulty of request unduly burdens other responsibilities of municipality and therefore requires additional time to produce the records;
- vi. Identify a reasonable timeframe to produce records sought, not to exceed 25 business days from the initial receipt of request,<sup>15</sup> or a later date agreed to by requestor;
- vii. Suggest a reasonable modification of the scope of the request if records could then be produced more efficiently and affordably;
- viii. Provide an itemized, good faith estimate of fees, if any, to be charged;
- ix. Include statement of requestor's appeal rights to Supervisor of Records and to Superior Court.

- b. RAO should consider seeking assistance of counsel to review this letter.

## **5. Appeal by RAO to Supervisor of Records for More Time <sup>16</sup>**

- a. If more than 25 business days will be needed to comply with the request, the RAO should make such a determination no later than the 20<sup>th</sup> business day after receipt of the request (or within 10 business days of a determination by the Supervisor of Records that a withheld record must be produced).
- b. The RAO should draft and submit a written petition to the Supervisor of Records no later than the 20<sup>th</sup> business day after the receipt of the request.
- c. The RAO should consider whether to seek assistance of counsel to draft petition.
- d. The RAO's petition for additional time should include any of the following information that supports the need for additional time:
  - i. The time estimated to search for, collect, examine and redact records;
  - ii. The scope of redaction required to prevent unlawful disclosure;
  - iii. The capacity and normal hours of business of the municipality to fulfill the request without the extension of time;
  - iv. Efforts already undertaken to fulfill the current and previous requests;

---

<sup>15</sup> Fifteen business days for state agencies.

<sup>16</sup> G. L. c. 66, §10(c).

- v. Whether the current and any previous requests are frivolous or intended to harass or intimidate the municipality;
- vi. The public interest, or absence of public interest, in producing the documents more quickly.
- e. The RAO shall provide a copy of the written petition to the requestor.
- f. The Supervisor of Records is to decide such appeal within 5 business days.
- g. Records should be produced within time ordered by Supervisor.

## 6. Fees <sup>17</sup>

- a. Costs that may be included in fees for records production:
  - i. Cost of storage device
  - ii. \$.05/page of materials printed in black and white (both single and double sided pages).
  - iii. Hourly rate of lowest paid employee with necessary skill to compile, segregate, redact and reproduce records not to exceed \$25/hour unless approved upon petition to Supervisor of Records.
  - iv. Employee time may include outside vendor time.
- b. Costs that may not be included in fee for records production
  - i. Municipalities with populations over 20,000 may not charge for first two hours of staff time.
  - ii. Staff time for segregation and redaction unless required by law or approved by Supervisor of Records.
- c. Petition to Supervisor for fee adjustments.
  - i. Hourly rates in excess of \$25/hour.
  - ii. Time spent for segregation and redaction when not required by law.
  - iii. Grounds for Supervisor to grant adjustment:
    - 1. For requests commercial in nature, or
    - 2. Fee represents actual good faith cost of compliance, request could not have been prudently completed without redaction or increase in hourly rate, fee is reasonable and not designed to limit access to public records.
    - 3. Supervisor shall also consider public interest in limiting fees charged and financial ability of requestor to pay additional fees.
- d. Waiver of fees by RAO
  - i. if disclosure of records is in public interest.
  - ii. if records request not primarily in commercial interest of requestor.
  - iii. upon showing of financial hardship of requestor to pay full fee.

---

<sup>17</sup> G. L. c. 66, §10(d).

- e. Denial of records to requestor who has failed to pay for previously produced records; RAO provides written denial and itemized balance of fees still owed.
- f. Forfeiture of fees: If Court awards attorneys fees to requestor who successfully obtains judicial relief in litigation, fees for production of records also forfeited. <sup>18</sup>

---

<sup>18</sup> G. L. c. 66, §10A(d)(3).

## Flow Chart of Procedures Under Public Records Law

