

## Legislative Updates: Massachusetts Public Records Law Overhauled by Legislature

### Legislative Updates

Earlier this summer, Governor Baker signed a bill into law adopting significant changes to the Massachusetts Public Records Law. These changes apply to all state agencies and municipalities. The new law provides, for the first time, penalties for agencies and municipalities that do not comply with the various requirements in the new Public Records Law. The new law will go into effect on January 1, 2017. On September 13, 2016, the Commonwealth's Supervisor of Public Records also released draft regulations to implement the new law. The following highlight some of the most significant changes municipalities should be aware of:

**Records Access Officer** - the new law requires that each municipality designate one or more employees to serve as records access officer. These individuals will be responsible for coordinating the response to requests for public records, documenting requests, assisting in preserving public records, and preparing guidelines on making public records requests.

**Form of Record Request** - the new law now allows record requests to be made via e-mail directly to the records access officer.

**Response Time** - municipalities must substantively respond to a records request within 10 business days. If the municipality cannot produce the record within 10 business days, the records access officer must respond in writing, identifying either the reasoning for withholding the record or a reasonable timeframe in which the agency will produce the record (within 15 business days for agencies or 25 business days for municipalities). If a record request is particularly complex or burdensome, the records officer may seek a further extension of time capped at 20 business days for an agency or 30 business days for a municipality. The law provides exceptions to this timeframe for any requests that are frivolous or designed to intimidate or harass.

**Fees** - municipalities may not charge for the first two (2) hours of employee time spent in responding to a records request. After this the municipality may charge a maximum rate of \$25 per hour. Municipalities may exceed this rate if the request is for a commercial purpose or the requested fee reflects the actual cost to comply. Unless required by law, employee time spent redacting or segregating records may not be charged. The cost for copying records, previously set at 50 cents per page, is now 5 cents per page. If a records officer fails to respond within 10 business days as required above, no fee may be charged.

**Exception for Smaller Municipalities** - the law makes a concession to municipalities with less than 20,000 residents: those municipalities may, unlike agencies or larger municipalities, charge a fee for the first two hours of employee time spent to fulfill a public records request.

**Online Records** - municipalities must post electronic copies of particular types of records on its website. These include, annual reports, notices of hearings, winning bids for public contracts, awards of government grants, open meeting minutes, budgets "to the extent feasible."



**Actions in Superior Court** – an individual requestor or the Massachusetts Attorney General, or both, may file a civil action in Superior Court to enforce the requirements of the Public Records Law. In these cases, the burden is on the agency or municipality to prove that a record was appropriately withheld.

**Attorney's Fees and Court Costs** – the new law establishes a presumption in favor of awarding attorney's fees and costs to a requestor that obtains relief in Superior Court, except in four specific circumstances: (i) the supervisor of public records finds the municipality did not violate the law; (ii) the municipality based their denial on a published decision of the appellate court or attorney general; (iii) the request was intended to harass or intimidate; (iv) the request was not in the public interest or was made for a commercial purpose unrelated to disseminating information to the public. The court may assess punitive damages in instances where a municipality acted in bad faith of no less than \$1,000 with a maximum of \$5,000.

Public records requests often present unique factual issues that require careful and individualized consideration. The attorneys at Pierce Davis & Perritano routinely advise municipalities, schools, and government agencies in complying with the Public Records Law, identifying public records for disclosure and preparing responses.

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