



On the Record

A publication of the Massachusetts Archives and Records Management Unit

Volume 1, Issue 8

October 2020

A Guide to the Massachusetts Public Records Law: FAQs

The Public Records Division, in the Office of the Secretary of the Commonwealth, maintains *A Guide to the Massachusetts Public Records Law*, <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

The *Guide* includes a “Frequently Asked Questions” section. A portion of this section is presented below:

What is the difference between the federal Freedom of Information Act (FOIA) and the Massachusetts Public Records Law?

The federal Freedom of Information Act is a statute that applies to federal records. The Massachusetts Public Records Law applies to records created by or in the custody of a state or local agency, board or other government entity.

Who can help me with questions regarding the Public Records Law?

The Division of Public Records provides an “attorney of the day” to assist any person seeking information regarding the Public Records Law. The hours of operation for the Division are Monday-Friday, with the exception of holidays, from 8:45 a.m. to 5:00 p.m. The telephone number for the Division is (617) 727-2832, and the email address is pre@sec.state.ma.us.

What is a “public record?”

Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory exemption permits or requires it to be withheld in whole or in part. The legislature created specific statutory exemptions and the courts have recognized common law exemptions, such as the attorney-client privilege. These exemptions permit the agency or municipality to withhold a record from the public. The exemptions to the Public Records Law are described in *A Guide to the Massachusetts Public Records Law*.

Does the Public Records Law apply to court, legislative or federal records?

The Public Records Law does not apply to records held by federal agencies, the legislature or the courts of the Commonwealth. Accordingly, the Supervisor of

Public Records is unable to assist requestors seeking such records.

What is a Records Access Officer?

A Records Access Officer (RAO) is the person responsible for responding to requests for public records. Information on how to contact an RAO is usually available on the website for the applicable municipal or state entity holding the records sought by requestors.

What are the requirements for an RAO’s response to a public records request?

A RAO must respond to a request within 10 business days. This response must be in writing and include a variety of components depending on the circumstances; for example, the response can offer to provide records, include a fee estimate for the provision of records, or deny access to records. If a RAO is denying access to a record, it must identify any records, categories of records or portion of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholdings, including the specific exemption or exemptions upon which the withholdings is based. Any denial must include instructions how to appeal to the Supervisor of Records.

Council of State Archivists highlights Public Records and Remote Work

In conjunction with Electronic Records Day (10/10), the Council of State Archivist (CoSA) has published a guidance document for managing records at home. While you should defer to the policies, procedures and best practices put out by your agency or department, this document provides some common sense suggestions and reminders on how to work remotely with records. The document can be accessed at <https://www.statearchivists.org/files/7816/0138/9100/PublicRecordsAndRemoteWork.pdf>. Additionally, CoSA sponsored a webinar entitled *Home is Where the Records Are: Managing Records in a Teleworking World*. A recording of this webinar is available on the CoSA YouTube channel at <https://www.youtube.com/user/StateArchivists/videos>