

## **DEFINITION OF PUBLIC RECORD**

“Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristic, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, . . . unless such materials or data fall within the exemptions of [4:7(26); Public Records Access Regulations 950 CMR 32.03]

Minutes of open meetings become public upon creation. If the minutes are not transcribed at the time a request is made, there is no requirement under the Public Records Law that the board transcribe those minutes in response to the request. However, an audio tape of a meeting or any notes taken by the recording secretary are public records. Executive session minutes may remain confidential until the reason for the executive session no longer exists. Accurate minutes are to be kept and maintained of all meetings. The law requires the minutes to set forth: (a) the date; (b) the time; (c) the place; (d) the members present or absent; (e) the actions taken; and, for executive sessions, (f) any votes, by recorded roll call. Minutes need not be transcripts of everything said. They should accurately reflect what business was before the board or committee.

## **CUSTODY OF RECORDS**

Town records are in the custody of the department, board, commission or office which generated them. The clerk of the department, board or office has the responsibility to enter the votes, orders or proceedings of the department in record books and has custody of those books. Every sole officer in charge of a department has custody of the records of that department.

The Public Records Law only applies to records that are in existence and in the custody of a government official. The law does not require an official to answer a question or to create a record in response to a question or a public records request.

The Town Clerk has custody of any record which is required under a section of the General Laws or by town bylaw or charter to be filed or recorded in the Town Clerk’s office where the record was generated by another public agency, a private individual, or by a business.

## **ACCESS TO AND COPIES OF PUBLIC RECORDS**

### **Record Custodian**

Custodian means the governmental officer or employee who in the normal course of his or her duties has access to or control of public records.

### **When Records May be Inspected**

The custodian of any public record must allow it to be inspected and examined by any person at reasonable times and without unreasonable delay. The regulations provide that the custodian must allow a public record to be inspected and copied by any person during regular business hours. However, if the office does not have regular business hours, a notice must be posted in a conspicuous place listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.

In addition, the custodian is required to maintain procedures that will allow access to public records at reasonable times and without unreasonable delay and must comply with requests as soon as practicable and within 10 days.

### **Form of Request**

Under the Public Records Law, a custodian of public records may not require that requests be made in writing. An oral request, made in person (not by telephone) is valid under the Public Records Law. In order for a requester to appeal a custodian’s failure to provide copies or access to records, however, their original request must have been in writing.

The person seeking access to a public record shall provide a reasonable description of the record so that the custodian can identify and locate it promptly. The person requesting the record cannot be made to make a personal inspection of the record prior to receiving a copy of it. In addition, the custodian is prohibited from requiring that the requester disclose the reasons he is seeking access to or a copy of a public record and the custodian cannot require proof of the requester’s identity prior to complying with requests for copies of public records.

If a custodian has filed or recorded a non-public record along with the public record, the custodian must allow public inspection of that part which is a public record, provided it can be separated from that part which is not public. For example, if impounded birth records are recorded in the same book as those which are not impounded, the custodian must allow inspection of a page in the record book which does not contain any impounded entries. In this case, the custodian should be sure that the examiner does not turn to a page in the book containing an impounded record.

**Response to Request**

The custodian's written response, made within ten days of the request, must be either an offer to provide the requested materials or a written denial. A denial must detail the specific legal basis for withholding the requested materials. Requesters are free to file an appeal with the Public Records Division if they do not receive the records within the ten-day period, or if they dispute the custodian's written denial. A failure to respond within the allotted time period, or a denial in writing from the custodian, allows a requester to appeal to the Supervisor of Public Records.

**Examination of Records**

Inspection of a public record must take place under the supervision of the record custodian. Such supervision is necessary to prevent the removal of a record from the room, altering, defacing or destroying the record, or changing the order of papers in a file. The procedures a custodian establishes for the examination of records will depend to a large extent upon the physical arrangements of their office, the location in which the records are kept, and the custodian's own judgment as to what may be necessary to protect the records.

The custodian, or one of his/her employees, must keep the record being examined and the person examining it in view at all times. Should the examiner start to do something which might damage the record, such as underlining or making other marks on a paper or in a book, he should be stopped immediately. Under no circumstances should an examiner be allowed to remove a record to examine it outside of the custodian's office area. Vigilance is strongly recommended to prevent an examiner from tearing a page out of a record book or removing papers from a file and taking them with him when he leaves the office.

**Copies of Records**

A copy of a public record must be furnished to any person upon request and upon the payment of a reasonable fee. In addition, every person for whom a search of public records is made shall, at the direction of the record custodian, pay the actual expense of such research.

If the costs are estimated to exceed \$10.00, the custodian must provide a written good faith estimate of cost including costs for copying, searching the records, etc. Actual cost of postage, if any, may be assessed and added to the copying costs. However, a custodian may not charge a fee for mere public inspection of records, unless compliance with the request for inspection takes more than one-half hour. In that case, a fee may be assessed.

For further information see:

<http://www.sec.state.ma.us/pre/prepdf/guide.pdf>