

MEMORANDUM

To: Ann Quirk, Town Clerk
Department Heads
Records Access Officers

cc: Mark S. Ells, Town Manager
Andy Clyburn, Assistant Town Manager
Lynne Poyant, Director of Communications

From: Karen L. Nober, Town Attorney

Re: Public Records Requests

Date: March 22, 2020

Discussed below are the timeframes for responding to public records requests. Please note that the definition of “Business Day” in 950 CMR 32.02, the public records regulations, specifically excludes “Saturdays, Sundays, legal holidays, **or other weekdays where a custodian’s office is closed unexpectedly**” (emphasis added). Due to the COVID-19 emergency, during the period March 16-March 20, 2020, all Town buildings, with the exception of Town Hall and 200 Main Street, were closed to the public and employees, and currently remain closed (“Fully Closed Offices”). Town Hall and 200 Main Street remain open, but in a very limited fashion: to the public by appointment only, and to a small number of employees who are performing essential functions.

Accordingly, public records requests that were submitted on or after March 16, 2020 (actual date dependent on closure date of specific building), to Records Access Officers (RAOs) whose offices are in Fully Closed Offices should not be deemed “received” until such time as those buildings are reopened to employees, and the “clock” for responding will not begin to run until the first business day after such receipt. I will prepare a notice to this effect for posting on the Town website. Upon the reopening of any of these offices to employees, the RAO should respond to the requestor in writing to acknowledge receipt of public records requests that were submitted while the offices were closed, including noting the date of receipt, i.e., the date the office reopened, in an email or letter to the requestor, and should use the attached Form Response Letter 1 (which incorporates the points discussed below).

Public records requests that are received by RAOs whose offices are in Town Hall or 200 Main Street should acknowledge receipt of such requests with a letter or email that states that additional response time of at least 15 business days will be required (i.e., for a total of 25 business days after receipt of request), but that given the unique and unprecedented

circumstances involving the COVID-19 virus, including the fact that only a small number of employees are physically present in the office, it will likely take longer than 25 business days for the Town to respond, and therefore, the requestor will be contacted to see if the requestor and the Town can reach a mutually agreed upon extension of the applicable deadlines. The letter should further state that if no agreement can be reached, the Town reserves its rights to petition the Supervisor of Public Records for additional time to respond. (See attached Form Response Letter 2.)

Public Records Timeframes

Under G.L. c. 66, § 10(a) and 950 CMR 32.06(2)(a), an RAO is required to permit inspection or furnish a copy of any “public record” as defined by G.L. c. 4, § 7(26) within ten (10) business days following receipt of the request.

Under G.L. c. 66, § 10(b) and 950 CMR 32.06(2)(b), if the municipality is unable to do so within 10 business days, the RAO must so inform the requestor in writing within 10 business days of receipt of the request and must, among other things, identify a reasonable timeframe in which the municipality shall produce the requested records, provided that such timeframe shall not exceed 25 business days following the date of the initial receipt of the public records request. This means that the RAO must respond in some fashion **within 10 business days after receipt of the request** and may inform the requestor that an additional 15 business days is needed to respond (for a maximum response time of 25 business days).

Alternatively, the RAO may contact the requestor to see if the requestor will agree to a response date beyond 25 business days. I recommend reaching out to requestors as soon as possible. If the requestor agrees, that agreement should be confirmed in writing.

In addition, 950 CMR 32.06(4) sets forth the process for submitting a petition to the Supervisor of Public Records requesting an extension of time beyond the 25 business day timeframe discussed above. Such petitions must be in writing and emailed to the Supervisor of Public Records at pre@sec.state.ma.us **within twenty (20) business days** after receipt of a public records request, with a copy provided to the requestor. The petition must include a brief narrative detailing why an extension of time is necessary. **It should be noted that submitting such a petition does not change the requirement that some type of response be sent to the requestor within 10 business days after the date of the request.**

FORM RESPONSE LETTER 1

FOR OFFICES THAT HAVE REOPENED AFTER BEING FULLY CLOSED

[date]

[Name]
[address]
[address]

Re: Public Records Request

Dear [Name]:

Please be advised that the Town of Barnstable received your public records request dated [date]. As this office has been closed to the public and employees from [date] to [date], please be advised that we deem [date] to be the date of receipt of your request.

Pursuant to G.L. c. 66, sec. 10(b)(vi), this is to notify you that we will require at least an additional fifteen (15) business days to respond to your public records request, but it will likely take longer than 25 business days due to the unique and unprecedented circumstances involving the COVID-19 virus. Accordingly, we will contact you to see if we can agree on a further extension of the applicable deadlines. Please note that if we cannot reach agreement, the Town reserves its rights to petition the Supervisor of Public Records for additional time to respond.

Thank you for your anticipated cooperation.

Sincerely,

FORM RESPONSE LETTER 2
FOR OFFICES THAT REMAIN OPEN TO EMPLOYEES

[date]

[Name]
[address]
[address]

Re: Public Records Request

Dear [Name]:

Please be advised that the Town of Barnstable received your public records request dated [date].

Pursuant to G.L. c. 66, sec. 10(b)(vi), this is to notify you that we will require at least an additional fifteen (15) business days to respond to your public records request, but it will likely take longer than 25 business days given the small number of employees who are physically in the office and due to the unique and unprecedented circumstances involving the COVID-19 virus. Accordingly, we will contact you to see if we can agree on a further extension of the applicable deadlines. Please note that if we cannot reach agreement, the Town reserves its rights to petition the Supervisor of Public Records for additional time to respond.

Thank you for your anticipated cooperation.

Sincerely,