

# PUBLIC RECORD REQUESTS

GREAT BARRINGTON POLICE DEPARTMENT POLICY & PROCEDURE NO. <b>4.50</b>	EFFECTIVE DATE: <u>9/19/17</u>
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>55.1.3 (b); 82.1.1 (c); 82.1.2</b>	REVISION DATE:
	REVIEW DATE: 9/20/2019

## POLICY

Every record made or received by the Police Department is presumed to be a public record, unless it is subject to an exemption as outlined in Section VII of this policy. The Massachusetts Public Records Law provides that every person has an absolute right of access to public information.<sup>1</sup> This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.<sup>2</sup> Therefore, it shall be the policy of the Police Department to adhere to the requirements of the Public Record Law as well as the applicable regulations promulgated by the Secretary of the Commonwealth.

## PROCEDURES

### I. DEFINITIONS

**A. Commercial Purpose:** means “the sale or resale of any portion of the public record or the use of information from the public record to advance the requester's strategic business interests in a manner that the requester can reasonably expect to make a profit, and shall not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the

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<sup>1</sup> G.L. Chapter 66, § 10

<sup>2</sup> *Id.*

operation or activities of government or for academic, scientific, journalistic or public research or education.”<sup>3</sup>

**B. Public Records:** includes “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, 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, or of any authority established by the general court to serve a public purpose, or any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in section 1 of chapter 32...”<sup>4</sup> This includes those records which are created by electronic means.<sup>5</sup>

**C. Records Access Officer:** “the employee designated within a governmental entity to perform the duties described in 950 CMR 32.00 including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requesters to make informed requests regarding the availability of such public records electronically or otherwise.”<sup>6</sup>

The Town of Great Barrington has designated the Town Clerk as the RAO for all departments and to process all requests for public records. For any requests that pertain to the police department, the Chief of Police will assist the Town Clerk in processing such requests.

**D. Redact:** means to delete, or otherwise expurgate that part of a public record that is exempt from disclosure under G.L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.<sup>7</sup>

**E. Requester:** any person or entity making a request for records pursuant to the Public Records Law.

**F. Segregation Time:** means the time used to review records to determine what portions are subject to redaction or withholding under

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<sup>3</sup> G.L. c. 66, § 10(d)(ix); see also 950 CMR 32.02.

<sup>4</sup> G.L. c. 4, § 7(26).

<sup>5</sup> G.L. c. 66, § 3.

<sup>6</sup> 950 CMR 32.02.

<sup>7</sup> 950 CMR 32.02.

G.L. c. 4, § 7(26) or other legally applicable privileges. Segregation time shall not include time expended to review records for accuracy and correct errors.<sup>8</sup>

## **II. RECORDS ACCESS OFFICER**

- A. At least one employee of the Town will be designated as the Records Access Officer (RAO) for the Town. Such designation shall be made by the Town Manager. The Town Clerk has been designated as the Town's RAO.
- B. The employee(s) designated as RAO for the Town shall be identified in a notice, conspicuously displayed in the Department lobby and the Department website, if one exists. The notice shall include name, title, business address, business telephone number, and business email address of each records access officer.<sup>9</sup>
- C. If an RAO is scheduled to be out of the office for a period of time, a substitute RAO shall be designated to handle requests for public records. The Assistant Town Clerk has been designated as the substitute.
- D. The RAO shall be responsible for the following tasks:
  - 1. Accepting all requests for public records;
  - 2. Responding thoroughly to all requests in a timely manner;
  - 3. Assisting requesters in identifying the records sought;
  - 4. Assisting in the preservation of public records in accordance with all applicable laws, rules, regulations and retention schedules;
  - 5. Preparing guidelines that enable the requester to make informed requests regarding the availability of such public records electronically or otherwise. The guidelines shall include a list of categories of public records maintained by the Department and such list shall be updated periodically. The guidelines shall be posted on the Department website if one exists; and
  - 6. Posting commonly available public record documents on the Town website if one exists.

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<sup>8</sup> 950 CMR 32.02.

<sup>9</sup> G.L. c. 66, § 6A(c); 950 CMR 32.04(4).

### III. REQUESTS FOR PUBLIC RECORDS

- A. The Town shall accept all requests for public records made in writing (via mail, courier, electronic mail, hand delivery or facsimile) and made orally (in-person).<sup>10</sup>
- B. A requester shall not be required to complete any particular form, however, the Town may make one available to assist requesters.<sup>11</sup>
- C. A requester shall not be required to make a personal inspection of the record prior to receiving a copy.<sup>12</sup>
- D. If the request is unclear or the requester is unsure as to the requested records, the RAO shall assist the requester in determining what records are sought.
- E. As an alternative to obtaining copies, a requester shall be permitted, to the extent feasible, and at reasonable times:<sup>13</sup>
  - 1. To view and inspect records prior to obtaining copies; or
  - 2. To use a personal device such as a camera or portable scanner to copy records.
- F. The RAO shall not require the requester to specify the purpose for a request, except:<sup>14</sup>
  - 1. when the requested records concern information which may be exempt from disclosure under exemption (n);
  - 2. to determine whether the records are requested for a **commercial purpose**; or
  - 3. whether to grant a request for a fee waiver.

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<sup>10</sup> G.L. c. 66, § 10(a); 950 CMR 32.06(1)(c).

<sup>11</sup> 950 CMR 32.06(1)(d).

<sup>12</sup> 950 CMR 32.06(1)(e).

<sup>13</sup> 950 CMR 32.07(1)(b).

<sup>14</sup> G.L. c. 66, § 10(d)(viii).

#### **IV. RESPONSES TO REQUESTS FOR PUBLIC RECORDS**

- A. The RAO shall respond to each request for public records within **10 business days** following the receipt of the request.
- B. For written requests, the calculation of time begins on the first business day following receipt of the request. For oral requests, the calculation of time begins on the day the request was made.<sup>15</sup>
- C. The RAO shall provide a written response to the requester unless the RAO has provided the requester with a copy of all of the requested documents in un-redacted format or has permitted the requester to inspect the requested documents in un-redacted format.
- D. A written response shall be made via electronic mail, if preferred, or via first-class mail.
- E. The RAO and requester may enter into an agreement to extend the time required to respond to the request.<sup>16</sup> The RAO shall document any such agreements in writing.
- F. The written response shall include the following:<sup>17</sup>
  - 1. confirm receipt of the request;
  - 2. identify any records or categories of records sought that are not within any department's possession, custody, or control (***if applicable***);
  - 3. identify the agency or municipality that may be in possession, custody or control of the record sought, if known (***if applicable***);
  - 4. identify any records, categories of records or portions of records that any department intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based (***if applicable***);
  - 5. identify any records, categories of records, or portions of records that any department intends to produce, and provide a detailed

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<sup>15</sup> 950 CMR 32.06(2)(e).

<sup>16</sup> 950 CMR 32.06(i).

<sup>17</sup> G.L. c. 66, § 10(b); 950 CMR 32.06(3)(a) & (c).

statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the department and therefore requires additional time to produce the public records sought (*if applicable*);

6. identify a reasonable timeframe (no more than **25 business days** following the initial receipt of the request **for municipal police departments**) in which the records will be produced;
  7. suggest a reasonable modification of the scope of the request or offer to assist the requester to modify the scope of the request if doing so would enable the entity to produce records sought more efficiently and affordably (*if applicable*);
  8. include an itemized, good faith estimate of any fees that may be charged to produce the records (*if applicable*); and
  9. include a statement informing the requester of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.
- G. The RAO shall provide public records to a requester in electronic format unless the record is not available in electronic form, or the requester does not have the ability to receive or access the records in electronic format, or the requester prefers the records in another format. In the absence of a preferred format, the records shall be provided in a searchable machine-readable form.<sup>18</sup> Where the requester is an individual held in custody in any correctional facility, the RAO shall presume that the requester does not have the ability to receive or access records in electronic form.
- H. The RAO may furnish records by providing reasonable assistance in locating the records on an appropriately indexed and searchable public website, if available.
- I. If the record is withheld or redacted on the basis of the attorney-client privilege, the RAO shall provide the following information in the response: (1) a detailed description of the record; (2) the names of the authors and recipients; and (3) in general terms, the subject matter of the withheld information.<sup>19</sup>

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<sup>18</sup> G.L. c. 66, § 6A(d).

<sup>19</sup> 950 CMR. 32.06(3)(d).

- J. The RAO may deny requests from a requester who has previously failed to pay for records already produced. In such instances, the RAO shall provide an explanation of the reason for the denial and the amounts owed in the written response.<sup>20</sup> The requested records may be withheld until any reasonable fee is paid.

## V. EXTENSIONS TO RESPOND TO REQUESTS

### A. Obtaining a First Extension

1. If any Department is unable to respond within 10 business days as a result of the undue burden placed upon the other responsibilities of the Department due to the magnitude or difficulty of the request, or of multiple requests from the same requester, the Department may obtain an extension to do so.
2. The extension may be for up to, but no more than, **25 business days** following the initial receipt of the request.
3. The written response must include all of the items listed in Section IV(F) of this policy and must be provided no later than 10 business days after the initial receipt of the request.<sup>21</sup>

### B. Requesting a Second Extension

1. If any Department requires more than 25 business days to respond to the request as a result of the undue burden placed upon the other responsibilities of the Department due to the magnitude or difficulty of the request, or of multiple requests from the same requester, the Department may file a petition with the Supervisor of Public Records in order to obtain a second extension.<sup>22</sup>
2. The Supervisor may grant a single extension of up to **30 business days** to respond upon a showing of good cause.<sup>23</sup> The Supervisor also has discretion to grant a longer extension or to relieve any Department of its obligation to comply with the request if the Supervisor determines that the request is frivolous or designed to intimidate or harass, and the request is not intended for the broad

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<sup>20</sup> G.L. c. 66, § 10(d)(vi) & (vii); 950 CMR 32.07(2)(n).

<sup>21</sup> G.L. c. 66, § 10(b).

<sup>22</sup> G.L. c. 66, § 10(c); 950 CMR 32.06(4).

<sup>23</sup> G.L. c. 66, § 10(c); 950 CMR 32.06(4).

dissemination of information to the public about actual or alleged government activity.<sup>24</sup>

3. The petition must be filed within 20 business days after the initial receipt of the request or within 10 business days after receipt of a determination by the Supervisor of Public Records that the requested record constitutes a public record. The requester must be provided with a copy of the petition.<sup>25</sup>
4. The petition must address the following factors probative to good cause:<sup>26</sup>
  - a. the need to search for, collect, segregate or examine records;
  - b. the scope of redaction required;
  - c. the capacity or the normal business hours of operation of that Department;
  - d. efforts undertaken by that department to fulfill request;
  - e. whether the request is frivolous or intended to harass or intimidate the department; and
  - f. the public interest served by expeditious disclosure.

## **VI. CHARGING FEES**

### **A. Generally**

1. The RAO may only assess such fees as are reasonable and assessed pursuant to this policy.<sup>27</sup>
2. The RAO shall provide a requester with a written, good faith estimate within 10 business days of the request being made if the RAO intends to charge any fee.<sup>28</sup>
3. No fees shall be charged if the RAO fails to provide a written response to a request within 10 business days.<sup>29</sup>

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<sup>24</sup> G.L. c. 66, § 10(c); 950 CMR 32.06(4).

<sup>25</sup> G.L. c. 66, § 10(c); 950 CMR 32.06(4).

<sup>26</sup> G.L. c. 66, § 10(c); 950 CMR 32.06(4).

<sup>27</sup> G.L. c. 66, § 10(d).

<sup>28</sup> 950 CMR 32.07(2)(b).



4. Requested records may be withheld until the fee is paid, if any.

#### B. Copy Costs

1. The RAO may only assess the following copy costs:
  - a. A maximum of \$0.05 per page for single and double-sided black and white paper copies or printouts of public records susceptible to reproduction by ordinary means.<sup>30</sup>
  - b. The actual cost of reproduction for records which are not susceptible to reproduction by ordinary means.<sup>31</sup>
2. No copy costs shall be charged for records provided electronically or by facsimile.<sup>32</sup>

#### C. Search and Segregation Fees

1. The RAO may only charge a fee for search and segregation time if:<sup>33</sup>
  - a. Any Department is required to devote more than 2 hours of time to search for, compile, segregate, redact or reproduce a record; and
  - b. The segregation or redaction of records is required by law or the fee is approved by the Supervisor of Public Records.
2. The search and segregation fee must be calculated using the hourly rate equal to or less than the hourly rate of the lowest paid employee who has the necessary skill to complete the search and segregation, but shall not exceed \$25.00 per hour unless approved by the Supervisor of Public Records.<sup>34</sup>
3. The first 2 hours may be charged.

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<sup>29</sup> G.L. c. 66, § 10(e).

<sup>30</sup> G.L. c. 66, § 10(d)(i); 950 CMR 32.07(2)(e).

<sup>31</sup> 950 CMR 32.07(2)(h).

<sup>32</sup> 950 CMR 32.07(2)(f).

<sup>33</sup> G.L. c. 66, § 10(d); 950 CMR 32.07(2)(d) & (m).

<sup>34</sup> G.L. c. 66, § 10(d); 950 CMR 32.07(2)(i) & (m).

#### D. Postage Costs

The RAO may charge the actual cost of postage to mail copies of public records, but only if:<sup>35</sup>

1. The requester specifically requests that records be mailed or is unable to receive copies in person; and
2. The RAO charges the lowest cost available for such mailing, at the discretion of the requester.

#### E. Medium Costs

The actual cost of any storage device requested may be charged to the requester.<sup>36</sup>

#### F. Discretion to Waive Fees

The RAO shall have the discretion to waive or reduce fees. Such waiver or reduction may be granted where it is shown that:<sup>37</sup>

1. Disclosure of a requested record is in the public interest;
2. The request is not primarily in the commercial interest of the requester; or
3. The requester lacks the financial ability to pay the full amount of the reasonable fee.

#### G. Petitions to Charge Fees

1. If the RAO wishes to charge: (i) an hourly fee in excess of \$25, or (ii) the time spent segregating or redacting documents not required by law, the RAO shall file a petition with the Supervisor of Public Records to that effect, and the RAO shall provide the requester with a copy of the petition.<sup>38</sup>
2. The supervisor may approve the petition if:<sup>39</sup>

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<sup>35</sup> G.L. c. 66, § 10(d)(i); 950 CMR 32.07(2)(c) & (g).

<sup>36</sup> G.L. c. 66, § 10(d)(i); 950 CMR 32.07(2)(c) & (g).

<sup>37</sup> G.L. c. 66, § 10(d)(v); 950 CMR 32.07(2)(k).

<sup>38</sup> G.L. c. 66, § 10(d)(iv); 950 CMR 32.06(4).

<sup>39</sup> G.L. c. 66, § 10(d)(iv); 950 CMR 32.06(4).

- a. the request is for a ***commercial purpose***; or
- b. the fee represents an actual and good faith representation to comply with the request, the fee is necessary, the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records.

## **VII. EXEMPTIONS**

The RAO shall ensure that if any portion of a record is redacted or withheld pursuant to one of the exemptions to the Public Records Law, the RAO shall provide the requester with the applicable exemption and describe, with specificity, how it applies to the particular record.

### A. Exemption (a)

1. Exemption (a) applies to records that are specifically or by necessary implication exempted from disclosure by statute.<sup>40</sup>
2. As an example, the following statutes may provide the basis to withhold records under exemption (a):<sup>41</sup>
  - Criminal Offender Record Information: G.L. c. 6, § 167.
  - Delinquency, Sealing by Commissioner of Probation: G.L. c. 276, § 100B.
  - Department of Youth Services Records: G.L. c. 120, § 21.
  - Home Addresses, Telephone Numbers and Personal E-Mail Addresses of Public Safety Personnel: G.L. c. 66, § 10B.
  - Name, Home Addresses, Telephone Numbers and Personal E-Mail Addresses of Family Members of Public Safety Personnel: G.L. c. 66, § 10B.
  - Home Addresses, Telephone Numbers, Place of Employment or Education and Personal E-Mail of Victims of Adjudicated Crimes, Domestic Violence Victims and Persons Providing Family Planning Services: G.L. c. 66, § 10B.
  - Name, Home Addresses, Telephone Numbers, Place of Employment or Education and Personal E-Mail of

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<sup>40</sup> G.L. c. 4, § 7(26)(a).

<sup>41</sup> This list is not meant to be exhaustive.

Family Members of Victims of Adjudicated Crimes, Domestic Violence Victims and Persons Providing Family Planning Services: G.L. c. 66, § 10B.

- Juvenile Delinquency Case Records: G. L. c. 119, § 60A.
- Rape and Domestic Abuse Reports: G. L. c. 41, § 97D.

B. Exemption (b)

1. Exemption (b) applies to records that are related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.<sup>42</sup>
2. For exemption (b) to apply, the RAO shall demonstrate not only that the records relate solely to the internal personnel practices of the government entity, but also that proper performance of necessary government functions will be inhibited by disclosure.

C. Exemption (c)

Exemption (c) applies to personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.<sup>43</sup>

D. Exemption (d)

Exemption (d) applies to inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.<sup>44</sup>

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<sup>42</sup> G.L. c. 4, § 7(26)(b).

<sup>43</sup> G.L. c. 4, § 7(26)(c).

<sup>44</sup> G.L. c. 4, § 7(26)(d).

E. Exemption (e)

Exemption (e) applies to notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit.<sup>45</sup>

F. Exemption (f)

1. Exemption (f) applies to investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.<sup>46</sup>
2. The RAO shall not use exemption (f) as a blanket exemption for all records that investigative officials create or maintain.
3. The RAO must demonstrate that the release of the requested records would result in the prejudice to investigative efforts by showing one of the following in order to apply exemption (f) to a particular request:
  - a. The requested records relate to an ongoing investigation, which if disclosed, could potentially alert suspects to the activities of investigative officials.
  - b. The requested records contain confidential investigative techniques, the disclosure of which would prejudice future law enforcement efforts.
  - c. The requested records contain information, which if disclosed, creates a grave risk of directly or indirectly identifying a private citizen as a witness. **[55.1.3 (b)]**

G. Exemption (g)

Exemption (g) is not applicable to the records maintained by the Department.

H. Exemption (h)

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<sup>45</sup> G.L. c. 4, § 7(26)(e).

<sup>46</sup> G.L. c. 4, § 7(26)(f).

Exemption (h) applies to proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.<sup>47</sup>

I. Exemption (i)

Exemption (i) is not applicable to the records maintained by the Department.

J. Exemption (j)

Exemption (j) applies to the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.<sup>48</sup>

K. Exemption (k)

Exemption (k) was repealed.

L. Exemption (l)

Exemption (l) applies to questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument.<sup>49</sup>

M. Exemption (m)

Exemption (m) is not applicable to the records maintained by a Department.

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<sup>47</sup> G.L. c. 4, § 7(26)(h).

<sup>48</sup> G.L. c. 4, § 7(26)(j).

<sup>49</sup> G.L. c. 4, § 7(26)(l).

#### N. Exemption (n)

1. Exemption (n) applies to records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety and cyber security.<sup>50</sup>
2. For all requests in which exemption (n) applies, the RAO may ask the requester for the purpose of making the request.
3. The RAO is not prevented from engaging the requester in conversation by asking the requester to voluntarily provide additional information in order to reach a reasonable judgment,” but the RAO may not require the requester to provide personal information.<sup>51</sup>
4. The determination of whether exemption (n) will be used to withhold records shall be based upon the totality of circumstances of the requester including the purpose for making the request.

#### O. Exemption (o)

Exemption (o) applies to the home address, personal email address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees

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<sup>50</sup> G.L. c. 4, § 7(26)(n).

<sup>51</sup> See SPR Bulletin No. 04-03 (April 1, 2003).

under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.<sup>52</sup>

P. Exemption (p)

Exemption (p) applies to the name, home address, personal email address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).<sup>53</sup>

Q. Exemption (q)

Exemption (q) is not applicable to the records maintained by a Department.

R. Exemption (r)

Exemption (r) applies to information and records acquired under chapter 18C by the office of the child advocate.<sup>54</sup>

S. Exemption (s)

Exemption (s) is not applicable to the records maintained by a Department.

T. Exemption (t)

Exemption (t) applies to statements filed under section 20C of chapter 32<sup>55</sup>

U. Exemption (u)

Exemption (u) is not applicable to the records maintained by a Department.

## **VIII. TRAINING**

A. All RAOs shall receive initial training on the Public Records Law upon being designated as an RAO consisting of at least four (4) hours.

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<sup>52</sup> G.L. c. 4, § 7(26)(o).

<sup>53</sup> G.L. c. 4, § 7(26)(p).

<sup>54</sup> G.L. c. 4, § 7(26)(r).

<sup>55</sup> G.L. c. 4, § 7(26)(t).



B. All RAOs shall receive refresher training the Public Records Law on a bi-annual basis. The required hours of training for such refresher course shall be in the discretion of the Town Manager.

A “Guide to the Massachusetts Public Records Law” published by the Division of Public Records and the “Law Enforcement Guide to Public Records” may be found in the Training Library.

ISSUING AUTHORITY:

Chief William R. Walsh Jr.:

