

GUIDELINES
PUBLIC RECORD REQUESTS
Adopted June 8, 2017

Effective January 1, 2017, the updated Massachusetts Public Records Law, G.L. c.66 and c.4, §7(26) provides that a municipality must, within 10 business days (Monday through Friday, excluding legal holidays), respond to a request for records by providing access to or a copy of such records, or explaining any delay or denial. The Public Records Law requires every agency and municipality to designate a Records Access Officer (RAO) to assist requesters in obtaining public records and that the RAO institute guidelines. These guidelines are intended to assist members of the public seeking access to public records in the custody of Mashpee Housing Authority.

A. General Information:

1. Business Hours. The regular business hours of Mashpee Housing Authority are 9AM – 2:30 PM Monday – Thursday.
2. Records Access Officers. The following Records Access Officer (“RAO”) has been designated:

RAO:
Leila Botsford
Executive Director
7 Job’s Fishing Road, Mashpee MA 02649
Email: mashpeeha@capecod.net
Telephone: 508-477-6202 X203
Fax: 508-477-4231

In the absence of the designated RAO, Carol Mitchell, Executive Assistant, may be contacted. Records Access Officers are available to answer questions concerning and help facilitate the making of public records requests. Contact information for RAOs is also posted on the housing authority’s website and at its main office.

3. Public Records Law Information. General information about the public records law and public records requests is found in the Secretary of the Commonwealth’s, “A Guide to the Massachusetts Public Records Law,” January 2017 edition, found online at: www.sec.state.ma.us/pre/prepdf/guide.pdf.

B. Making Public Records Requests:

1. Public Records Requests. Any person may make a public records request:
 - a. In person at 7 Job’s Fishing Road, Mashpee, MA during regular business hours.
 - b. By first class mail addressed to the RAO at the RAO’s business address set forth above;

- c. By facsimile addressed to the RAO at the number set forth above.
 - d. By e-mail addressed to the RAO at the e-mail address set forth above.
2. Requests Encouraged to be in Writing. Although not required, it is strongly encouraged that public records requests be in writing to ensure the most efficient and accurate response. All written public records requests, including via email and facsimile, shall be addressed/directed to an RAO, and contain the requester's name and contact information, so that the RAO is able to provide the required response. A sample request letter is provided as attachment "B".
 3. Contact Information. Although not required, individuals making in-person requests can provide their names or contact information so that the RAO can respond directly to them. For in-person requests that require additional time for a comprehensive response, and no name or contact information has been provided, requesters must check in periodically with the RAO with regards to their request. Requesters may voluntarily provide contact information using Public Records Request Forms, which shall be available in the office (See attachment "B").
 4. Specificity of Requests. To facilitate timely responses to public records requests, requests should be as specific as possible, detailing, if known, records custodian(s), and date and subject matter parameters. The more specific the request, the better able the housing authority will be to respond, as broad requests often require more extensive staff efforts to locate, review and copy all possibly responsive records. In addition, the cost to the requester may be reduced if the information requested is as precise as possible.
 5. Receipt of Requests. Written requests received during normal business hours, as defined in paragraph 1, above, will be considered received on that date. Written requests sent via email or facsimile after normal business hours shall not be considered received until the following business day. Business days shall not include Saturdays, Sundays, and legal holidays.
 6. Purpose of Request. The RAO will not ask a requester to identify the purpose of the request, but may ask for more information to assist the requester to make an appropriate request and/or to enable the RAO to respond more efficiently.

C. Responses to Public Records Requests:

1. Fees. If fees will be assessed, a written estimate of the same will be provided to the Requester.
2. Response if Longer than 10 Days or Denial in Whole or in Part. If a full response, including provision of records, cannot be made within 10 business days of receipt of the request, the RAO or designee will respond to the requester in writing: explaining the anticipated time frame for complete response; identifying any records that the housing authority does not have in its custody; identifying records which the housing authority does not expect will be provided, or that will be redacted, specifying the relevant

exemption and its application to the requested record or portion thereof; providing a good faith fee estimate; and including a statement of appeal rights.

3. Clarification of Request. Depending upon the scope of the request, the requester may be asked to clarify the request, provide more specific detail, and/or agree to a voluntary extension of time for the housing authority to respond fully to the request.
4. Time for Response. Typically, a complete response will be provided within 25 business days of receipt of the requests. If, due to the scope of the request, the need for redactions, or other complications, the housing authority is concerned that it will not be able to provide a complete response within that time frame, the housing authority may ask the requester for an extension of time to comply or petition the Supervisor of Public Records for additional time.
5. Publicly Available Records. The housing authority has some information available on the Town of Mashpee's website (www.mashpeema.gov) and also on its own website (www.mashpeehousing.org) where certain public records are available for inspection, downloading or printing. If a request seeks documents publicly available on one of these websites, the requester will be directed to the website in satisfaction of the request, unless the requester does not have the ability to receive or access the records in a usable electronic form.
6. Electronic Records Delivery Preference. To the extent feasible, the RAO or designee will provide public records in response to a request by electronic means unless the record is not available electronically or the requester does not have the ability to receive or access the records electronically. To the extent available and feasible, the RAO will provide an electronic record in the requester's preferred format.
7. Request for Records to be Mailed. Should a requester seek to have responsive records provided by mail, the requester will be charged the actual cost of postage, using the least expensive form of mailing possible, unless the requester requests, and agrees to pay for, an expedited form of mailing and such fees are paid in advance.
8. Creation of Records. The housing authority is only required to provide records that are in existence at the time of a request and is not required to create a new record to accommodate a specific request.
9. Answering Questions. The housing authority is not required to answer questions in response to a public records request.
10. Supplementing Responses. The housing authority is not required to supplement its response to a previous public records request in the event that responsive records are created in the future.
11. Unique Right of Access. Pursuant to the provisions of 950 CMR 32.06(1)(g) , if a requester or requester's representative (such as an attorney), has "a unique right of access by statutory, regulatory, judicial or other applicable means", a request for records will not be considered a G.L. c.66, §10 public records request.

D. Exemptions:

1. Exemptions/Redaction/Withholding. Specific statutory exemptions have been created by the legislature. Some public records, or portions of records, may not be provided in response to a public records request because the housing authority has determined such records to be exempt from disclosure pursuant to the provisions of G.L. c.4, §7(26) (See attachment “B”), the attorney-client privilege, or other applicable exemptions or common law privileges.

E. Fees:

1. Reasonable Fees. In some circumstances, the Mashpee Housing Authority may assess a reasonable fee for the production of public records.
2. Categories of Permissible Charges. Permissible charges include, but are not limited to:
 - a. five cents (\$0.05) per page of black and white printouts or copies;
 - b. actual cost for storage devices or materials such as CDs or thumb/flash drives;
 - c. actual cost for duplication of records not susceptible to ordinary means of reproduction, such as color copies and large format plans;
 - d. postage fees (where applicable; see paragraph 15, above); and
 - e. fees for employee time required to satisfy a public records request (see paragraph 26 below).
3. No copying fee will be charged for records provided in electronic form.
4. Employee Time for Locating and Segregating Records. A fee may be charged for employee time necessary to identify, locate, and compile the records requested. A fee may also be charged for employee time necessary to review, and, as applicable, segregate and/or redact information exempt from public disclosure. The hourly rate for such fees shall be the hourly rate of the lowest paid employee capable of performing the task, provided, however, that this hourly rate shall not exceed twenty-five dollars (\$25.00) per hour, unless the housing authority has obtained the approval of the State Supervisor of Public Records to charge a higher hourly rate. Depending upon the nature of the request, different rates may be charged for different types of work (i.e., a different hourly rate for search time and a different hourly rate for segregation/redaction time).
5. Small Municipality Exception. As of the 2015 Census, the Town of Mashpee had 14,027 residents. In accordance with 950 CMR 32.07(2)(m)(2), therefore, the housing authority may assess fees for all employee time, including the first two hours.
6. Requests for Commercial Purposes. Said fee limitations may not apply when a request for records is for a commercial purpose as determined by the Commonwealth’s Supervisor of Records.

7. Petition for Higher Fee. In certain circumstances, the housing authority may petition the Supervisor of Public Records for permission to assess fees for employee time at a rate in excess of \$25.00.

F. Appeals:

If a requester wishes to assert a claim that they have been denied access to public records, they may appeal the RAO's determination to the Supervisor of Records pursuant to 950 CMR 32.08(1). The Supervisor shall make a final determination on the appeal within ten (10) business days of receipt.

If the requester is dissatisfied with the determination of the Supervisor of Records, the requester may appeal to Superior Court. Alternatively, a requester may bypass the Supervisor and go directly to Superior Court.

For further information on appeals, see the Secretary of the Commonwealth's "A Guide to the Massachusetts Public Records Law," January 2017 edition, available at www.sec.state.ma.us/pre/prepdf/guide.pdf

Attachment "A"

Public Records Request Form

Date request mailed

Leila Botsford
Mashpee Housing Authority
7 Job's Fishing Road
Mashpee, MA 0649

Re: Massachusetts Public Records Request

Dear Mrs. Botsford:

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

[Please include a detailed description of the information you are seeking.]

I recognize that you may charge reasonable costs for copies, as well as for personnel time needed to comply with this request.

The Public Records Law requires you to provide me with a written response within 10 business days. Please respond to me at my address/email below. If you cannot comply with my request, you are statutorily required to provide an explanation in writing.

Sincerely,

Your Name

Contact Information (address, email, telephone)

Attachment “B”

Exemptions per

G.L. c.4, §7(26)

Public Records Law allows for certain records to be kept private. 760 CMR 8.00: PRIVACY AND CONFIDENTIALITY (Attachment “C”) outlines some housing authority records that are to be kept private. In addition, below is a list of some of the items that shall be considered private and not to be released in a Public Records Request.

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;
- (h) 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;
- (i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;
- (j) 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;

(k) 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, cyber security 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 (c) of section 10 of chapter 66, is likely to jeopardize public safety or cyber security.

(l) 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 under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

Attachment "C"

760 CMR 8.00: PRIVACY AND CONFIDENTIALITY

- 8.01: Applicability and Definitions
- 8.02: Informed Consent
- 8.03: Collection and Maintenance of Personal Data
- 8.04: Access to Personal Data
- 8.05: Objections and Administrative Appeals
- 8.06: Administration and Enforcement

8.01: Applicability and Definitions

760 CMR 8.00 shall be effective on November 15, 1996. 760 CMR 8.00 replaces prior regulations appearing at 751 CMR 7.00.

The definitions of data subject, personal data, and personal data system appear in M.G.L. c. 66A, § 1. In addition, the following definitions apply:

Department - the Massachusetts Department of Housing and Community Development.

Holder - A local housing authority, redevelopment authority and any other person or entity which has a written contract, agreement or arrangement with a local housing authority or redevelopment authority to hold personal data in performing a governmental or public function or purpose.

LHA - a local or regional housing authority established under M.G.L. c. 121B, § 3 or § 3A, or a comparable special act.

LRA - a local redevelopment authority established under M.G.L. c. 121B, § 4.

8.02: Informed Consent

A data subject may give or withhold informed consent when requested by a holder to provide personal data.

(1) Written Statement from Holder. Consent will be deemed "informed consent" only if the holder provides to the data subject a written statement containing the following information and the data subject indicates his/her written understanding and agreement:

- (a) an explanation of how the requested data will be used and held;
- (b) the identity of persons, entities or agencies who will receive or hold the data, and an assurance that all holders will keep the data confidential;
- (c) an offer to answer any inquiries concerning the data, indicating the data subject's right to object in accordance with 760 CMR 8.05; and,
- (d) any legal requirements to provide the requested data and any legal or administrative consequences arising from a decision to withhold the data.

(2) Separate Approval for Data Use. Except where otherwise provided by statute or judicial order, personal data collected for one purpose shall not be used for another unrelated purpose without the informed consent of the data subject.

8.03: Collection and Maintenance of Personal Data

(1) Designation of Personal Data Officer. Each LHA and LRA shall designate one individual to serve as the officer immediately responsible for the privacy, confidentiality, and security of personal data consistent with M.G.L. c. 66A.

(2) Limit on Personal Data. A Holder shall not collect or maintain more personal data than reasonably necessary for the performance of the holder's legally authorized functions.

8.04: Access to Personal Data

- (1) Contracts or Agreements with a Holder to Perform a Public or Governmental Purpose. A LHA or LRA shall allow another person, entity or agency to hold personal data for a governmental function or purpose only by written contract, agreement, or arrangement. Such contract, agreement, or arrangement shall contain provisions expressly informing the other person, entity or agency of its status as a Holder and covering its legal obligations as such.
- (2) Dissemination of Personal Data - General. A Holder shall not allow any individual, agency, or entity not employed by the Holder or under contract or agreement with the Holder under 760 CMR 8.04(1) to have access to personal data unless such access is:
 - (a) authorized by statute or by regulations which are consistent with the purposes of M.G.L. c. 66A; or
 - (b) approved by the data subject, unless the data subject is not entitled to access.
- (3) Access by Physicians in an Emergency. A Holder may disseminate medical or psychiatric data to a physician treating a data subject, upon the request of the physician, if a medical or psychiatric emergency arises precluding the data subject from approving the release of the data. Upon termination of the emergency, the Holder shall give notice to the data subject about the physician's access.
- (4) Access by the Department. A Holder shall permit authorized employees of the Department to have access to personal data for the performance of legally authorized duties and responsibilities and shall disseminate personal data to the Department upon its request.
- (5) Access by Holder Personnel and Board Members. A Holder shall:
 - (a) design personnel procedures which limit the number of employees whose duties involve access to personal data and train existing personnel concerning standards of confidentiality and security required by 760 CMR 8.00;
 - (b) permit only those employees whose duties require access to have access to personal data; and
 - (c) strictly limit board member access to personal data concerning an applicant or tenant to situations where there is a need for access in order for the board to conduct business properly.
- (6) Access by Data Subject. A data subject or his/her duly authorized representative shall have access to, as well as the right to inspect and copy, any personal data concerning him/her, unless prohibited by law or judicial order.
- (7) Denial of Access to Data Subject. A Holder shall not rely on any exception contained in M.G.L. c. 4, § 7 clause twenty-sixth (public records law) to withhold personal data from a data subject. A Holder may deny a request by a data subject or his/her authorized representative for access to personal data if:
 - (a) the denial of access is expressly permitted by statute; or
 - (b) the personal data is currently the subject of an investigation and its disclosure would probably so prejudice the possibility of effective law enforcement that the disclosure would not be in the public interest. 760 CMR 8.04(7) is not intended to limit any right or power of access the data subject might have under pertinent administrative or judicial procedures. Such personal data may be withheld for the time for completion of the investigation and commencement of an administrative or judicial proceeding on its basis, or for one year from the commencement of the investigation, whichever occurs first.
- (8) Notice of Denial. A Holder shall notify a data subject in writing of any denial of his/her request for access, the reasons therefore, and the right of appeal set forth in 760 CMR 8.05.
- (9) List of Data Requests. A Holder shall, at the request of a data subject, provide a written list of the uses made of his/her personal data, including any persons, agencies, or entities which have gained access to the personal data.
- (10) Holder Authority to Make Additional Access Rules. A Holder may adopt reasonable written rules governing access to personal data, consistent with 760 CMR 8.00 and all pertinent statutes which:
 - (a) insure that any substitute or proxy for the data subject be duly authorized by him/her;
 - (b) regulate the time and place for inspection and the manner and cost of copying, provided that the time for inspection shall not be unduly restricted, and the fee for copies shall not exceed that

allowed for public records under the Freedom of Information regulations of the Massachusetts Supervisor of Public Records; and

(c) require that data be reviewed in the presence of or under the supervision of the Holder.

(11) Judicial or Administrative Orders. Any Holder served with a subpoena or other judicial or administrative order directing it to disclose a data subject's personal data shall, unless otherwise prohibited by law or judicial order, immediately give notice to the data subject. Such notice, where possible, shall include a copy of the subpoena or order, except where the data subject himself requests the order or is otherwise obviously aware of its existence. The holder, wherever legally and practically possible, shall allow the data subject adequate time to attempt to secure a court order to quash the subpoena or order.

(12) Record of Data Access and Use. Each Holder shall maintain a complete and accurate record of every access to any personal data by persons, agencies, or entities other than the holder, including the identity of all such persons, agencies, and entities and their intended use of the data.

(13) Physical Safety of Data. A Holder shall take all reasonable measures to protect personal data from physical damage or removal.

8.05: Objections and Administrative Appeals

(1) Data Subject's Right to Object. A data subject who objects to the accuracy, completeness, pertinence, timeliness, relevance, use, or dissemination of his/her personal data or the denial of access to his/her personal data, may personally, or through a duly authorized representative, file an objection with the personal data officer.

(2) Meritorious and Non-meritorious Objections. The personal data officer shall investigate the validity of the objection within 30 days of receipt and

(a) if the objection is found to be meritorious, he or she shall correct or amend the data or the methods for the use or dissemination of the data, or as appropriate, permit access by the data subject to the data; or

(b) if the objection is found to lack merit, provide the data subject the opportunity to have a statement reflecting his/her views recorded and included with any subsequent dissemination of the personal data in question.

(3) Data Subject Appeal. Any data subject, including an applicant or tenant, or his/her authorized representative may appeal the personal data officer's decision pursuant to the LHA or LRA grievance procedures.

8.06: Administration and Enforcement

(1) Data System Notices to Secretary of State. Each Holder shall upon the establishment, termination, or change in the character of a personal data system, file a notice with the Massachusetts Secretary of State pursuant to M.G.L. c. 30, § 63.

(2) Departmental Power of Review. The Department may from time to time review the procedures of a Holder under 760 CMR 8.00. If the Department finds the procedures deficient, the Department shall direct corrective measures.

(3) Legal Action. Any Holder which violates a provision of M.G.L. c. 66A may be subject to legal action pursuant to M.G.L. c. 214, § 3B.