



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
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BOSTON, MASSACHUSETTS 02108

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ATTORNEY GENERAL

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[www.mass.gov/ago](http://www.mass.gov/ago)

June 6, 2019

Christine McCue Potts  
7 Curve Street  
Medfield, MA 02052

**RE: Open Meeting Law Complaint**

Dear Ms. Potts:

Thank you for contacting the Attorney General's Office. On June 6, 2019, we received your Open Meeting Law complaint, which was originally received by the Medfield School Committee on or about April 29, 2019. We will review your complaint and will contact you in the event that we require additional information. We will notify you of our determination following our Office's review.

Your complaint may be resolved through either a formal order or informal action. Formal orders contain a detailed discussion of the alleged violation, applicable legal requirements, and may order any of the remedies provided in G.L. c. 30A, § 23(c). If a complaint is appropriate for informal action, we will attempt to resolve the matter by speaking to the parties, followed by a brief letter noting whether or not there was a violation and what remedial action was taken.

For additional information on the Open Meeting Law and the complaint process, please visit our website at [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting). Please do not hesitate to contact the Division of Open Government with any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Mira Netsky".

Mira Netsky  
Paralegal  
Division of Open Government

cc: Cynthia Amara, Esq., Murphy, Hesse, Toomey & Lehane, LLP  
Medfield School Committee



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

June 17, 2019  
SPR19/1203

Ms. Christine McCue  
7 Curve Street  
Medfield, MA 02052

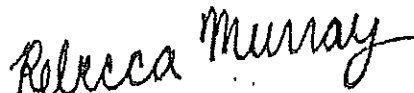
Dear Ms. Christine McCue:

I have received your letter appealing the response of the Medfield Public Schools to your request for records.

I have directed a member of my staff, Gregory Stewart, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

  
Rebecca S. Murray  
Supervisor of Records

cc: Mr. Jeffrey Marsden



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

July 1, 2019  
SPR19/1203

Jeffrey J. Marsden, Ed.D  
Superintendent  
Medfield Public Schools  
459 Main Street, Third Floor  
Medfield, MA 02052

Dear Superintendent Marsden:

I have received the petition of Christine McCue appealing the response of the Medfield Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. McCue requested certain executive session minutes and other documents. The School provided a response on May 8, 2019. Ms. McCue appealed the May 8<sup>th</sup> response to this office on June 14, 2019 concerning attorney-client privilege.

***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

*Attorney-client privilege*

A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived. Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 450 n.9 (2007); see also Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies). Disclosing attorney-client communications to a third party generally undermines the privilege. Comm'r of Revenue v. Comcast Corp., 453 Mass. 293, 306 (2009).

Records custodians seeking to invoke the common law attorney-client privilege "are required to produce detailed indices to support their claims of privilege." Suffolk Constr. Co., 449 Mass. at 460. Pursuant to the Public Records Law, in assessing whether a records custodian has properly withheld records based on the claim of attorney-client privilege the Supervisor of Records "shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney client privilege is being claimed." G. L. c. 66, § 10A(a).

The School on June 21, 2019 provided a supplemental response to this office and Ms. McCue. The School states "Ms. McCue alleges that the May 8 letter failed to provide any information on the grounds upon which the attorney-client privileged was asserted. That allegation is unquestionably false. The entire second paragraph in the Committee's May 8 letter lays out in detail exactly what Ms. McCue claims does not exist." The School explained that the "emails reference explicit communications and advice given by Mr. Waugh to Mr. Morrison after Mr. Morrison had requested that legal counsel advise the Committee on the terms of the contract extension." The School also attached in the May 8<sup>th</sup> response provided to Ms. McCue on which included a privilege log containing the authors, recipients, dates, and substance of the withheld records as well as the grounds for withholding or redacting.

*Conclusion*

In light of the School's June 21<sup>st</sup> supplemental response and attached May 8<sup>th</sup> privilege log, I find the School has met its burden to withhold the information under the attorney-client privilege

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Christine McCue



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

July 29, 2019  
SPR19/1503

Christine McCue  
7 Curve Street  
Medfield, MA 02052

Dear Christine McCue:

I have received your letter appealing the response of the Medfield Public Schools to your request for records.

I have directed a member of my staff, Manza Arthur, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Rebecca S. Murray  
Supervisor of Records

cc: Jeffrey Marsden



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

August 05, 2019  
SPR19/1571

Christine McCue  
7 Curve Street  
Medfield, MA 02052

Dear Christine McCue:

I have received your letter appealing the response of the Medfield Public Schools to your request for records.

I have directed a member of my staff, Attorney Lori Sullivan, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray  
Supervisor of Records

cc: Supt. Jeffrey Marsden



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

August 9, 2019  
SPR19/1203

Jeffrey J. Marsden, Ed.D  
Superintendent  
Medfield Public Schools  
459 Main Street, Third Floor  
Medfield, MA 02052

Dear Superintendent Marsden:

I have received a request for reconsideration from Christine McCue regarding a previous determination related to the response of the Medfield Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. McCue requested certain executive session minutes and other documents from the School.

***Previous appeals***

This request was the subject of previous appeals. See SPR19/767 Determination of the Supervisor of Records (April 24, 2019); SPR19/1203 Determination of the Supervisor of Records (July 1, 2019). In my July 1<sup>st</sup> determination I found in light of the School's June 21, 2019 supplemental response and May 8, 2019 privilege log, the School had met its burden to withhold the information under the attorney-client privilege. Ms. McCue sought reconsideration of this determination in an email dated July 19, 2019.

***Request for reconsideration***

In Ms. McCue's July 19<sup>th</sup> request, she asks for the determination to "be reconsidered as it applies only to the e-mail dates noted, especially since allowing an unauthorized, individual member of a public body to claim the attorney-client privilege exemption would establish a dangerous precedent for the MA Public Records Law, and allow for a perceived abuse of power." Ms. McCue also asks for the School to be required to "provide documentation, with time, place and date when that authorization took place" with regards to attorney-client privilege.

In the School's June 21<sup>st</sup> supplemental response they explained that the "emails reference explicit communications and advice given by Mr. Waugh to Mr. Morrison after Mr. Morrison had requested that legal counsel advise the Committee on the terms of the contract extension."

Jeffrey J. Marsden, Ed.D

SPR19/1203

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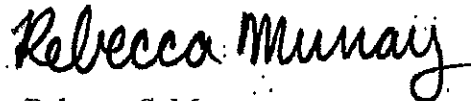
August 9, 2019

Based on the School's communications, it is my understanding these communications were between an attorney and a client for the purposes of seeking legal advice and the privilege was not waived.

The School also provided to Ms. McCue a privilege log containing the authors, recipients, dates, and substance of the withheld records as well as the grounds for withholding or redacting the records. The School established that the communication between the parties constituted attorney-client privilege materials which may be withheld from public disclosure.

After another careful and thorough review of this matter, I respectfully decline to reverse my findings. If Ms. McCue is not satisfied with the resolution of this administrative appeal, she is advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, § 10(A)(c).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Christine McCue





**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

August 9, 2019  
SPR19/1503

Jeffrey Marsden, Ed. D  
Superintendent  
Medfield Public Schools  
459 Main Street, 3<sup>rd</sup> Floor  
Medfield, MA 02052

Dear Dr. Marsden:

I have received the petition of Christine McCue appealing the response of the Medfield Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on March 12, 2019, Ms. McCue requested the following records:

- “1. Copies of Medfield School Committee Executive Session minutes for the list of dates in the attached document.
2. Copies of all written communications since April 1, 2018 between Superintendent Marsden and/or any member of his staff, and/or any member of Medfield School Committee, related to his contract, including, but not limited to, re-opening negotiations.
3. Copies of all electronic communication exchanged between Medfield School Committee members . . . (including but not limited to message sent and received via scohair@email.medfield.net) between Dec. 1, 2018 and March 11, 2019, excluding meeting scheduling messages, and especially including any communication related to the superintendent contract.
4. A copy of the e-mail (in its entirety) that School Committee Member . . . received and read aloud at the March 11, 2019 public meeting that contained a copy of the e-mail distributed by me.
5. Copies of any written communication (electronic and/or hard copy) between Superintendent Marsden, and/all principals, teachers, staff and/or other administrators/leadership team members, school committee members (former and present), and/or former Police Chief . . . , related to:
  - i. “Dr. Marsden’s presence at a 1st grade teacher/common planning meeting in December 2017 or January 2018;
  - ii. “My presence in the high school in the late afternoon of January 17, 2018;”

- iii. Any/all communication about me (including reference to Superintendent Marsden's letter to me) as it relates to the January 29, 2018 School Committee Meeting/Budget Hearing, including but not limited to messages exchanged with [an identified individual], and arrangements for or with the Resource Officer who was present at the meeting."

### *Previous appeal*

The requested records were the subject of a previous appeal. See SPR19/0767 Determination of the Supervisor of Records (April 24, 2019). In my April 24<sup>th</sup> determination, I found that the School had not met its burden to withhold responsive records from disclosure pursuant to the attorney-client privilege. I also directed the School to provide Ms. McCue with a revised, good faith estimate for the cost of complying with her request consistent with the order, the Public Records Law, and its Regulations. Following the April 24<sup>th</sup> determination, the School provided a response on June 21, 2019. Having not received certain records, Ms. McCue petitioned this office and this appeal, SPR19/1503, was opened as a result. Ms. McCue indicates that this appeal pertains to only item 5 of her original request. While this appeal was pending, the School provided a supplemental response dated August 8, 2019.

### *The Public Records Law*

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### *The School's June 21<sup>st</sup> response*

In its June 21, 2019 response, the School had stated that "... [u]pon further review of the Supervisor's April 24, 2019 order, the [School] does not dispute Ms. McCue's allegation that she should not be assessed a fee for her March 12 records request. Accordingly, the [School] will not require Ms. McCue to pay the fee referenced in the May 8 email to her. ..."

In her appeal petition, Ms. McCue claims that “. . . the Records Custodian had agreed to [] waive all fees associated with providing the outstanding records (all others have been received), and had also previously agreed to provide them, yet I have still not received the records [responsive to item 5].”

*The School's August 8<sup>th</sup> supplemental response*

In its August 8, 2019 supplemental response, the School indicates that it has delayed in providing responsive records because, it “. . . has been dealing with a lack of staff availability since school ended and the summer began . . . [and] has advised Ms. [McCue] at numerous points of the lack of staff availability and the communication challenges during the summer months.” However, the School provided a record indicating that it is responsive to item 5 of Ms. McCue's request.

*Additional responsive records*

In response to the School's supplemental response, Ms. McCue claims that “. . . a lengthy letter sent by my attorney to [Dr.] Marsden in spring 2018 that he was required to share with others, yet no record of him doing so has yet to be provided.” Ms. McCue further claims the following:

- [i.] Dr. Marsden's presence at a 1<sup>st</sup> grade teacher/common planning meeting in December 2017 or January 2018 – no documents provided, even though there was electronic communication related to this meeting between [3 identified individuals] and one or more Memorial School staff members.
- [ii.] [m]y presence in the high school in the late afternoon of January 17, 2018 – only school committee e-mail provided; no other documents provided, even though there was electronic communication between Superintendent Marsden and Medfield High School principal . . . , among others noted;
- [iii.] [a]ny/all communication about me (including reference to Superintendent Marsden's letter to me) as it relates to the January 29, 2018 School Committee Meeting/Budget Hearing. . . . None of these requested documents have been provided even though there was electronic communication exchanged prior to the January 29, 2018 meeting regarding, but not limited to, a scheduled meeting at the police station.

Ms. McCue further claims that “Superintendent Marsden also did not share actual, electronic communications between him, Chief Meaney and others about the ‘incident’ noted in the Jan. 17, 2018 e-mail. . . .”

In accordance with the Public Records Law, a custodian is expected to use their superior knowledge of the records in their custody to assist the requestor in obtaining the desired information. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request.

Jeffrey Marsden, Ed. D  
Page 4  
August 9, 2019

SPR19/1503

See G. L. c. 66, § 10(a)(ii). In light of Ms. McCue's claims, I find the School must confirm whether additional records exist that may be responsive to item 5.

***Conclusion***

Accordingly, the School is ordered to provide Ms. McCue with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Rebecca S. Murray  
Supervisor of Records

cc: Christine McCue



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

August 15, 2019  
SPR19/1571

Jeffrey Marsden, Ed.D.  
Superintendent  
Town of Medfield Public Schools  
459 Main Street, 3<sup>rd</sup> Floor  
Medfield, MA 02052

Dear Dr. Marsden:

I have received the petition of Christine McCue appealing the response of the Town of Medfield Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on June 26, 2019, Ms. McCue requested:

1. A copy of the contract and/or written agreement (e.g., e-mail with details on services & cost) between Medfield Public Schools and John Guilfoil Public Relations; and
2. Draft minutes and documents shared and/or discussed (including individual member assessments) from the June 20 Medfield School Committee meeting/planning session.

On July 8, 2019, the School provided Ms. McCue with the responsive contract (Request Number 1); however, the School indicated that due to a lack of staff availability due to vacation, the meeting minutes are not in draft form, (Request Number 2). The School advised Ms. McCue that it hoped to provide her with the minutes by the end of the following week.

In a July 22, 2019 email to you and the Chair of the School Committee (Committee), Ms. McCue indicated that she received the individual Committee members' self-assessment documents of Meghan Glenn and Jessica Reilly from the June 20<sup>th</sup> workshop-meeting; however, she has not been provided with the individual self-assessments of Anna Mae O'Shea Brooke, Leo Brehm and Tim Knight. She was also waiting for any additional documents shared and/or discussed at the June workshop-meeting. Further, in her July 22<sup>nd</sup> email, Ms. McCue clarified her request for the original, un-transcribed/unapproved minutes from the workshop-meeting.

On July 24<sup>th</sup>, the School provided Ms. McCue with a copy of the June 20, 2019 School Committee workshop meeting minutes in draft form. As a result of not receiving all the requested records, Ms. McCue petitioned the Supervisor of Records (Supervisor), and this appeal was opened.

### *The Public Records Law*

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based..."); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

On August 15<sup>th</sup>, in a telephone conversation, you explained to a Public Records Division staff attorney that Ms. McCue was provided with some of her requests, and that the School's Legal Counsel, Paul G. King, Esq. of *Murphy, Hesse, Toomey & Lehane, LLP* was in the process of providing further records and a supplemental response. This office also learned that the School did not assess any fees to provide the responsive records.

In an August 15<sup>th</sup> response, after contacting this office by email and telephone, Attorney King states, "...the Committee notes for the Supervisor, as it has in other recent requests and appeals by [Ms. McCue], that the Committee has been dealing with staff shortages and lack of availability during the Summer months. Specifically, multiple Committee members have been, or still are, on extended vacations outside of the state and/or outside of the country. As a result, those Committee members have had limited or, at times, no internet access. Also, administrative staff members supporting the Committee have been on vacation at various times during recent months."

The School, through Attorney King, attempted to provide responsive records via email on August 15<sup>th</sup>; however, the attachments were too large to be accepted by this office's and Ms. McCue's email servers. It is my understanding that, if the records cannot be provided via email, the School will provide the records to Ms. McCue via U.S. Postal Mail. In this transmission of records, the School is providing:

- Individual Committee member assessments from the June 20<sup>th</sup> workshop-meeting of Anna Mae O'Shea Brooke and Tim Knight; and
- Handwritten meeting minutes (notes) created at the Committee's June 20<sup>th</sup> workshop-meeting.

Dr. Jeffrey Marsden  
Page 3  
August 15, 2019

SPR19/1571

*No responsive records*

The School's August 15<sup>th</sup> response states, "[t]here are no responsive records regarding Committee member Leo Brehm." (Ms. McCue's Request Number 2 – Committee Member self-assessments). See G. L. c. 66, § 6A(d); see also 950 C.M.R. 32.06(3)(c)(2). Under the Public Records Law, the School has no obligation to create a record in response to a public records request. 32 Op. Att'y Gen. 157, 165 (May 18, 1977).

Whereas the School has now provided all the records responsive to Ms. McCue's Request Numbers 1 and 2, I will consider that portion of Ms. McCue's June request closed. With regard to the balance of Ms. McCue's request for any records shared by the Committee during the June 20<sup>th</sup> meeting, such as any research notes/documents in the custody, control or possession of Committee member Meaghan Glenn, the School will provide these records if they exist, after August 20<sup>th</sup> when Ms. Glenn returns from her vacation.

**Conclusion**

Accordingly, the School is ordered to provide Ms. McCue with a response to her request for any bus research notes/documents held by the School Committee, in a manner consistent with this order, the Public Records Law and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Christine McCue  
Paul G. King, Esq., *Murphy Hesse Toomey & Lehane, LLP*