

DATE: June 5, 2017
TO: Board of Selectmen
FROM: John Senchyshyn, Asst. Town Administrator/HR Director
RE: **NEW PUBLIC RECORDS LAW – POSTING GUIDELINES**

REQUESTED MOTION:

NONE AT THIS TIME. A VOTE TO ACCEPT THE GUIDELINES AND APPOINT A NEW RECORDS ACCESS OFFICER FOR THE SCHOOL DEPARTMENT WILL BE ADDED TO THE JUNE 19, 2016 AGENDA.

BACKGROUND:

An Act to Improve Public Records, Ch. 121 of the Acts of 2016 was signed into law on June 3, 2016 and became effective January 1, 2017. Since the passage of the Act, the Board of Selectmen appointed 5 Records Access Officers (RAOs). In addition, KP Law conducted 3 training sessions in early January 2017: one for RAOs, one for staff and one for board/committee members. Since the beginning of the year, the Town has received approximately 700 requests for records in varying degrees. The vast majority of the requests are simple, over-the-counter transactions.

The next milestone under the Act will be to post the Town's Public Records Access Guidelines on the website. Posting the Guidelines is a requirement under Ch. 121. The Guidelines address various aspects of the law and are intended to provide general information to individuals seeking to access Public Records. The Guidelines also identify reasonable fees, links to exemptions under the law and the appeals process set forth by law.

The proposed Guidelines were developed by KP Law to ensure that they are compliant with Ch. 121. The Guidelines are being provided in advance of the June 19th Selectmen's Meeting so that the Board members have adequate time to review the information.

With the retirement of School Superintendent Dr. Paul Stein, a new RAO will need to be appointed for the School Department. I ask that the Board appoint the new School Superintendent, Dr. Arthur Unobskey as School RAO effective July 1, 2017.



Town of Wayland Public Records Access Guidelines

Effective January 1, 2017, the 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. These guidelines are intended to assist members of the public seeking access to public records in the custody of the Town of Wayland.

General Information:

1. **Business Hours.** The regular business hours of the Town of Wayland are Monday from 8:00 a.m. to 7:00 p.m., Tuesday through Thursday from 8:00 a.m. to 4:00 p.m., and Friday from 8:00 a.m. to 12:30 p.m.
2. **Records Access Officers.** The following Records Access Officers ("RAO") have been designated:

General Government

Assistant Town Administrator John Senchyshyn
Board of Selectmen's Office
41 Cochituate Road
Wayland MA 01778
508-358-3623 FAX 508-358-3627
jsenchyshyn@wayland.ma.us

General Government

Executive Secretary MaryAnn DiNapoli
Board of Selectmen's Office
41 Cochituate Road
Wayland MA 01778
508-358-3621 FAX 508-358-3627
mdinapoli@wayland.ma.us

School Department

School Superintendent Arthur Unobskey
Wayland Public Schools
41 Cochituate Road
Wayland MA 01778
508-358-3774 FAX 508-358-3627
arthur_unobskey@wayland.k12.ma.us

Fire Department

Fire Chief David Houghton
Wayland Fire Department
38 Cochituate Road
Wayland MA 01778
508-358-6910 FAX 508-358-6920
dhoughton@wayland.ma.us

Police Department
Police Chief Robert Irving
Wayland Police Department
38 Cochituate Road
Wayland MA 01778
508-358-1710 FAX 508-358-1777
chief@wayland.ma.us

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 town website at http://www.wayland.ma.us/Pages/WaylandMA_Selectmen/PublicRecords and at public offices.

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/prepdf/guide.pdf.

Making Public Records Requests:

4. **Public Records Requests.** Any person may make a public records request:
 - a. In person at the Wayland Town Building, 41 Cochituate Road, Wayland, or the Wayland Public Safety Building, 38 Cochituate Road, Wayland
 - 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 business facsimile number set forth above;
 - d. or by e-mail addressed to the RAO at the e-mail address set forth above.
5. **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.
6. **Contact Information.** Individuals making in-person requests will not be requested or required to give their names or contact information. For in-person requests that require additional time for a comprehensive response, requesters will be advised to check in periodically with the RAO or department from which records are sought, or requesters may voluntarily provide contact information. Voluntary Public Records Request Forms shall be available in all municipal offices.
7. **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 Town of Wayland will be to respond, as broad requests often require more extensive staff efforts to locate, review and copy all possibly responsive records.
8. **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.

9. 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.

Responses to Public Records Requests:

10. Fees. If fees will be assessed, a written estimate of the same will be provided to the Requester.
11. 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 ten 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 Town of Wayland does not have in its custody; identifying records which the Town of Wayland 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.
12. 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 Town of Wayland to respond fully to the request.
13. 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 Town of Wayland is concerned that it will not be able to provide a complete response within that time frame, the Town of Wayland may ask the requester for an extension of time to comply or petition the Supervisor of Public Records or additional time.
14. Publicly Available Records. The Town of Wayland maintains a searchable website at www.wayland.ma.us where certain public records are available for inspection, downloading or printing. If a request seeks documents publicly available on the Town of Wayland's website, 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.
15. 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.
16. 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.
17. Creation of Records. The Town of Wayland 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.

18. **Answering Questions.** The Town of Wayland is not required to answer questions in response to a public records request.
19. **Supplementing Responses.** The Town of Wayland is not required to supplement its response to a previous public records request in the event that responsive records are created in the future.
20. **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.

Categories of Records:

21. Attachment "A" provides a general list of records commonly requested and maintained by the various Town of Wayland departments. For a complete list, you may also refer to the Municipal Records Retention Schedule, Quick Guide, which schedule identifies various categories of records maintained by municipal departments and so-called "records in common:"
https://www.sec.state.ma.us/arc/arcpdf/Municipal_Retention_Schedule_20161109.pdf.

Whereas there is a relationship between the Public Records Law and the Open Meeting Law regarding requests for public meeting minutes, such requests will be included in the tracking of Public Records requests.

Exemptions:

22. **Exemptions/Redaction/Withholding.** Some public records, or portions of records, may not be provided in response to a public records request because the Town of Wayland has determined such records to be exempt from disclosure pursuant to the provisions of G.L. c.4, §7(26), the attorney-client privilege, or other applicable exemptions or common law privileges. For more information about exemptions to the Public Records Law, see the Secretary of the Commonwealth's, "A Guide to the Massachusetts Public Records Law," January 2017 edition, available at <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Fees:

23. **Reasonable Fees.** In some circumstances, the Town of Wayland may assess a reasonable fee for the production of public records.
24. **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. four dollars (\$4.00) per map;
 - c. actual cost for storage devices or materials such as CDs or thumb/flash drives;
 - d. actual cost for duplication of records not susceptible to ordinary means of reproduction, such as color copies and large format plans;
 - e. postage fees (where applicable; see paragraph 15, above); and
 - f. fees for employee time required to satisfy a public records request (see paragraph 26 below).
 - g. No copying fee will be charged for records provided in electronic form.

25. **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 Town of Wayland 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).
26. **Small Municipality Exception.** As of the 2010 Decennial Census, the Town of Wayland had 12,994 residents. See <https://www.sec.state.ma.us/census2020/middlesex.htm>. In accordance with 950 CMR 32.07(2)(m)(2), therefore, the Town of Wayland may assess fees for all employee time, including the first two hours.
27. **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.
28. **Petition for Higher Fee.** In certain circumstances, the Town of Wayland may petition the Supervisor of Public Records for permission to assess fees for employee time at a rate in excess of \$25.00.

Appeals:

29. 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.
30. 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.
31. 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

The following is a general list of records commonly requested and maintained by the various Town of Wayland departments. For a complete list of records, you may also refer to the Municipal Records Retention Schedule, Quick Guide, which identifies various categories of records maintained by municipal departments and so-called "records in common." The Quick Guide can be found online here: https://www.sec.state.ma.us/arc/arcpdf/Municipal_Retention_Schedule_20161109.pdf

Whereas there is a relationship between the Public Records Law and the Open Meeting Law regarding requests for public meeting minutes, such requests will be included in the tracking of Public Records requests.

Department/Board	General Description of Public Records Maintained
Documents Common to Most Boards and Departments	Agendas and Minutes, Emails, Contracts, Operating Budgets, Capital Budgets
Assessors	Granted Abatements, Tax Maps, Property Record Cards
Building	Building Permit Files, Zoning Files
Conservation	Project Plans, Engineering Drawings, Environmental Data Forms, Orders of Conditions, Permit Applications
Council on Aging	Grant Files, Monthly Statistics
Facilities/Procurement	Bids for Contracts, Contract Files
Finance	Quarterly Statements, Audit Reports, Budgets
Fire Department	Ambulance Call Records, Permit Records, Reports of Building Fires, Fire Alarm Records, Inspection Reports, Incident Reports
Health Department	Septic Plans, Title V Records, Inspection Reports, Building approvals, Subdivisions, Housing, Non-building/Septic Permits, Wastewater Treatment Plan Information
Human Resources	Payroll and Personnel, Insurance policies
Information Technology	All town electronic records, IT inventory
Library	Library Master Plan Documents
Planning Department	Development Applications, 40B Proposals

Police Department	Accident Reports, Incident Reports, Permits and Applications
Department of Public Works	Street & Sidewalk Opening Permits, Physical Alteration Permits, Water Service Records, Cemetery Records
Recreation	Field Plans, Programs
School Department	Please see Schol Retention Schedule online here: https://www.sec.state.ma.us/arc/arcpdf/Municipal_Retention_Schedule_20161109.pdf
Board of Selectmen	Correspondence, Licenses and Permits, Annual Reports
Town Maps - GIS	Maps
Town Clerk	Vital Records, Dog Licenses, DBA Certificates, Annual and Special Town Meeting Minutes, Voter Records, Resident Lists, Meeting Notices, Historical Records
Treasurer/Collector	Bonds, Loans, Debt Records, Tax Abatements
Wastewater Management District Commission	Water Service Records, Quarterly Billing, Title V Design Flow and Change in Use Applications, Wastewater Management District Commission 's Rules and Regulations, Betterment/Debt Information



TOWN OF WAYLAND
41 COCHITUATE ROAD
WAYLAND, MASSACHUSETTS 01778

PUBLIC RECORDS REQUEST

The Town of Wayland provides this form to assist the public in making a request for public documents or records. Use of this form is optional, and it is offered only as a convenience to the public. Any request for public records, whether verbal, written, or on this form, or written in some other format, will be acknowledged and replied to as per law.

Name	
Full Address	
Telephone	HOME
	MOBILE
Fax (optional)	
Email Address (optional)	
Description of Request <i>Attach Additional Documentation if necessary</i>	

FOR TOWN USE ONLY		
Date Request Received:	Method of Delivery:	Date Request Passed on to Custodian of Records:
Signature of Individual Receiving Request:		
Department:		