



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

Rebecca S. Murray
Supervisor of Records

Updates to the Public Access Regulations
950 CMR 32.00

May 3, 2021 Hearing

The current Public Access Regulations (Regulations) were revised in 2016 to coincide with the January 1, 2017 effective date of the updated Public Records Law (Law). *Chapter 121 of the Acts of 2016*. The proposed modifications to the Regulations are to provide further clarity and ensure greater efficiency with respect to responding to requests for public records and issuing determinations relating to the public status of records.

The following is a summary of the changes:

32.03(3): Change creates consistency with respect to the computation of time for methods of requests.

32.05(e): Revises the deadline for submitting agency public records request data to this office so agencies have sufficient time to respond to requests prior to formatting and submitting data. Under the current Regulations, agencies must submit their request data to this office on the same days responses are due for requests received on the last day of the calendar year. By granting agencies until February 1st, they will have additional time to close out their requests for the calendar year before having to submit the data to this office.

32.06(1)(b) and (c): Technical clarifications.

32.06(1)(g): Removal of section which caused confusion. This section had been commonly interpreted to mean that requestors with unique rights of access to records were not permitted to make public records requests.

32.06(2)(c) and (e): Technical clarifications with respect to the computation of time.

32.06(2)(h): Removed language authorizing records access officers to ask the requestor their purpose in making the request if requested records concern information which may be exempt under Exemption (n).

32.06(3)(b): Technical clarification with respect to the computation of time.

32.06(4)(b),(d),(g): Technical clarification with respect to the computation of time.

32.07(1)(b)(1): Technical clarification.

32.07(2)(a): Technical clarification.

32.07(2)(b): Technical clarification with respect to the computation of time.

32.07(o): Newly added language prohibiting requestors from structuring larger requests in such a manner for the purpose of avoiding an assessment of fees.

32.08(1)(j): Removed language allowing Supervisor to open appeals received after 4:00pm on a business days on the following business days.

32.08(2)(a): Under the updated Law, a requestor who is dissatisfied by a records access officer's response, or lack thereof, to a request for records may petition the Supervisor to issue a determination. The Supervisor is required to issue these determinations within 10 business days of receipt of an appeal from a requestor. Additionally, records access officers may petition the Supervisor for approval to receive an extension of time to respond to a request or permission to charge in excess of the statutory fees. The Supervisor must issue a determination relating to a records access officer's petition within 5 business days of receipt.

The Supervisor has seen a significant increase in the number of appeal petitions received since the updated Law became effective. Prior to the update, the Supervisor received an average of 480 cases a year. Since the updated Law went into effect, the Supervisor has been receiving an average of over 2000 cases per year. In 2020, the Supervisor issued 2,767 determinations.

The vast majority of the appeals the Supervisor receives can be closed within the statutory timeframe of 10 business days. However, a limited number of cases would benefit from additional time to seek relevant information from records access officers, research novel legal arguments or account for staffing considerations. Given this, a modest change to the Regulations is proposed: in situations where permission is granted by both parties to the appeal or records access officer petition, the Supervisor could issue a determination beyond the statutory timeframe. If either of the parties does not agree to additional time, the Supervisor would issue the determination within 10 business days following receipt of the petition for appeal or within 5 days of receipt of a records access officer's petition.