



Town of Falmouth

PUBLIC RECORDS ACCESS GUIDELINES

The Town of Falmouth is committed to open government and improved transparency through increased access to public records. These guidelines are intended to assist members of the public seeking access to public records in the custody of the Town of Falmouth. 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.

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.

Making Public Records Requests:

1. Public records requests may be made by any of the following methods:
 - a. In person, verbally or in writing
 - b. By first class mail addressed to the RAO at the 59 Town Hall Square, Falmouth, MA 02540
 - c. By facsimile addressed to the RAO at 508-457-2511
 - d. By e-mail addressed to the RAO at the e-mail address set forth above.
 - e. By Public Records Request Form found on the Town's website.
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.
3. **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 will be to respond, as broad requests often require more extensive staff efforts to locate, review and copy all possibly responsive records.
4. **Receipt of Requests** Written requests received during normal business hours, Monday thru Friday 8 am to 4: 30 pm, in person, sent by mail, sent via email, facsimile or online form shall not be considered received until the following business day. Business days shall not include Saturdays, Sundays, and legal holidays.

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 Town does not have in its custody; identifying records which the Town 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 Town to respond fully to the request.
4. **Time for Response** If, due to the scope of the request, the need for redactions, or other complications, the Town is concerned that it will not be able to provide a complete response within that time frame, the Town 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 Town maintains a searchable website at www.falmouthmass.us where certain public records are available for inspection, downloading or printing. If a request seeks documents publicly available on the Town'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..
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 Town 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 Town is not required to answer questions in response to a public records request.
10. **Supplementing Responses**. The Town 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.

Exemptions:

Exemptions/Redaction/Withholding. Some public records, or portions of records, may not be provided in response to a public records request because the Town 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 www.sec.state.ma.us/pre/prepdf/guide.pdf.

Fees:

1. In some circumstances, the Town may assess a reasonable fee for the production of public records.
2. No copying fee will be charged for records provided in electronic form
3. 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 **Request for Records to be Mailed**, above); and
 - e. fees for employee time required to satisfy a public records request (see paragraph below).
4. **Employee Time for Locating and Segregating Records**. There shall be no fee for the employee time required to satisfy a public records request for the first two (2) hours of work performed. After the first two (2), 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 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. **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.
6. **Petition for Higher Fee**. In certain circumstances, the Town may petition the Supervisor of Public Records for permission to assess fees for employee time at a rate in excess of \$25.00.

Appeals:

1. 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, One Ashburton Place, Room 1719, Boston, MA 02108 pursuant to 950 CMR 32.08(1). The Supervisor shall make a final determination on the appeal within ten (10) business days of receipt.
2. 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.
3. 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