

Subject: Request for Appeal - Sharon Public Schools
Date: Friday, October 1, 2021 at 8:13:46 AM Eastern Daylight Time
From: Malden Transparency
To: pre@sec.state.ma.us
CC: Meg Dussault
Priority: High
Attachments: Open Malden Records Request.pdf, SKM_C45821093016560 (1).pdf

Greetings:

On September 26, 2021 the following verbatim request was served upon the Sharon Public Schools via email:

“Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, § 10:

For the time period January 1, 2019 through the date you respond with the responsive documents, please provide the following;

- 1. All billing statements and/or invoices from Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 (P.O. Box 9126) Quincy, MA 02269-9126.**
- 2. All documents evidencing payments made to Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 (P.O. Box 9126) Quincy, MA 02269-9126.**

This request specifically seek electronic versions of responsive documents. If any responsive documents exist in a non-electronic format, please include an estimate of the actual costs to scan the documents and provide them electronically.

Please provide all responsive documents electronically to the email address info@openmalden.com.

This request seeks responsive documents in the format in which they are regularly maintained, including any and all electronic mail metadata. This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of your school.

Kindest Regards,

OpenMalden.com”

On September 30, 2021 the following email and attached attachments were received:

From: Meg Dussault <mdussault@sharonschools.net>
Date: Thursday, September 30, 2021 at 5:24 PM
To: Malden Transparency <info@openmalden.com>
Subject: Public Records request

Please see attached for response to records request.

Thank you,
Meg

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Meg Dussault Ed.D
(she/her)
Interim Assistant Superintendent
Director of Arts and Community Education
Sharon Public Schools
77 Pond Street
Sharon, MA 02067
781-784-1570
www.sharoncommunityeducation.com

Per the Massachusetts public records law, the response of the RAO fails to comport with the law in the following ways:

1. The RAO must quantify any cost estimate with specific records, with specific costs associated with only legally allowed charges. The RAO has not quantified the 5 minutes per email estimate. The RAO has failed to provide the exact cost for search, segregation and redaction. The RAO has failed to identify the person and hourly rate paid to that person who will be performing the search, segregation and redactions.
2. The RAO cannot charge for records organization, only search, segregation and redaction which comports with specific exemptions.
3. The RAO has proposed a \$75 per hour charge, this is not allowed under the public records law, the maximum allowed is \$25.
4. The RAO has further proposed that they are somehow being harassed under the public records statute, OpenMalden has served exactly **ONE** public records request upon the Sharon Public Schools, **EVER**. This singular request is the subject of this appeal. This request seeks only public financial information, spent by a public entity in the course of delivering public school education. Further, the request, the response of Sharon Public Schools and all other public records sought and received by OpenMalden have been publicly published for broad dissemination of information to the public about actual or alleged government activity.

Wherefore OpenMalden respectfully requests that the RAO of the Sharon Public Schools be ordered to properly respond the public records request without delay and without charge.

Regards,

OpenMalden.com



SHARON PUBLIC SCHOOLS

75 Mountain Street, Sharon, MA 02067 Tel: 781-784-1570 Fax: 781-784-1573

Dr. Peter Botelho, Superintendent | Dr. Meg Dussault, Interim Assistant Superintendent

BY E-MAIL

Open Malden

info@openmalden.org

Re: Public Records Request dated September 27, 2021

Dear Open Malden:

We have received the request that you submitted on September 27, 2021 in which you stated:

For the time period January 1, 2019 through the date you respond with the responsive documents, please provide the following:

1. All billing statements and/or invoices from Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 (P.O. Box 9126) Quincy, MA 02269-9126.
2. All documents evidencing payments made to Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 (P.O. Box 9126) Quincy, MA 02269-9126.

Response

The District hereby produces 4 “Invoice Browse” sheets (see attached) evidencing payments made to Murphy, Hesse, Toomey & Lehane, LLP (“MHTL”). The District is in possession of approximately 43 pages of invoices that are responsive to your request for invoices from MHTL. The District has no other responsive documents.

Harassment

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The District intends to petition the Supervisor of Records pursuant to G. L. c. 66, § 10(c), to relieve the District of its obligation to provide you with copies of the records sought in the request on the grounds that your request is intended to harass the District. See Erickson v. Executive Office of Environmental Affairs, 2006 WL 3010949 (Superior Court, Suffolk County) (public records requests may not be used as part of a “pattern of harassment to government officials and anyone else” with whom a party has a dispute).

Open Malden appears to have made public records requests, identical to the instant request, to every school district in the state. Each of these requests seeks records related to MHTL. MHTL represents the District and also represents many other school districts in the Commonwealth, including one particular district that is currently engaged in litigation, in multiple forums, with the individual behind Open Malden. Given the targeted nature of your request and the parties involved, the request does not appear to have been made in good faith, or for any genuine public purpose, or in the public interest. Rather, on its face, it seems that the purpose of this request, as part of a series of requests issued to other districts represented by MHTL, is to overwhelm the law firm that represents the District, and thereby harass the District, since MHTL will need to review the records sought to determine if they contain information protected by the attorney-client privilege.

If the District is not relieved of its obligation to provide you with copies of the records you seek, then the District will alternatively petition the Supervisor of Records to charge a fee to produce the invoices you seek because the records will need to be reviewed to determine if they contain information protected by the attorney-client privilege or certain statutory exemptions to the Public Record Law.

Grounds For Redaction

The records you seek need to be reviewed, and potentially redacted, for several reasons.

First, you seek invoices for legal services provided by MHTL to the District. Those records likely contain the content of discussions between the District and its attorneys, for purpose of obtaining

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legal advice, which has not been shared with the public and is therefore protected by the attorney-client privilege. See Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt., 449 Mass. 444 (2007) (governmental entity may assert attorney-client privilege to protect documents against disclosure where they contain communications between lawyer and client for purpose of obtaining legal advice). “The privilege enable[s] clients to make full disclosure to legal counsel of all relevant facts, no matter how embarrassing or damaging these facts might be, so that counsel may render fully informed legal advice.” Suffolk, 449 Mass. At 449. The Guide to the Massachusetts Public Records Law states that “[s]egregation and redaction under the attorney-client privilege has also been found to be ‘require [sic] by law.’” Accordingly, the records will need to be reviewed to determine if they contain information protected by the attorney-client privilege and then any necessary redactions will need to be made.

Second, the records contain personally identifying information of public school students. In Champa v. Weston Public Schools, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon Exemption (a) (which protects from disclosure records that are “... specifically or by necessary implication exempted from disclosure by statute,” MGL c. 4, § 7(26)(a)).

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of its opinion, that the school district’s receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemption (a) exempted the agreement from the definition of a public record, the Champa, court nonetheless ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court “... regarding the necessary and appropriate redactions of personally identifying information to be made ...” 473 Mass. at 98-99.

Like the agreement at issue in Champa, billing statements and invoices between the District and MHTL contain personally identifying information of public school students who enjoy mandated

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confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since MHTL is counseling the District on the educational services and programming that it is providing to students, especially special education students, these records should be deemed exempt from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel the District to protect educational records from disclosure. Specifically, they are protected by the Federal Education Rights Privacy Act, Massachusetts General Law, Chapter 71, Section 34A to 34H, and 603 CMR 23.00 et. seq. At the very least, the records will need to be reviewed to determine if they contain any student information, and then any necessary redactions will need to be made.

Finally, these invoices require redactions in accordance with the exemption set forth at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:

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. G. L. c. 4, § 7(26)(c).

In terms of the first clause of the privacy exemption, the Supreme Judicial Court has held that “[w]hile the precise contours of the legislative term “personnel [file] or information” may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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In accordance with the exemption, the District needs to review and redact the billing statements to the extent they contain information concerning employees that relates to performance or complaints, evaluations of employees, leaves of absences, and discipline of employees. The District will petition to charge a fee to redact under this exemption.

Calculation of Fee Estimate

To produce these records, the District provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) et seq., “if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested.” In this case, the Office of District Counsel is the lowest paid employee with the necessary skill to determine whether the attorney-client privilege requires certain portions of the records you seek to be redacted. While performing that review, Counsel can also determine whether other exemptions apply, rather than have a separate employee review the records at additional cost. Counsel’s hourly rate is \$240. Notwithstanding that rate, the District will request that the Supervisor allow it to charge \$75 per hour to complete the review.

Each page of the records you seek must be reviewed to determine which exemption or privilege applies. Segregation time “includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.

The District estimate that it will take District Counsel approximately 5 minute per page to complete it review, segregation, and potential redaction of the records sought in your request. As a result, the District estimates a total of 3 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

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One hour multiplied by \$75 per hour yields a fee estimate of \$75. The actual fee to produce these records may vary based on the actual time spent to complete the necessary review and redaction process. The District will not begin to review the records you seek until it receives a check in the amount of \$75.

Please be advised that your fee estimate may be reduced if you narrow the scope of your request (i.e. the period of time for the records you seek).

The District will provide you with a copy of its fee petition to the Supervisor.

Right of Appeal

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Respectfully,

Dr. Peter Botelho

Records Access Officer

Cc: Supervisor of Public Records



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Invoice

- Comments
- Detail
- Invoice Audits
- Additional Info
- notes

Document: 239076
 Invoice: 81315
 Year/per: 2022 1
 Type: 1 Invoice

Cash Account: 0001 104000 CASH

PO: 21180347
 Contract:

Gross amt: 144.00
 Disc date:
 Disc base: .00
 Disc percent: .000
 Net amount: 144.00
 Retainage: .00

[Details](#)

Payment meth: N Normal
 Check no: 754251
 Check date: 07/22/2021

Attachments (0)

Vendor: 2379 Rent
 Name: MURPHY HESSE TOOME
 Terms:
 Address: Ret

Desc	SHAR03
Status	P Paid
Voucher	B2103
Warrant	21SS6PYR
Inv date	06/29/2021
Due date	07/22/2021
Work Order/Task	
Dept/Loc	018

Separate check
 Include docume
 PA applied

FY22

Clerk	Invoice	Inv Date	PO	Warrant	S	Check #	Amount
jgreen	77759	06/30/2020	20180106	20556PYR	P	744920	2,138.25
jgreen	78872	11/10/2020	21180197	21S26	P	748825	3,960.00
jgreen	78354	11/25/2020	21180197	21S27	P	749021	120.00
jgreen	78676	12/10/2020	21180197	21S27	P	749021	1,560.00
jgreen	79078	12/17/2020	21180197	21S30	P	749428	1,800.00
jgreen	79434	12/30/2020	21180197	21S30	P	749428	72.00
jgreen	79698	01/29/2021	21180197	21S34	P	750086	1,368.00
jgreen	80041	02/28/2021	21180197	21S40	P	751171	216.00
jgreen	80413	04/23/2021	21180197	21S46	P	752045	1,248.00
pmacdougall	80468	04/26/2021		21T47	P	752419	813.75
pmacdougall	80575	04/30/2021		21T47	P	752419	630.00
dmiller	80758	05/24/2021		21T49	P	752730	2,905.00
jgreen	80797	05/26/2021	21180197	21S51	P	753171	408.00
dmiller	80973	06/14/2021		21T52	P	753597	1,470.00
dmiller	81072	06/17/2021		21T52	P	753597	1,846.25
jgreen	81126	06/18/2021	21180197	21S53	P	753711	48.00
pmacdougall	81202	06/23/2021		21T53	P	753825	315.00
pmacdougall	81404	06/29/2021		21T54	P	753993	183.75

Vendor: 2379 MURPHY HESSE TOOMEY has 18 Invoices for: 21,102.00

** END OF REPORT - Generated by Judy Townsend **

FY21

Clerk	Invoice	Inv Date	PO	Warrant	S	Check #	Amount
jgreen	74421	06/27/2019	19180123	19S56PVR	P	734563	376.00
jgreen	74803	08/27/2019	20180106	20S13	P	736356	3,031.50
jgreen	75025	09/25/2019	20180106	20S17	P	737182	376.60
jgreen	75217	10/22/2019	20180106	20S19	P	737651	188.00
jgreen	75500	11/21/2019	20180106	20S28	P	739343	211.50
jgreen	75686	12/16/2019	20180106	20S28	P	739343	2,057.94
jgreen	75993	01/27/2020	20180106	20S33	P	740426	164.50
jgreen	76292	02/26/2020	20180106	20S38	P	741536	705.00
dmiller	76460	03/16/2020	20180106	20T39	P	741818	1,373.75
jgreen	76744	03/28/2020	20180106	20S49	P	743058	658.00
dmiller	76782	03/31/2020	20180106	20T43	P	742251	525.00
jgreen	77029	04/29/2020	20180106	20S51	P	743430	1,574.50
dmiller	77169	05/13/2020	20180106	20T48	P	742977	201.25
jgreen	77323	05/27/2020	20180106	20S54	P	744464	1,433.50
dmiller	77407	05/29/2020	20180106	20T51	P	743505	463.75
jgreen	77576	06/16/2020	20180106	20S54	P	744464	5,187.43
pmacdougall	77715	06/26/2020	20180106	20T54	P	744719	385.00

Vendor: 2379 MURPHY HESSE TOOMEY has 17 Invoices for: 18,913.22

** END OF REPORT - Generated by Judy Townsend **

FY20

Clerk	Invoice	Inv Date	PO	Warrant S	Check #	Amount
pmacdougall	71485	08/22/2018		19T09 P	724144	516.25
pmacdougall	71237	08/29/2018		19T52 P	733894	223.37
jgreen	71669	09/10/2018	19180123	19S23 P	727259	1,291.50
jgreen	71909	09/27/2018	19180123	19S18 P	726141	1,316.00
jgreen	72172	12/11/2018	19180123	19S29 P	728394	2,179.64
jgreen	72393	01/08/2019	19180123	19S33 P	729325	1,198.50
jgreen	72809	02/13/2019	19180123	19S38 P	730372	387.50
jgreen	73068	03/11/2019	19180123	19S39 P	730636	940.00
jgreen	73124	03/13/2019	19180123	19S44 P	731628	3,713.00
jgreen	73368	04/08/2019	19180123	19S47 P	732504	1,598.00
jgreen	73668	05/07/2019	19180123	19S50 P	733220	1,856.50
jgreen	73884	05/23/2019	19180123	19T50 P	733347	658.00
pmacdougall	73967	06/04/2019		19T50 P	733347	227.50
pmacdougall	74298	06/21/2019		19T52 P	733894	262.50
jgreen	74286	06/21/2019	19180123	19S53 P	734027	1,104.50

Vendor: 2379 MURPHY HESSE TOOMEY has 15 Invoices for: 17,672.76

** END OF REPORT - Generated by Judy Townsend **

F219