



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

Rebecca S. Murray  
*Supervisor of Records*

November 27, 2018  
**SPR18/1675**

Mary Lou Folan  
Town of Norwood – Town Clerk  
566 Washington Street, Room 27  
P.O. Box 40  
Norwood, MA 02062

Dear Mrs. Folan:

I have received the petition of Christopher Donovan appealing the response of the Norwood Town Clerk's Office (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On August 6, 2017 Mr. Donovan requested a number of public records from the Town.

***Previous Appeal***

Mr. Donovan's request was the subject of a previous appeal and time petition. See SPR18/1465 Determination of the Supervisor of Records (October 18, 2018) and SPR18/1613 Determination of the Supervisor of Records (November 9, 2018). Mr. Donovan appealed the nonresponse by the Town to this office on September 19, 2018. The Town then provided a response to Mr. Donovan's public records request on September 19, 2018 by producing certain requested records. Mr. Donovan then sent an email on October 3, 2018 to our office appealing the Town's response asserting that "[t]he records produced were not completely responsive, missing key parts and not in the time frame under the law."

On November 11, 2018 the town submitted a petition stating it "respectfully request[s] an additional week in which to complete Norwood's response," explaining the response has been delayed by "the press of other deadlines and town meetings." This office concluded SPR18/1613 by declining to opine on the Town's petition for an extension of time to furnish responsive records, as the Town had subsequently indicated a response was forthcoming.

### ***Current Appeal***

In an email to this office on November 14, 2018, the Town indicated “there are no additional responsive documents within the custody and control of the Town of Norwood to provide to Mr. Donovan.” The Town also asserted that Mr. Donovan had not received certain records because they are “in the custody of the law firm of Murphy, Hesse, Toomey & Lehane, counsel to the Town of Norwood and the Norwood Airport Commission, such records are not ‘public records’ within the definition of same under M.G.L. c. 66, section 10A(d).”

In an email to this office dated November 14, 2018, Mr. Donovan writes, “In my appeal I provided numerous examples of communication between the Town of Norwood Attorney Brandon Moss and a PRIVATE entity at the Norwood Airport. Any communication between a private entity and the Town of Norwood Attorney is a public record.”

### ***Agency relationship***

Public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request. G. L. c. 66, § 10(a); see also Reinsteinst v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979). Further, where a public entity contracts with a third party to fulfill its public duties, and the public entity exercises control over that third party, an agency relationship is created.

In light of the above information, specifically where you explained that some of the requested records are “in the custody of the law firm of Murphy, Hesse, Toomey & Lehane, counsel to the Town of Norwood and the Norwood Airport Commission,” an agency relationship appears to exist between the Town and the law firm. See Fifty-one Hispanic Residents of Chelsea v. School Comm. of Chelsea, 421 Mass. 598, 607-08 (1996) (discussing agency relationship between a public and private entity within the context of the Public Records Law). For this reason, it is unclear why the responsive records, in particular those referenced in Mr. Donovan’s appeal, are not subject to the Public Records Law.

### ***Order***

Accordingly, the Town is ordered to provide Mr. Donovan with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations without delay. 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).

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Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray  
Supervisor of Records

cc: Christopher Donovan