Massachusetts Municipal Association
Annual Meeting
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Transparency Basics:
Public Records

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Receipt of Records Request (1)

Initial Processing of Request (2)

Production of Records Without Withholding or Extending Time (3)

Response Letter if Withholding, Redacting or Extending Time (3)

Appeal to Supervisor for increase in fees (3)

Produce Records by Time in Response Letter, unless withheld (4)

Request Supervisor for Additional Time (4)

Decision by Supervisor (5)

Produce Records by Time Ordered by Supervisor (6)

10 Business Days

10 Business Days

5 Business Days

Up to 30 Business Days
Striking the Right Balance in Release of Records Held by Government

Protecting Exempt Material

• Presumption that records are public
• Enumerated exemptions narrowly construed
• Claim exemptions per state law with specificity in response
• Release reasonably segregable, non-exempt portions of partially exempt record
• Redact exempt material

Attorney-Client Privilege

• Any communication of legal advice between attorney for the Town and employees of the Town.
• Have Counsel review to confirm
Best Records Management Practices:
Electronic Records

- Collaborate with IT to search for and compile electronic records in response to request
  - disclose to and seek agreement from requester on search terms
  - foster dialogue between IT and legal advisors
- Retention/production of records from personal accounts and devices
  - Distribute public email accounts to volunteer board/commission members
  - Train employees and volunteers on public records requirements
  - Require all public records received/created on personal account/devices be forwarded to public accounts
  - Employees/Board members responsible for segregating personal records from public records
  - Employees (both paid and voluntary) must transfer public documents maintained on private servers to public servers upon leaving
Best Records Management Practices:
Be Prepared for Record Requests

- Be familiar with records statute and regulations
- Appoint and train Records Access Officer ("RAOs")
  - Develop consistent approach across departments
- Be deliberate in what records are created or received
  - Develop process for culling on an annual basis
- Be familiar with records retention requirements (or make sure your staff are)
- Dispose of records beyond applicable retention period
- Organize records storage and inventory procedures
- Segregate and safeguard records with personal or sensitive security information
Recent Cases: Privacy Interests v. Public Interest

- RAOs and Custodians must carefully analyze requests
  - Privacy (exemption c)
    - Balancing Test: Weight of Privacy Interest v. Public Interest
  - Security (exemption n)
    - Is Record Requested like Records Listed in Statute?
    - Would a Terrorist Find Useful to Maximize Damage?
  - Electronic Indices of Publicly Available Records
  - Privacy Analysis
  - Would privacy be compromised by comparing multiple indices?
  - Is compilation of records otherwise available?
  - Is identity theft and fraud at risk with release?
  - Would release lead to unwanted intrusions?
  - Does Public Interest outweigh privacy interests?
Emerging Privacy Issues

- Body Cameras [SPR19/1915 (10/3/2019) (Sherborn)]
- Facial Recognition Software
- Automated License Plate Recognition (ALPR) (*Comm v. McCarthy*, SJC 12750)
- Internet Search Histories
Thank you