

32.08: Appeals

(1) Appeal to the Supervisor.

- (a) a requester may petition the Supervisor for failure by a records access officer to comply with a requirement of 950 CMR 32.00.
- (b) an oral request, while valid as a public record request, shall not be the basis of an appeal under 950 CMR 32.08.
- (c) petitions for appeal of a response by a records access officer must be made within 90 calendar days of the date of the response by a records access officer.
- (d) petitions for appeal of a failure to respond within the timeliness requirements of 950 CMR 32.00 must be made within 90 calendar days of the request.
- (e) all petitions for appeal shall be in writing and shall specifically describe the nature of the requester's objections to the response or failure to timely respond.
- (f) requesters shall provide to the Supervisor complete copies of all correspondence associated with the petition, including:
 - 1. a complete copy of the letter by which the request was made, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses; and
 - 2. a complete copy of all written responses associated with requests subject to the petition for appeal, including in the case of electronic communications all header information indicating time, date, subject, sender and recipient email addresses.
- (g) in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition.
- (h) if the requester's petition for appeal is related to a previous appeal to the Supervisor, the requester's petition shall refer to the previous appeal number.

(2) Dispositions of Appeals and Records Access Officer Petitions.

- (a) the Supervisor shall issue a written determination regarding any petition submitted in accordance with 950 CMR 32.08(1) not later than ten business days following receipt of the petition. The Supervisor shall issue a written determination regarding any petition submitted in accordance with M.G. L. c. 66, § 10(c)(vi) and M.G. L. c. 66, § 10(d)(iv) within five business days following receipt of the petition. If necessary, additional time may be granted as agreed upon by both the requester and the records custodian.
- (b) the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:
 - 1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation;
 - 2. the request is designed or intended to harass, intimidate, or assist in the commission of a crime;
 - 3. the public records request is made solely for a commercial purpose; or
 - 4. the requester has failed to comply with the provisions of 950 CMR 32.08(2).
- (c) upon a determination by the Supervisor that a violation has occurred, the Supervisor shall order timely and appropriate relief.

(3) Hearings and Conferences.

- (a) the Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. The decision to hold a hearing shall be solely in the discretion of the Supervisor.

32.08: continued

1. said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08.
 2. nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.
- (b) the Supervisor may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding. The decision to hold a conference shall be solely in the discretion of the Supervisor.
- (4) In Camera Inspections and Submissions of Data.
- (a) the Supervisor may require an inspection of the requested record(s) in camera during any investigation or any proceeding initiated pursuant to 950 CMR 32.08.
 - (b) the Supervisor may require the records access officer to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.
 - (c) the Supervisor does not maintain custody of documents received from a records access officer submitted for an in camera review. The documents submitted for an in camera review do not fall within the definition of public records. M.G.L. c. 4, § 7(26).
 - (d) upon a determination of the public record status of the documents, they are promptly returned to the custodian, and no copies shall be retained by the Supervisor.
 - (e) any public record request made to the Division for records being reviewed in camera would necessarily be denied, as the office would not be the custodian of those records.
 - (f) attorney-client privileged records voluntarily submitted to Supervisor:
 1. a records access officer may voluntarily submit documents to the Supervisor for in camera review;
 2. such submission shall not waive any legally applicable privileges claimed by the agency or municipality.
- (5) Custodial Indexing of Records.
- (a) the Supervisor may require a records access officer or custodian to compile an index of the requested records within the context of a public records appeal under 950 CMR 32.08.
 - (b) said index shall be a public record and shall meet the following requirements:
 1. the index shall be contained in one document, complete in itself;
 2. the index shall adequately describe each withheld record or redaction from a released record;
 3. the index must state the exemption or exemptions claimed for each withheld record or each redaction of a record; and
 4. the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt.
 - (c) nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

32.09: Enforcement of Orders

A records access officer shall promptly take such steps as may be necessary to comply with an order of the Supervisor. If a records access officer fails to comply with an order issued by the Supervisor, the Supervisor, upon the Supervisor's initiative, may notify the Attorney General to ensure compliance.

32.10: Advisory Opinions

Advisory opinions from the Supervisor may be requested. However, it shall be in the Supervisor's discretion whether to issue an advisory opinion. The Supervisor has and will continue to provide a staff member on call every day during regular business hours to offer informal information to any person, whether a requester or custodian.

REGULATORY AUTHORITY

950 CMR 32.00: M.G.L. c. 66, § 1.