TOWN OF MANCHESTER-BY-THE-SEA

TOWN CLERK'S OFFICE

January 13, 2026

BY ELECTRONIC MAIL ONLY - [redacted]

[redacted]
New England Convenience Store & Energy Marketers Association (NECSEMA)
100 Franklin Street
Boston, MA 02110

Re: Town of Manchester-by-the-Sea – Public Records Request Dated December 29, 2025

Dear Mr. [redacted]:

The Town of Manchester-by-the-Sea ("Town") is in receipt of your public records request, dated December 29, 2025 and received by the Town on that same day. As set forth in your request, you seek "*all records, including but not limited to emails, text messages, letters, memos, contracts, invoices, grant applications, meeting minutes, public notices and draft documents from January 1, 2023 to present that reference: Nicotine Free Generation, Tobacco-Free Generation, Generational ban, NFG, Birthdate ban, Model ordinance, Technical assistance, Grant funding, Bloomberg, or MTCP.*"

You additionally seek the following:

a) Correspondence between any municipal official or employee and:

- *Board of Health members and staff*
- *Municipal health department directors*
- *Select Board*
- *Municipal attorneys*
- *North Shore Tobacco Control Program*
- *Ashley Hall*
- *Massachusetts Health Officers Association (MHOA)*
- *Massachusetts Association of Health Boards (MAHB)*
- *Massachusetts Municipal Association (MMA)*
- *Tobacco Free Massachusetts*
- *Public Health Advocacy Institute (PHAI)*
- *Mark Gottlieb (PHAI)*
- *Kate Silbaugh (BU Law)*
- *Bloomberg Philanthropies representatives*

- *Mystic Valley Public Health Coalition*
- *Maureen Buzby*
- *Any other tobacco control contractors*

b) *All documents related to the development, drafting, consideration, or adoption of Nicotine-Free Generation policies, including model ordinances, presentations, technical assistance materials, and legal analysis*

c) *All contracts, agreements, MOUs, and payment records with tobacco control contractors, specifically including North Shore Tobacco Public Health Coalition, Ashley Hall, Mystic Valley Public Health Coalition, Maureen Buzby, Massachusetts Health Officers Association, Massachusetts Association of Health Boards, or Massachusetts Municipal Association*

d) *All grant applications and awards related to tobacco control from the Massachusetts Department of Public Health, Centers for Disease Control and Prevention, or private foundations*

The Town presumes that you intend the 10 search terms referenced in your opening paragraph to limit the scope of requests a) through d). Please advise if this assumption is incorrect. You further specify that you seek responsive electronic records in their native electronic format.

As a preliminary matter, the Town notes that your request, in totality, does not meet the specificity requirements of the Public Records Law. In a recent determination, the Supervisor of Records noted:

> *Please be aware, the Public Records Law states that a records access officer must furnish a copy of any public record "provided that the request reasonably describes the public record sought." See G. L. c. 66, § 10(a)(i).*
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> *In a recent case, the Superior Court found that under the Public Records Law "[t]he reasonable description requirement contemplates that a requesting party will identify documents or categories of documents with sufficient particularity that government employees will be able to understand exactly what they are looking for, and then make a prompt production." See Jaideep Chawla v. Dept of Revenue, Suffolk. Sup. No. l784CV02087, at 2 (January 23, 2019). The court further indicated "[r]equests for documents that are articulated with very broad language that calls upon non-lawyer administrative personnel to interpret the scope of what is sought, and then make fine judgments about what documents are and are not sufficiently 'related' to the category of materials requested, will not satisfy this statutory standard." As such, requests that seek "all records relating to…," "all records concerning…," or "all records regarding…" are not sufficiently particular as to satisfy the statutory standard of a request that "reasonably described the public record sought." See G. L. c. 66, § 10(a)(i).*
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> *Consistent with the decision in Chawla, I find that the language "[a]ny correspondence related to …" and "[r]eports or memos authored by or concerning …" does not satisfy the statutory standard for a request that reasonably describes the public record sought. See Chawla, at 2. [The requester] may wish to provide clarification regarding the*

specific records he is seeking. Once [the requester] has provided the needed clarification, the Department must provide a response within 10 business days.

See SPR25/1364 (Danvers Police Department). Where your request seeks "all records…referenc[ing]" 10 distinct search terms and 20+ individuals (many of whom are not specified by name), it is the Town's position that your request does not contain sufficient specificity and/or comply with the "reasonably described" requirement of the Public Records Law. See G. L. c.66, §10(a)(i).

Nonetheless, the Town has endeavored in good faith to identify categories of records it believes are responsive to your request. Upon payment of the fees estimated below, the Town will undertake the work necessary to further respond to this request.

Response and Anticipated Bases for Withholding or Redaction

Please be advised that the Town's duty to respond to records requests extends only to records that are in existence and in its custody, and the Town is under no obligation to create records in response to your request or to respond to prospective requests. See G.L. c.4, §7(26) (defining "public records" as materials which have already been "made or received" by a public entity). Furthermore, the Town is not required to answer questions in response to public records requests. See "A Guide to the Massachusetts Public Records Law," December 2022, published by the Secretary of the Commonwealth, at page 41.

Where permitted by law, please be advised that such records or material contained therein may be withheld or redacted under any of the exemptions to the Public Records Law, other applicable provisions of law, and/or common law privileges, such as the attorney-client privilege. See, e.g., G.L. c.4, §7(26); 950 CMR 32.06(3); Suffolk Construction Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449–50 (2007) ("Nothing in the language or history of the public records law…leads us to conclude that the Legislature intended the public records law to abrogate the [attorney-client] privilege….") Further, nothing herein shall limit the Town's ability to assert any applicable exemptions under state or federal law, as become apparent and appropriate, following the search for and segregation of all responsive records, pursuant to G.L. c.66, §10(b)(iv). The anticipated bases for withholding or redacting responsive records are detailed below.

Attorney-Client Privilege

Where you have specifically correspondence from or to "municipal attorneys," certain responsive records may contain information protected from public disclosure under common law doctrines and privileges, such as attorney-client privilege and attorney work product doctrine. In this regard, "the attorney-client privilege shields from the view of third parties all confidential communications between a client and its attorney undertaken for the purpose of obtaining legal advice." Suffolk Const. Co., 449 Mass. at 448. Confidential communications between governmental entities and their legal counsel undertaken for the purpose of obtaining legal advice or assistance are also protected under the normal rules of the attorney-client privilege, and are not subject to disclosure under the Public Records Law. Id. Until such time as the fees estimated below are paid and the Town conducts further work in responding to your request, it

cannot state definitively whether or not it anticipates withholding any records in their entirety under the attorney-client or other related privilege(s). Should the Town do so, however, the Town will provide you with the information required under 950 CMR 32.06(3)(d).

Exemption (d)

Exemption (d) to the Public Records Law exempts from disclosure those records which relate to the deliberative process of the agency. G.L. c. 4, §7(26)(d). The exemption applies to recommendations on legal and policy matters. See, e.g., Babets v. Sec'y of the Exec. Office of Human Servs., 403 Mass. 230, 237, n.8 (1988). In considering Exemption (d), the Massachusetts Supreme Judicial Court in General Electric Company v. Dep't of Environmental Protection, 429 Mass. 798, 807 (1999) stated, "[t]he purpose of Exemption (d) is to foster independent discussions between those responsible for a governmental decision in order to secure the quality of the decision." To the extent that the Town may be determining enforcement policies in implementing the Board of Health's Regulations regarding a so-called "generational" ban on tobacco sales, responsive records may be withheld pursuant to Exemption (d).

Fee Estimate

As permitted by law, you will be charged for all employee search time to locate and identify responsive records, at the hourly rate of the lowest paid person capable of compiling, segregating, redacting where required by law, and reproducing responsive records, in accordance with 950 CMR 32.07(2)(i).[1] This rate shall not exceed $25.00 per hour, unless otherwise authorized by the Supervisor of Records. Here, all staff identified below are paid more than $25/hour, and therefore you will be charged the maximum rate. Due to the scope of your request, please be advised that the fee estimate is broken down as follows:

Title	***Hours***	***Per Hour Cost***	***Total***
Director of Information Technology	4 hours (to search for, compile, and reproduce responsive e-mails)	Reduced to $25.00 per hour, as required.	$100
Health Agent	9 hours (to search for, compile, and reproduce responsive electronic and hard copy records)	Reduced to $25.00 per hour, as required	$225
Health Department Administrative Assistant	5 hours (to search for, compile, and reproduce responsive electronic and hard copy records) 4 hours (1 hour per Board of Health member) to search for text messages	Reduced to $25.00 per hour, as required	$125 $100

[1] The Town of Manchester-by-the-Sea has fewer than 20,000 residents as of the last U.S. decennial census (approx. 5,395), and therefore, you will be charged for all employee time necessary to respond to this request. See G.L. c.66, §10(d)(iii)(B); 950 CMR 32.07(2)(m)(2).

Finance Department	30 minutes (to search for, compile, and reproduce responsive electronic and hard copy records)	Reduced to $25.00 per hour, as required	$12.50
Town Counsel	2 hours (to review and redact responsive electronic and hard copy records pursuant to the attorney client and other related privilege(s) and to produce privilege log)	Reduced to $25.00 per hour, as required	$50
TOTAL	**24.5 hours**	**N/A**	**$612.50**

Where you have specifically requested records involving communications with legal counsel it is anticipated that responsive records may be protected from public disclosure under the attorney-client privilege. Therefore, time is included in the above fee estimate for the necessary review and redaction. Preliminary e-mail searches identified 25,604 potentially responsive e-mail communications alone (not including other electronic or paper records). The amount of time for Town Counsel review included in the fee estimate is conservative, and should actual time exceed this estimate, you will be provided with a supplemental fee estimate. Although the Town could seek that the Supervisor of Records approve a higher hourly rate for Town Counsel work in relation to your request, it has chosen not to do so in this instance.

Please note that the actual cost of producing the records may vary once the Town begins preparing the records for response. At this time, it is anticipated that the Town will be able to produce most of the records electronically. In the event that the best way to produce such a large quantity of records is to provide them on a USB drive, you will be charged for the cost of the USB drive. Please be advised further that if there are any responsive records that do not exist in electronic format, or may only be redacted manually and not electronically (and thus must be printed prior to redaction), copying charges will apply at the rate of $.05 per page. The Town has not identified any paper-only records so far.

Upon receipt of your payment in the amount detailed above or as revised by the Supervisor of Records and made payable to the "Town of Manchester-by-Sea," the Town will begin the requested work necessary to comply with your request. See 950 CMR 32.06(2)(f) (municipalities not required to provide public records until all fees are paid in full). The Supervisor of Records has previously determined that the "Public Records Law requires a requester to pay a fee estimate prior to the agency or municipality conducting search, segregation and redaction of records, and prior to receipt of the records." See SPR17/1005. It is anticipated that the Town will produce the requested records identified above, subject to withholding or redaction, within fifteen (15) business days of receiving payment. Once the number of responsive records is identified, the Town will supplement this fee estimate if necessary if the cost exceeds the above-referenced amount.

Conclusion

The Town will also work with you to clarify or modify the scope of your request. If there is any way to narrow this request, including by providing a narrower time frame, the Town may be able to respond more efficiently, and thus at lower cost. Please do not hesitate to contact the Health Agent to clarify or narrow the scope of your request.

You may appeal this response to the Supervisor of Public Records pursuant to 950 CMR 32.08(1)(d). By law, the Supervisor is required to respond within ten (10) business days of receipt of your appeal. You may also seek judicial review of an unfavorable response by commencing a civil action in the Norfolk County Superior Court, pursuant to G.L. c.66, §10A(c).

Sincerely,

Christine Dixon
Town Clerk

cc: Health Agent