

October 17, 2018
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508-259-9154

Secretary of the Commonwealth
Public Records Division
Supervisor of Public Records
McCormack Building
One Ashburton Place, Room 1719
Boston, MA 02108
pre@sec.state.ma.us

VIA EMAIL ONLY

Re: Appeal of Public Records Request Denial by Plymouth County Commissioners

Dear Supervisor of Records:

This is an appeal from a denial of two public records requests to the Plymouth County Commissioners. I made the original request on August 9, 2018, which was denied in part on September 10, 2018. This appeal is timely.

In support of this appeal, I provide the following background information with accompanying documentation:

1. On August 9, 2018, I requested the following public records from the Plymouth County Commissioners (*see Exhibit 1*):
 - “For the years 2016, 2017 and 2018, all minutes of Executive Sessions held at regular meetings of the County Commissioners.”¹
 - “For the years 2016, 2017 and 2018, all minutes of Executive Sessions held by the Plymouth County Advisory Board.”
 - “For the years 2016, 2017 and 2018, all minutes of “statutory meetings” held by the Plymouth County Commissioners.”
2. Also on August 9, 2018, I emailed Mr. Basler to request additional public records (*see Exhibit 2*):

¹ This appeal concerns the first category of public records consisting of 19 sets of Executive Session minutes for the period January 1, 2016 to July 26, 2018.

- “This is a Public Records Request for the year 2010 for: 1. all meeting minutes of Open Session and Executive Session of the County Commissioners. 2. all agendas of County Commissioner meetings and Plymouth County Advisory Board meetings.”
3. Together, these two public records requests on August 9, 2018, are collectively the subject of this appeal and will be referred to hereafter as the “August 9, 2018 Request.”
 4. On August 14, 2018, Mr. Basler provided an initial and incomplete response to the August 9, 2018 Request (*see Exhibit 3*), which provided no records but stated the County Commissioners would be posting Executive Session minutes “that can be released” after the next Commissioners meeting, and that he would be providing other records by August 22, 2018.
 5. On August 15, 2018, I emailed Mr. Basler with some clarifying questions regarding his vague initial response, and also requested to view the records at the Plymouth County offices on August 16, 2018. (*see Exhibit 4*).
 6. After initially being told Mr. Basler was on vacation and I could not view the records on August 16th, on the morning of August 16, 2018, Mr. Basler’s assistant emailed to state I could examine “the 2010, 2016, 2017 and 2018 *open session* meeting minutes in their original form.” (emphasis added). Plymouth County did not make any Executive Session minutes available for inspection. Given the late notice and the continued failure to make all requested records available for inspection, I did not travel to the County office on that day.
 7. On August 20, 2018, I filed an Open Meeting Law Complaint with the Attorney General’s office and emailed a copy of the complaint to the Plymouth County Commissioners. (*see Exhibit 5*). The complaint alleged the Plymouth County Commissioners, in response to my public records request and/or in violation of the Open Meeting Law, had (1) refused to release minutes of executive sessions held in 2016, 2017, and 2018; (2) failed to review minutes of executive sessions held in 2016, 2017, and 2018 at reasonable intervals to determine if disclosure would defeat lawful purposes; (3) if review was done, failed to announce its determination at the next meeting following its review that non-disclosure was warranted; (4) unlawfully entered into executive session on multiple occasions; and (5) failed to include lists of documents and exhibits used in executive and open sessions from at least 2015 to the present.
 8. On August 24, 2018, I received an email from Mr. Basler attaching various 2010 postings and agendas, as well as the 2010 Open Session meeting minutes. (*see Exhibit 6*). This response did not provide any executive session minutes for 2010. The County Commissioners held at least 25 executive sessions in 2010, according to the Commissioners’ meeting notices and open session minutes.

9. On September 4, 2018, in response to the Open Meeting Law Complaint, I received a letter from Shannon Resnick, Legislative Counsel for the Plymouth County Commissioners, who informed me that the County Commissioners had determined to disclose executive session minutes for five out of 24 executive sessions that occurred in the time period of my records request (2016-18).² (see **Exhibit 7**). Ms. Resnick's letter further indicated that "[a]ny minutes withheld have been withheld for valid purposes, namely that they relate to attorney-client privileges and/or that the matters for which they relate are legal matters still pending, which the disclosure would frustrate the purpose of executive session."
10. On September 10, 2018, I received an email from Mr. Basler that enclosed the five sets of executive session minutes for the period 2016-2018 identified in Ms. Resnick's letter that the County Commissioners had determined to disclose. (see **Exhibit 8**). The County has produced no executive session minutes for the approximately 25 executive sessions it held in 2010. Mr. Basler's September 10, 2018 email states:

As requested in your Public Records Request below, please see attached all 2016, 2017, and 2018 Executive Meeting Minutes that have been approved by the Commissioners and released as open records. By the way, the Executive Meeting Minutes, that have been released by the Commissioners, will be posted to our web site as soon as the developer can add them.

This fulfills your Public Records Request.

As noted above (¶ 9), the County Commissioners held executive session meetings on at least 24 occasions between January 1, 2016 and the August 9, 2018 Request and held at least 25 executive sessions in 2010.³ Mr. Basler's email responses and Ms. Resnick's letter, both individually and in combination, fail to sufficiently and completely respond to the August 9, 2018 Request, and therefore constitute a denial, or, at a minimum, a partial denial of that request. Specifically, Mr. Basler has not provided any executive session minutes for the 25 executive sessions in 2010, and also has not provided at least 19 executive session meeting minutes from the time period between 2016 and the date of the request. Mr. Basler has provided no rationale for withholding these records. "A denial must detail the specific basis for withholding the requested materials." 950 CMR 32.08(1).

To the extent that Ms. Resnick's letter is relied on to supply the rationale for withholding the executive session minutes, the letter is insufficient. The letter broadly and non-specifically stated that any materials withheld were not disclosed either because

² Ms. Resnick's letter did not address any executive session minutes from 2010, which were not part of the Open Meeting Law Complaint, but were requested as part of the August 9, 2018 Request.

they “relate to attorney-client privileges” or they related to “legal matters still pending, which [sic] the disclosure would frustrate the purpose of executive session.” However, the letter did not identify which rationale related to which executive session. Accordingly, the letter failed to “detail the specific basis for withholding the requested materials” as required by regulation. 950 CMR 32.08(1). Further, neither the letter nor Mr. Basler in any of his responses included a citation to the statutory exemptions upon which the Commissioners were relying or explain why the exemption applied. *See id.* And neither the letter nor Mr. Basler advised me of my right to seek redress through the administrative process provided by regulations governing public records requests. *See id.* To the extent the Commissioners claimed attorney-client privilege as a basis for withholding records, they did not provide a privilege log, nor did they provide portions of withheld minutes not covered by privilege. *See G. L. c. 66, § 10(a); see also Reinstein v. Police Commissioner of Boston*, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not blanket in nature).

Statutory exemptions to disclosure of public records are to be narrowly construed. *See Attorney General v. Assistant Commissioner of the Real Property Department of Boston*, 380 Mass. 623, 625 (1980). Here, to the extent the Commissioners have provided any rationale at all for withholding requested records, the purported rationale is so vague and non-specific that it is impossible for me to determine if it applies, and otherwise fails to comply with applicable regulations.

I request the Supervisor remand this matter to the Plymouth County Commissioners with instructions to immediately release the requested records being withheld (both from the 2010 and from the 2016-18 time periods), or to provide sufficient justification for their continued non-disclosure. Please contact me at 508-259-9154 or by email at megsheehan07@gmail.com if you need further information from me to act on this appeal.

Thank you for your assistance in this matter.

Very truly yours,



Margaret E. Sheehan, Esq.

Cc: Attorney General’s Office, Division of Open Government
Plymouth County Commissioners