

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

PUBLIC RECORDS GUIDANCE MATERIALS RELEASED

It has been about one year since the major amendment and restatement of the Massachusetts public records statute, M.G.L. c. 66, entitled “An Act to Improve Public Records”, became effective. Many public agencies and municipalities (including charter schools, which are considered municipalities for the purposes of the new law) are still working to understand the more rigorous requirements of the new statute, which are described [here](#). Until recently, the Public Records Division of the Secretary of State’s Office (the “PRD”) had not issued much guidance to public agencies and municipalities regarding the amendment in spite of the many changes it makes to the public records statute. However, on March 12, 2018, the PRD released a [web page](#) which includes guidance materials, both existing and new, and a useful list of frequently cited public records cases.

In addition to including the handbook entitled [A Guide to the Massachusetts Public Records Law](#), which has been in existence for several years and was last updated in January 2017, the web page also posts two new and helpful training materials: [a video](#) explaining how public entities must initially respond to a public records request; and a [comprehensive flow chart](#) of the process. As noted above, the web page also lists frequently cited public records cases, the findings of which are still good law in the wake of the amendment to the statute, as the amendment did not change the public record exemptions.

Examples of cases listed on the web page include:

- [Brogan v. School Committee of Westport](#), 401 Mass. 306 (1987), which concluded that school employee attendance records are not exempt from public records requests, because “sick days” and “personal days” are not intimately personal, nor are they medical records (where the requestor did not seek the reasons for the use of sick days, but, rather, the general attendance record of the employee);
- [Globe v. City of Boston](#), Docket No. 2014-03952 (Mass. Sup. Ct. May 9, 2016), which concluded that race and ethnicity of employees were not “personnel records,” because such data points are not relevant to employment or performance and are not of a personal nature; and
- [Wakefield Teachers Ass'n v. School Comm.](#), 431 Mass. 792 (2000), which concluded that a disciplinary report of a teacher who was found to have written inappropriate notes

to students was an exempt personnel record because it dealt with the disciplinary action taken against the teacher.

We encourage our clients to review the new training materials on the PRD web page and familiarize themselves with the cited case law, which continues to apply under the amended statute.

If you have any questions regarding compliance with the public records statute, or would like assistance understanding the new materials or cited case law, please contact attorneys Elka Sachs (esachs@kb-law.com) or Allison Belanger (abelanger@kb-law.com).

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