

# THE GARDNER NEWS

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## 'Excessive' Charge For Public Info *Massachusetts' Open record orders often hard to enforce*

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WINCHENDON After its estimated \$5,000 fee to fulfill a public records request was deemed "unreasonable and excessive" by the secretary of state's office, the Winchendon School District has yet to comply with the state's laws.

Short of a lawsuit against the district, or action from Attorney General Maura Healey's office, there is little that can be done to force the district to obey the state's open records laws.

"Massachusetts has one of the weakest public records laws in the country," said Justin Silverman, executive director of the New England First Amendment Coalition.

If a citizen is denied a public records request, or cannot get satisfaction after appealing a request through the secretary of state's office, there is little that can be done, according to people interviewed who are familiar with the process.

This leaves the burden of getting information that is supposed to be public on taxpayers willing to go to court.

In October 2014, The Gardner News requested copies of emails, cellphone bills and employee contracts from the district after questions arose about Superintendent Salah Khelifaoui's actions concerning his school-funded cellphone, as well as a police report in which he is accused of directing former School Business Manager Melissa Dunnet to tamper with the taxes on his paychecks.

Dr. Khelifaoui was investigated in April for alleged fraud over the tax withholding for his cellphone stipend.

Then in September, state investigators decided the amount of money in question was not worth a prosecution.

Ms. Dunnet, who reportedly said in a police report that Dr. Khelifaoui directed her to tamper with his paychecks, left the district in June.

About a month later, the district paid her more than \$25,000.

The district has yet to explain that payment.

Dr. Khelifaoui's response to the October public records request was to demand \$4,667 just to see paper copies of the emails.

He has yet to respond to the request for the contracts or the cellphone bills.

Such requests must be answered within 10 days.

In a Jan. 26 ruling from Shawn Williams, supervisor of records for the secretary of state's office, the fee being demanded for the emails is considered too high and unjustified under the law.

"I find that the Schools' estimate of ninety dollars and ten cents (\$90.10) per hour for the Superintendent to review and redact email records is unreasonable and excessive," Mr. Williams wrote.

"The School has not met its burden to explain why this is the lowest rate."

State open records laws allow a fee to be charged to review documents, but it states that the hourly rate of the lowest paid employees that can reasonably prepare the material must be used for the fee estimate.

High dollar estimates on public documents is a common tactic for keeping public records away from the public, said Katie Townsend, litigation director for the Reporters Committee for Freedom of the Press.

"It's not uncommon for there to be what I would call exorbitant, or certainly extremely high, fees charged by government agencies for public records," Ms. Townsend said.

Some agencies have been known to charge tens of thousands of dollars, or even \$100,000, for records that are supposed to be available to the public.

The concern that's raised when government agencies charge such high prices to media members is what those agencies will try to charge average taxpayers.

If government agencies are able to stonewall members of the press, Ms. Townsend said they could be doing that to the public as well.

"There's no reason to think that if an agency thinks that it can charge these high fees for a public records request to the media, that they aren't doing the same thing to members of the public," she said.

There are some options available to the public if an estimate is thought to be too high.

There are always appeals that can be made through the secretary of state's office.

The Gardner News appealed the \$4,667 estimate, and Mr. Williams ordered the district to supply a new estimate within 10 days of the order.

However, Mr. Williams issued his order on Jan. 26, which means Feb. 9 was the deadline to comply with the order.

To date, the Winchendon School District has yet to issue a new estimate, and it has yet to respond to the request for cellphone bills and contracts from October.

Dr. Khelfaoui and School Committee chairwoman Dawn Harris did not respond to requests for a telephone interview on the apparent public records law violations and the Jan. 26 order from Mr. Williams.

Mr. Silverman said it's not unheard of to have public agencies ignore orders from the secretary of state's office.

"Those orders are not going to get you the documents," Mr. Silverman said.

"It's really an unfortunate situation

This leaves the average citizen trying to stay on top of local government business no way to compel a government official or agency to comply with the open records law, Silverman said.

If the appeals process fails, or if the agency ignores the order, it forces people to undertake a potentially expensive lawsuit on their own, Mr. Silverman said.

"It is rather difficult," said Brian McNiff with the secretary of state's office.

"Legally, you can take them to court. That is your option."

This is why the laws need to be reformed, said Gavi Wolfe, legislative counsel for the American Civil Liberties Union of Massachusetts.

"My understanding is that the supervisor could, in theory, refer a case to the district attorney or attorney general for enforcement, but that never happens in reality," Mr. Wolfe said.

"Otherwise, one can file for injunctive relief in superior court, which seems a heavy lift just to get some documents that are supposed to be public as a matter of right."

There are remedies offered in some states, Ms. Townsend said. Some states set a cap on the amount of money a government agency can charge for public records.

Other states set fees depending on the records involved.

In many states, journalists are able to use a lower fee schedule given that publishing the records are in the public interest.

Mr. McNiff said Secretary of State William Galvin wants to see a reform of the laws and has made proposals, but to little avail.

"It's up to the Legislature to pass the bills," McNiff said.

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