

To: Members of the Monterey Select Board:

From: Jon Levin, Records Access Officer

Date: January 13, 2022

I am writing to report on the progress of two of the Public Records Requests that I was asked to deal with. One request was dated September 13, 2021 submitted by Melissa Noe and an anonymous requestor<sup>1</sup> and one request was dated September 14, 2021 and submitted by Melissa Noe (the "Public Records Requests"). The two Public Records Requests were substantially similar, and they were both addressed to Terry Walker, Clerk of Monterey. Copies of the Public Records Requests are attached as Exhibit A hereto. Ms. Walker, as an employee or officer of a municipality, is deemed a public records Custodian under the Public Records Statute and regulations.

The Public Record Requests sought documents and related emails (personal and town email accounts) and text messages (personal and email accounts) between Ms. Walker and third parties, relating to specific issues/items and covering a specified time frame. It is my understanding that Ms. Walker uses both her personal email account and personal telephone for Town business. As discussed, below, these records constitute Public Records and should be maintained in the control and custody of the Town.

Under the Public Records Statute, Ms. Walker, as Town Clerk and custodian of the Public Records within her control and possession, should have substantively responded to the Public Records Requests within 10 business days of receipt, or should have sought the assistance of a Records Access Officer<sup>2</sup> and provided a statutorily required response within such time frame detailing why the records could not be produced within such time frame, and/or whether a reasonable fee was required and/or whether the custodian, in coordination with the Records Access Officer, intended to seek an extension to the required time frame or other relief from the State Supervisor of Public Records (the "Supervisor"). Based on the information available to me, within the prescribed ten business days, (i) no response was made by Ms. Walker (ii) no documents turned over in response to the Public Records Requests, and (iii) neither Ms. Walker nor a Records Access Officer sought an extension to the required time frame or other relief from the Supervisor. The deadline for these actions would have been September 27 and 28, respectively. Failure to respond within said time frames limits the right of the Town to object, obtain extensions and charge fees.

On September 28, 2021 and September 29, 2021 (after the expiration of the original ten business days) Ms. Noe filed a request for a response to the Public Records Requests with the Supervisor. On September 30, 2021, the Supervisor's office asked Ms. Walker for a response. On September 30, 2021, Ms. Walker responded to the Supervisor, asking for additional time, and indicated she could respond within said additional time (25 business days from the date of the original requests). The Supervisor subsequently deemed the request and acknowledgement that Ms. Walker would respond within said twenty-five days to be sufficient to close the requests of Ms. Noe. The relevant email chain and Supervisor's letters are attached hereto as Exhibit B. The additional time requested by Ms. Walker

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<sup>1</sup> Under the Public Records Statute, a person requesting Public Records need not disclose their identity.

<sup>2</sup> At the time of the records request, there were two appointed Records Access Officers for the Town: Melissa Noe and Police Chief Backhaus

expired on October 20, 2021. Ms. Walker did not provide any documents to Ms. Noe by October 20, 2021.

November 1, 2021, the Ms. Walker submitted to Ms. Noe a packet of documents of approximately 148 pages. Ms. Walker indicated in her transmittal to Ms. Noe that the packet was not complete and indicated that additional documents were forthcoming. The packet did not reference which document responded to which specific request within the Public Records Requests (approximately 11 categories of documents).

Based on information provided by Ms. Noe, Ms. Walker did not provide any further documents in response to the Records Requests up to and including the date the undersigned was appointed as a Records Access Officer.

On November 10, 2021, the undersigned was appointed as a Records Access Officer and was sworn in on Monday November 13, 2021.

I subsequently communicated with Ms. Walker relative to the Public Records Requests as follows, with Ms. Walker's response noted as well:

1. On Friday November 12, 2021, I transmitted to Ms. Walker an email requesting information relative to (and remaining documents with respect to) the outstanding Public Records Requests. I did not receive a substantive response.
2. On November 22, 2021, I sent another email repeating my request for a response. On November 30, 2021, I received a limited, but incomplete response from Ms. Walker. Included in the limited response were 82 pages of documents and a statement by Ms. Walker that "all medical records, personal emails and text messages are exempt"<sup>3</sup>. Ms. Walker did not cite any statutory authority for such 'exemptions'.
3. On December 1, 2021, I followed up Ms. Walker's limited and incomplete response with an email with further specific questions and requests. No response.
4. On December 14, 2021, I again requested a response from Ms. Walker to my December 1, 2021 email. No response.
5. On January 3, 2022, I again requested a response from Ms. Walker to my December 1, 2021 email. The only response I received thereafter from Ms. Walker was on January 3, 2021 stating "I answered your questions on November 30, 2021". The November 30, 2021 email from Ms. Walker did not address my follow-up questions and document requests of December 1, 2021.
6. A copy of all the above referenced emails are attached hereto as Exhibit C.

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<sup>3</sup> Ms. Noe was asked by the undersigned to review the two sets of documents produced by Ms. Walker and Ms. Noe advised the undersigned that while four of the eleven specific public records requests were addressed, the remaining seven requests were not complied with, nor did Ms. Walker turn over any personal emails, texts of phone records with respect to the Town business public records made in the Public Records Requests. I also personally reviewed the turned over documents in relation to the list of requests in the Public Records Requests. My review of the documents was unfortunately limited by the fact that Ms. Walker did not delineate which documents were responsive to which specific document requests, so a complete and fair analysis of the documents produced is difficult, at best. Nevertheless, of the approximate total of 230 pages turned in, over two thirds were many copies of the same material. Except for one instance, I found no documents that were responsive to seven of the eleven specific requests, and limited responses to the others. I found (with only one exception) no copies of emails or texts of Town business on Ms. Walker's personal devices/accounts.

The Public Records Statute provides that "Public records" shall mean all books, papers, maps, Photographs, recorded tapes..., or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of ...any municipality, unless such materials or data fall within specified statutory exemptions.

Exemptions which may be applicable in this instance are:

1. Personnel and medical files or information;
2. Notebooks and other materials prepared by an employee which are personal to him and not maintained as part of the files of the governmental unit;

All Public Records are supposed to be maintained within the custody and control of the Town. Failure to maintain Public Records in the custody and control of the Town is a violation of the Public Records Statute. Violations of the Public Records Statute can subject the Town to punitive damages of not less than \$1,000 nor more than \$5,000.

It is settled law that if any employee of the Town uses his or her personal email and/or personal phone to conduct Town business, or communicate with others in their municipal capacity, such personal emails and/or personal phone records are Public Records as defined by the Public Records Statute and must be kept within the custody and control of the Town. To the extent that such Public Records may be exempt from disclosure to the public does not obviate the requirement that such records be kept within the control and custody of the Town. Further, it is up to the Records Access Officer to determine whether a Public Record is exempt from disclosure, not the custodian of the record.

If Ms. Walker has used her personnel email and phone (texts) for Town business, then Ms. Walker has failed and refused to comply with the statutory requirement to maintain Town business email and text messages (whether on personal or town devices) within the control and custody of the Town. Again, assuming that such personal devices contain Public Records, despite repeated requests from the undersigned, Ms. Walker has failed and refused to turn over such Public Records so that they may be properly reviewed for any applicable exemption, and then if not exempt, provided pursuant to the Public Records Request. Further, in my opinion, Ms. Walker has not turned over all documents within her office records that are relevant to the Public Records Requests.

The continuing failure of the Town to properly respond to the Public Records Requests leaves the Town exposed to the punitive damages penalties of the Public Records Statute. I would recommend that the Select Board require Ms. Walker to (i) fully comply with the Public Records Requests and (ii) turn over to the Town (by copying and archiving in Town digital records) all emails, texts and documents in Ms. Walker's possession (whether from personal or Town accounts or devices) which constitute Public Records as defined by the Statute (regardless of any applicable exemption) so that the Town has a full and complete Public Record of the communications and activities of Ms. Walker as a Town employee, and so that the Records Access Officer can review such records (and except with respect to exempt records), comply with the Public Records Requests.

On a related matter, I believe it would be prudent for the Select Board (either with or without the assistance of Town Counsel) to re-emphasize to all Town employees, Boards, Committees and others (those who fall within the parameters of the Public Records Statute), of the requirement to comply with Town and or statutory Public Records and retention requirements, including, but not limited to:

1. What constitutes a Public Record;
2. Who (employees, officers, board and committee members) are subject to the Public Records Statute (hereinafter "Town Officials");
3. What are the responsibilities of a Town Official as 'custodian' of public records;
4. That all Public Records must be kept within the custody and control of the Town;
5. That to the extent that a Town Official is issued a Town email address and/or a Town phone/cell phone, that all Town business must be conducted using such addresses, phone numbers or devices;
6. That to the extent that a Town Official cannot always comply with #5, that any Town business conducted with personal phone or email accounts must be regularly and completely copied and archived with Town digital archives and records;
7. That with respect to 3, 4, 5 and 6, all Town Officials must fully cooperate with a Records Access Officer with respect to any public records requests;
8. What the consequences will be if a Town Official fails to comply with any of 4, 5, 6 and 7;
9. To the extent not already done, detail, specify and disseminate a Town Records Retention Policy, as required by statute.



Jonathan Levin

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**Subject:** FW: Records Request

**From:** [clerk@montereyma.gov](mailto:clerk@montereyma.gov) [mailto:[clerk@montereyma.gov](mailto:clerk@montereyma.gov)]  
**Sent:** Monday, September 13, 2021 10:16 AM  
**To:** Monterey Town Administrator <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Subject:** RE: Records Request

I am working on it

----- Original Message -----

**Subject:** Records Request  
**From:** "Monterey Town Administrator" <[admin@montereyma.gov](mailto:admin@montereyma.gov)>  
**Date:** Mon, September 13, 2021 7:01 am  
**To:** <[clerk@montereyma.gov](mailto:clerk@montereyma.gov)>

Good Morning Terry,

A records request has been received today 9/13/21 for the following items:

1. Printed copies of any emails sent since January 1, 2021 from [clerk@montereyma.gov](mailto:clerk@montereyma.gov) , [terry@montereyma.gov](mailto:terry@montereyma.gov) , [tlwalkerbbc@ol.com](mailto:tlwalkerbbc@ol.com) and [terry.walker1952@icloud.com](mailto:terry.walker1952@icloud.com) to John Weingold (town issued and personal email addresses), Jon Sylbert (town issued and personal email addresses), Justin Makuc (town issued and personal email addresses), Emily Johnson, Mike Johnson, Nancy Tomasovich, Jeremy Rawitz, Susan Gallant, Rebeca Wolin, Barbara Swann, Gary Shaw and Linda Thorpe. This request also includes any emails you have received from those parties listed above and anyone else that may not be specifically listed with regard to the following topics:
  - a. Massworks grant
  - b. AFG Grant
  - c. Resigning from any of your positions (this includes contemplating resignation and actually resigning)
  - d. Fire Dept/Company
  - e. Highway Dept
  - f. Town Administrator (this includes your relationship with the TA both positive and negative on any and all topics)
  - g. Issues in town hall (this includes anyone suggesting to you that there may be issues)
  - h. Your office hour schedule (anything having to do with your request to change hours and discussions had with outside parties on this)
  - i. Access/inability to access grants portal
  - j. Recent year end reporting issue reported to the Select Board
2. Printed copies of any text messages you have sent since January 1, 2021 to John Weingold, Jon Sylbert, Justin Makuc, Emily Johnson, Mike Johnson, Nancy Tomasovich, Jeremy Rawitz, Susan Gallant, Rebecca Wolin, Barbara Swann, Gary Shaw and Linda Thorpe. This request also includes any texts you have received from those parties listed above and anyone else that may not be specifically listed with regard to the following topics:
  - a. Massworks grant
  - b. AFG Grant

- c. Resigning from any of your positions (this includes contemplating resignation and actually resigning)
- d. Fire Dept/Company
- e. Highway Dept
- f. Town Administrator (this includes your relationship with the TA both positive and negative on any and all topics)
- g. Issues in town hall (this includes anyone suggesting to you that there may be issues)
- h. Your office hour schedule (anything having to do with your request to change hours and discussions had with outside parties on this)
- i. Access/inability to access grants portal
- j. Recent year end reporting issue reported to the Select Board

Please leave the printed copies in my mailbox or you may give them to me directly. If you are unable to fulfill any of the above requests please provide a reason for each item you cannot fulfill. Thank you.

Respectfully,

*Melissa Noe*

Town Administrator  
Town of Monterey  
413-528-1443 x111

*Kindness is FREE, sprinkle that stuff everywhere! ☺*

Jonathan Levin

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Subject: FW: Additional Public Records Request

----- Original Message -----

Subject: Additional Public Records Request

From: "Monterey Town Administrator" <[admin@montereyma.gov](mailto:admin@montereyma.gov)>

Date: Tue, September 14, 2021 4:27 am

To: <[clerk@montereyma.gov](mailto:clerk@montereyma.gov)>

Good Morning Terry,

I am requesting copies of the following items:

1. Printed copies of any emails sent since July 21, 2021 through today from [clerk@montereyma.gov](mailto:clerk@montereyma.gov) , [terry@montereyma.gov](mailto:terry@montereyma.gov) , [tlwalkerbbc@ol.com](mailto:tlwalkerbbc@ol.com) and [terry.walker1952@icloud.com](mailto:terry.walker1952@icloud.com) to John Weingold (town issued and personal email addresses), Jon Sylbert (town issued and personal email addresses), Justin Makuc (town issued and personal email addresses), Emily Johnson, Mike Johnson, Nancy Tomasovich, Jeremy Rawitz, Susan Gallant, Rebeca Wolin, Barbara Swann, Gary Shaw, the Police Department and Linda Thorpe. This request also includes any emails you have received from those parties listed above and anyone else that may not be specifically listed with regard to the complaint filed against myself and Shawn Tryon taking place on July 21<sup>st</sup>.
2. Printed copies of any texts sent since July 21, 2021 through today from [clerk@montereyma.gov](mailto:clerk@montereyma.gov) , [terry@montereyma.gov](mailto:terry@montereyma.gov) , [tlwalkerbbc@ol.com](mailto:tlwalkerbbc@ol.com) and [terry.walker1952@icloud.com](mailto:terry.walker1952@icloud.com) to John Weingold (town issued and personal email addresses), Jon Sylbert (town issued and personal email addresses), Justin Makuc (town issued and personal email addresses), Emily Johnson, Mike Johnson, Nancy Tomasovich, Jeremy Rawitz, Susan Gallant, Rebeca Wolin, Barbara Swann, Gary Shaw, the Police Department and Linda Thorpe. This request also includes any emails you have received from those parties listed above and anyone else that may not be specifically listed with regard to the complaint filed against myself and Shawn Tryon taking place on July 21<sup>st</sup>.

Please leave the printed copies in my mailbox or you may give them to me directly. If you are unable to fulfill any of the above requests please provide a reason for each item you cannot fulfill. Thank you.

Respectfully,

*Melissa Noe*

Town Administrator  
Town of Monterey  
413-528-1443 x111

*Kindness is FREE, sprinkle that stuff everywhere! ☺*





# EXHIBIT "B"

**From:** [Monterey Town Administrator](#)  
**To:** [SEC-DL-PREWERB](#)  
**Subject:** Public Records Request Appeal  
**Date:** Tuesday, September 28, 2021 10:38:02 AM  
**Attachments:** [RE Records Request.msg](#)  
[RE Records Request.msg](#)

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Good Morning,

On September 13<sup>th</sup> myself and another party verbally made the attached request put in writing to the Town Clerk, Terry Walker for some town records/communications. As you can see she immediately replied that she was working on it. The 24<sup>th</sup> would've been 10 business days. On 9/22 I sent a follow up inquiring about the status of receiving the records requested and have had no response to that request nor have I been provided with any records or a reason why she cannot provide them. In addition to being one of the requesters I am also the RAO for the Town.

I wish to file an appeal/complaint and be provided with the documents requested or reasons why she cannot provide them this week.

Respectfully,

*Melissa Noe*

Town Administrator  
Town of Monterey  
413-528-1443 x111

*Kindness is FREE, sprinkle that stuff everywhere! ☺*

## Jonathan Levin

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**From:** Monterey Town Administrator <admin@montereyma.gov>  
**Sent:** Wednesday, September 29, 2021 8:00 AM  
**To:** pre@sec.state.ma.us  
**Subject:** Another Public Records Request Appeal  
**Attachments:** RE: Additional Public Records Request (9.42 KB); RE: Additional Public Records Request (11.8 KB)

Good Morning,

On September 14<sup>th</sup> I made the attached request put in writing to the Town Clerk, Terry Walker for some town records/communications. As you can see she immediately replied that she was working on it. The 28<sup>th</sup> would've been 10 business days. On 9/22 I sent a follow up inquiring about the status of receiving the records requested and have had no response to that request nor have I been provided with any records or a reason why she cannot provide them. In addition to being the requester I am also the RAO for the Town.

I wish to file an appeal/complaint and be provided with the documents requested or reasons why she cannot provide them this week.

Respectfully,

*Melissa Noe*

Town Administrator  
Town of Monterey  
413-528-1443 x111

*Kindness is FREE, sprinkle that stuff everywhere! ☺*



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

September 28, 2021  
**SPR21/2491**

Ms. Melissa Noe  
Town of Monterey  
435 Main Road  
Monterey, MA 01245

Dear Ms. Noe:

I have received your letter appealing the response of the Monterey Town Clerk to your request for records.

I have directed a member of my staff, Christopher Burgess, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

*Rebecca Murray*

Rebecca S. Murray  
Supervisor of Records

cc: Terry Walker

## Jonathan Levin

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**From:** Nekton, Mackenzie (SEC) <mackenzie.nekton@state.ma.us>  
**Sent:** Thursday, September 30, 2021 4:10 PM  
**To:** TerryWalker  
**Cc:** SEC-DL-PREWEB; admin@montereyma.gov  
**Subject:** SPR21/2532 Petition Acknowledgement  
**Attachments:** SPR21-2532.pdf

Dear Records Custodian:

Please be aware, this office has received a petition relating to your entity's response to a request for public records. Attached are further details concerning this petition. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us) or 617-727-2832. Given that the Supervisor of Records must issue a determination within 5 business days of receipt of the petition, please provide any additional information to this office as soon as possible.

Sincerely,

MacKenzie Nekton  
Office of the Secretary of the Commonwealth  
Public Records Division  
One Ashburton Place, Room 1719  
Boston, MA 02108  
Tel: (617) 727 2832  
Email: [mackenzie.nekton@sec.state.ma.us](mailto:mackenzie.nekton@sec.state.ma.us)

## Plante, Emma (SEC)

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**From:** tlwalkernbbc@aol.com  
**Sent:** Thursday, September 30, 2021 3:19 PM  
**To:** Burgess, Christopher (SEC)  
**Cc:** SEC-DL-PREWEB  
**Subject:** Re: SPR21-2491

Hi Chris,

Yes I would like to clarify that I seek to petition your office for an extension of time and I believe 25 days is adequate time to fulfil the Public records Request.

Terry Walker  
Town Clerk-Monterey

-----Original Message-----

**From:** Burgess, Christopher (SEC) <christopher.burgess@state.ma.us>  
**To:** tlwalkernbbc@aol.com <tlwalkernbbc@aol.com>  
**Cc:** SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>  
**Sent:** Thu, Sep 30, 2021 2:58 pm  
**Subject:** RE: SPR21-2491

Good afternoon Terry,

Please clarify whether you seek to petition this office for an extension of time, and if so, whether the 25 days you provided earlier is the amount of time you think you will need.

Thank you.

Best,

Chris Burgess  
Public Records Division  
Office of the Secretary of the Commonwealth of Massachusetts  
One Ashburton Place, Room 1719  
Boston, MA 02108  
Tel: (617)727-2832

**From:** tlwalkernbbc@aol.com <tlwalkernbbc@aol.com>  
**Sent:** Thursday, September 30, 2021 11:53 AM  
**To:** Burgess, Christopher (SEC) <Christopher.Burgess@sec.state.ma.us>; Burgess, Christopher (SEC) <Christopher.Burgess@sec.state.ma.us>  
**Subject:** SPR21-2491

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Mr. Burgess,

Please cc attorney of the day--Angela C.

I am requesting an extension to comply with the public records request from an anonymous person in the Town of Monterey. The Records Access Officer, in handing this request. I responded to Melissa Noe, Town Administrator/ RAO stating I was working on her request twice. The request is unreasonable to fulfill in a short period of time. I am requesting an extension of 25 days to fulfill the public records request.

Melissa Noe-Town Administrator and Shawn Tryon-DPW Superintendent started harrassing me in May-June 2021 it escalated to a me being verbally assaulted by both of them on July 21, 2021 at the Monterey Town Hall., Shawn actually jumped off the table he was sitting on and took a step toward me to frighten me. Shawn Tryon gave me the middle finger on another occasion while at town hall. Melissa Noe verbally assaulted me on September 22, 2021 after a board of Selectmen's meeting. Her anger was out of control and Steve Weisz, chairman of the board of Selectmen could not control her. I was trying to leave the town hall and she was 2 feet away from me and she was not allowing me to leave the building. She wanted me to say I lied about the verbal assault, mental abuse by herself and Shawn Tryon July 21, 2021. I refused and she was so angry she was out of control. She told my assistant he was protecting me so she wouldn't beat me up. I have witnesses to all my complaints

So I am asking for an extension of 25 days because I am afraid to go to work to fulfill the request. I have my assistant with me at all times and I lock myself in my office. Shawn Tryon and Melissa Noe are both harrassing me and Melissa Noe is retaliating against me because she thinks there is a conspiracy against her.

I contacted the local police department on July 21, 2021 They said it was not a police issue because there wasnt any physical abuse.

I contacted the local police department on September 23 regarding September 22, 2021 issue , the chief said "Melissa is not going to hit you"

I can not function in a threatening, abusive, hostile work environment. Locking myself in my office is not healthy. The harrassment and verbal assaults need to stop so I can do my duties as Town Clerk.

Your attention to this matter is very much appreciated.

Terry Walker  
Monterey Town Clerk

## Jonathan Levin

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**From:** Monterey Town Administrator <admin@montereyma.gov>  
**Sent:** Friday, October 1, 2021 7:56 AM  
**To:** 'Nekton, Mackenzie (SEC)'; 'TerryWalker'  
**Cc:** 'SEC-DL-PREWEB'  
**Subject:** RE: SPR21/2532 Petition Acknowledgement

Thank you Mackenzie. I would add that Ms. Walker's allegations are unfounded and border on libel, slander and defamation of character. There is a hearing set on Monday to discuss her claims. She has been in the office working during the whole time since the request and should be able to provide the documents without the extension.

I would be happy to allow that extension but feel that she has stated once (not twice) that she is working on it all records that she has to date should be immediately provide and any others going provided should be given as they are located rather than waiting for them all in one lump sum.

I look forward to your prompt reply so that this request may be resolved in the timeliest and most professional fashion. I am happy to provide you with any further information you need to corroborate the facts listed above.

Respectfully,

*Melissa Noe*

Town Administrator  
Town of Monterey  
413-528-1443 x111

*Kindness is FREE, sprinkle that stuff everywhere! ☺*

**From:** Nekton, Mackenzie (SEC) [mailto:mackenzie.nekton@state.ma.us]  
**Sent:** Thursday, September 30, 2021 4:10 PM  
**To:** TerryWalker <clerk@montereyma.gov>  
**Cc:** SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; admin@montereyma.gov  
**Subject:** SPR21/2532 Petition Acknowledgement

Dear Records Custodian:

Please be aware, this office has received a petition relating to your entity's response to a request for public records. Attached are further details concerning this petition. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us) or 617-727-2832. Given that the Supervisor of Records must issue a determination within 5 business days of receipt of the petition, please provide any additional information to this office as soon as possible.

Sincerely,

MacKenzie Nekton  
Office of the Secretary of the Commonwealth  
Public Records Division



One Ashburton Place, Room 1719  
Boston, MA 02108  
Tel: (617) 727 2832  
Email: [mackenzie.nekton@sec.state.ma.us](mailto:mackenzie.nekton@sec.state.ma.us)

## Jonathan Levin

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**From:** Stair, Joshua (SEC) <joshua.stair@state.ma.us>  
**Sent:** Thursday, October 7, 2021 12:41 PM  
**To:** TerryWalker  
**Cc:** SEC-DL-PREWEB; admin@montereyma.gov  
**Subject:** SPR21/2532 Time Petition Determination  
**Attachments:** spr212532.pdf

Hello,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Thank you,

Joshua Stair  
Office of the Secretary of the Commonwealth  
Public Records Division  
One Ashburton Place, Room 1719  
Boston, MA 02108

(617) 727-2832 (office)

(617) 727-5914 (fax)

<http://www.sec.state.ma.us/pre/preidx.htm>

**A Guide to Public Records Law:** <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
Supervisor of Records

October 7, 2021  
SPR21/2532

Ms. Terry Walker  
Town of Monterey Town Clerk  
435 Main Road  
Monterey, MA 01245

Dear Ms. Walker:

I have received your petition on behalf of the Town of Monterey Town Clerk (Town) seeking an extension of time to produce records. G. L. c. 66, § 10(c). As required by law, it is my understanding that the Town furnished a copy of this petition to the requestor, Ms. Melissa Noe. Id.

***Petition for an Extension of Time***

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

- (i) the need to search for, collect, segregate or examine records;
- (ii) the scope of redaction required to prevent unlawful disclosure;
- (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
- (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
- (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
- (vi) the public interest served by expeditious disclosure.

G. L. c. 66, § 10(c).

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended

Ms. Terry Walker  
Page 2  
October 7, 2021

SPR21/2532

for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requester within ten business days after receipt of a request for public records. 950 CMR 36.06(4)(b).

### ***Current Petition***

The September 30, 2021 petition states that the Town requests “an extension of 25 days to fulfill the public records request.” In subsequent communications on the same day, the Town has confirmed that they are petitioning for “an extension of time” and “believe 25 days is an adequate time to fulfill the [p]ublic records [r]equest.”

### ***Conclusion***

In light of the Town's September 30<sup>th</sup> emails I find it is unnecessary to opine on the Town's extension request because it intends to provide responsive records within twenty five (25) business days of the receipt of the request as allowed in G. L. c. 66 § 10(b)(vi). The Town is advised it must seek another petition for extension if it cannot provide responsive records within twenty five (25) business days of the receipt of the request. G. L. c. 66 § 10(c).

The records must be provided in a manner consistent with the Public Records Law and its Access Regulations. Ms. Noe may appeal the substantive nature of the Town's response within ninety (90) days. See 950 C.M.R. 32.08(1). Please note, Ms. Noe has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4),10A(c).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Ms. Melissa Noe



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

October 12, 2021  
**SPR21/2500**

Terry Walker  
Town Clerk  
Town of Monterey  
435 Main Road  
Monterey, MA 01245

Dear Ms. Walker:

I have received the petition of Melissa Noe appealing the nonresponse of the Town of Monterey (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On September 14, 2021, Ms. Noe requested certain communications from July 21, 2021. Claiming to not yet have received a response Ms. Noe petitioned this office, and this appeal, SPR21/2500 was opened as a result.

***The Public Records Law***

Under the Public Records Law and the Access Regulations (Regulations) all requests for public records must be met with a response within 10 business days from receipt of the request. G. L. c. 66, § 10(a)-(b). The response may contain, among other things, an offer to provide records, a fee estimate for provision of the records, or a denial. G. L. c. 66, § 10(b). All records custodians must comply with both the Public Records Law and the Regulations with respect to the timeliness of response.

Subsequently, I learned that the Town provided a response to Ms. Noe dated September 14 and September 30, 2021. Where this matter was opened based upon the Town's lack of a written response, I will now consider this appeal closed. Ms. Noe may appeal the Town's response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,  
*Rebecca Murray*

Rebecca S. Murray  
Supervisor of Records

cc: Melissa Noe



**Jonathan Levin**

---

**From:** Jonathan Levin <jlevin@lawglm.com>  
**Sent:** Friday, November 12, 2021 9:00 AM  
**To:** 'clerk@montereyma.gov'  
**Subject:** Records Requests from Melissa Noe et als.  
**Attachments:** RE: Additional Public Records Request (11.1 KB); RE: Records Request (17.3 KB)

Terry:

As you may know, I have been appointed the Records Access Officer for the Town and I have received copies of all record requests submitted to the Town.

The two record requests above were directed to you, and appear to solely deal with communications either by you to third parties, or from third parties to you.

In order to understand what is involved with these particular records requests, and to make sure the Town properly responds, I have the following questions:

1. I understand that you have provided some responses to these requests --- please send me a copy of what you provided, and detail how each response ties into a specific request;
2. Have you compiled any additional responses, and if so, please forward them to me, again detailing how each response ties into a specific request;
3. What would be necessary to complete a final and complete response to the request, including, time involved, cost (if any), whether access to any of the requested materials is problematic or otherwise unavailable (and if so, why);
4. Whether you believe that any of the requested information is confidential (as defined by statute) or subject to an exemption provided in the public records statute.

Your prompt response will be greatly appreciated. Thanks.

Jon Levin  
Records Access Officer  
Town of Monterey  
781-449-4095

## Jonathan Levin

---

**From:** Jonathan Levin <jlevin@lawglm.com>  
**Sent:** Monday, November 22, 2021 3:01 PM  
**To:** 'clerk@montereyma.gov'  
**Subject:** FW: Records Requests from Melissa Noe et als.  
**Attachments:** RE: Additional Public Records Request (11.1 KB); RE: Records Request (17.3 KB)

Terry:

I still do not have a response from you to the email below. Please provide.

Thanks.

Jon Levin

Records Access Officer

Town of Monterey

781-449-4095

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**From:** Jonathan Levin [mailto:jlevin@lawglm.com]  
**Sent:** Friday, November 12, 2021 9:00 AM  
**To:** 'clerk@montereyma.gov'  
**Subject:** Records Requests from Melissa Noe et als.

Terry:

As you may know, I have been appointed the Records Access Officer for the Town and I have received copies of all record requests submitted to the Town.

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2. Have you compiled any additional responses, and if so, please forward them to me, again detailing how each response ties into a specific request;
3. What would be necessary to complete a final and complete response to the request, including, time involved, cost (if any), whether access to any of the requested materials is problematic or otherwise unavailable (and if so, why);
4. Whether you believe that any of the requested information is confidential (as defined by statute) or subject to an exemption provided in the public records statute.

Your prompt response will be greatly appreciated. Thanks.

Jon Levin

Records Access Officer

Town of Monterey

781-449-4095



## Jonathan Levin

---

**From:** Jonathan Levin <jlevin@lawglm.com>  
**Sent:** Wednesday, December 1, 2021 8:54 AM  
**To:** 'clerk@montereyma.gov'  
**Cc:** 'Kathryn Crouss'  
**Subject:** RE: public records requests

Terry:

Thank you for your response. You do not need to send me the Guide, as I have had it since my appointment. Please note that you are not responding to my public records request. You are responding to a Public Records Request made to the Town for documents which may be within your office. I do not make Public Records Requests. I just process public records requests made to the Town.

I would appreciate your immediate response to the following:

1. The package of material/documents provided to Melissa Noe on or about November 1, 2021 totaled 148 pages, and the material/documents you provided me are only 82 pages. Please explain the difference. Further, I asked you to identify which documents pertain to the specific records requests. Please do so.
2. I understand you have a town issued cell phone. Any emails or texts sent (or received) from your town cell phone are considered Public Records. You are obligated to provide me with all such emails and texts and it is my responsibility to determine whether they are subject to an exemption. Please send me all emails or texts sent or received from your town issued cell phone for the time periods covered by the two Public Records Requests, and I will determine whether they are (a) responsive to the Requests, and (b) exempt from disclosure under applicable statute. If you wish to have your counsel review such emails and texts, and annotate them with her belief as to what might constitute an exempt public record, that would be fine with me, as long as I see the full text/email and the reason for exemption. I would also be more than happy to discuss any different opinion I might have with your counsel's annotation before making a final decision on disclosure.
3. There is a clear precedent that if you used your personal cell phone or personal computer to conduct Town business, such should be maintained as a Town record, subject to the Public Records Statute. If you did conduct Town business on your personal cell phone or personal computer, please provide copies of any such communications that are responsive to the two Public Records Requests, or have your counsel provide an explanation as to why you are not providing such material. Alternatively, if you can state that you never used your personal cell phone or personal computer for any Town business, please provide the undersigned with a signed sworn statement to that effect for the file.

Thank you.

Jon Levin

Town of Monterey

Records Access Officer

781-449-4095

[jlevin@lawglm.com](mailto:jlevin@lawglm.com)

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**From:** clerk@montereyma.gov [mailto:clerk@montereyma.gov]

**Sent:** Tuesday, November 30, 2021 3:50 PM

**To:** Jonathan Levin

**Cc:** clerk@montereyma.gov; Kathryn Crouss

**Subject:** RE: public records requests

Jon Levin,

1. Attached are the documents requested in your public Records request.
2. These are all the documents that I have.
3. time involved in researching emails for 9 months for 12 or more people for two town emails took 30 hours and I have no idea if the town has been paid.
4. A Guide to the Massachusetts Public Records Law handbook updated March 2020 - Under exemption C states that all medical records, personal emails and text messages are exempt.

Since you are the RAO, I will email you the guidebook for future reference.

Terry Walker  
Monterey Town Clerk

----- Original Message -----

Subject: RE: public records requests

From: <clerk@montereyma.gov>

Date: Mon, November 29, 2021 9:41 am

To: "Jonathan Levin" <jlevin@lawglm.com>, "John Weingold" <johnweingold@gmail.com>, "Steven Weisz" <steve@montereyma.gov>, "justin@montereyma.gov" <justin@montereyma.gov>

Cc: "Kathryn Crouss" <KCrouss@baconwilson.com>

Jon Levin,

You could not perform your duties until you were sworn which was on November 15th. You sent me a request on November 12th.

Now that you can legally perform your duties as an RAO, I will fulfill your request. Thanks for resubmitting your request on November 29th

I will email you documents tomorrow.

Terry Walker  
Monterey Town Clerk

----- Original Message -----

Subject: RE: public records requests

From: "Jonathan Levin" <jlevin@lawglm.com>

Date: Mon, November 29, 2021 6:34 am

To: <clerk@montereyma.gov>, "John Weingold" <johnweingold@gmail.com>, "Steven Weisz" <steve@montereyma.gov>, <justin@montereyma.gov>

Cc: "Kathryn Crouss" <KCrouss@baconwilson.com>

Terry:

I see you have copied the Select Board and your attorney on this email.

If you review the emails that I have sent you, you will note that I did not send you (nor would I send you) a Records Request. You already received the Records Requests on September 13 and September 14.

After my appointment as Records Access Officer on the evening of November 10, I began the process of collecting the outstanding Records Requests, two of which, as noted, were sent to you on September 13 and September 14.

On November 12, November 17 (after being sworn in) and again on November 22, you received emails from me requesting that you provide me with a status report of the two pending record requests that were submitted to you on September 13 and 14. You responded to the request of the 17<sup>th</sup> stating "I will have this to you by Saturday" (November 20). The responses to those Record Requests are significantly delinquent, and my job is to make sure all requests are closed out in as timely a manner as possible. Until you substantively respond to my three emails (two of which were sent to you after I was sworn in) I cannot fulfill my responsibilities to the Town, nor put the Town on a path to compliance with the Public Records Statute.

For the convenience of your attorney, I have copied the substance of my three earlier emails below. I await your timely and complete response.

Jon

Terry:

As you may know, I have been appointed the Records Access Officer for the Town and I have received copies of all record requests submitted to the Town.

The two record requests above were directed to you, and appear to solely deal with communications either by you to third parties, or from third parties to you.

In order to understand what is involved with these particular records requests, and to make sure the Town properly responds, I have the following questions:

1. I understand that you have provided some responses to these requests --- please send me a copy of what you provided, and detail how each response ties into a specific request;
2. Have you compiled any additional responses, and if so, please forward them to me, again detailing how each response ties into a specific request;
3. What would be necessary to complete a final and complete response to the request, including, time involved, cost (if any), whether access to any of the requested materials is problematic or otherwise unavailable (and if so, why);
4. Whether you believe that any of the requested information is confidential (as defined by statute) or subject to an exemption provided in the public records statute.

Your prompt response will be greatly appreciated. Thanks.

## Jonathan Levin

---

**From:** Jonathan Levin <jlevin@lawglm.com>  
**Sent:** Tuesday, December 14, 2021 11:03 AM  
**To:** 'clerk@montereyma.gov'  
**Cc:** 'Kathryn Crouss'  
**Subject:** FW: public records requests

Terry:

As of today, I have not had a response to my email below. In order for me to properly respond to the outstanding Records Requests, I must have answers to the questions below. Your cooperation is necessary and required. Thank you.

Jon Levin  
Town of Monterey  
Records Access Officer  
781-449-4095  
[jlevin@lawglm.com](mailto:jlevin@lawglm.com)

---

**From:** Jonathan Levin [mailto:jlevin@lawglm.com]  
**Sent:** Wednesday, December 1, 2021 8:54 AM  
**To:** 'clerk@montereyma.gov'  
**Cc:** 'Kathryn Crouss'  
**Subject:** RE: public records requests

Terry:

Thank you for your response. You do not need to send me the Guide, as I have had it since my appointment. Please note that you are not responding to my public records request. You are responding to a Public Records Request made to the Town for documents which may be within your office. I do not make Public Records Requests. I just process public records requests made to the Town.

I would appreciate your immediate response to the following:

1. The package of material/documents provided to Melissa Noe on or about November 1, 2021 totaled 148 pages, and the material/documents you provided me are only 82 pages. Please explain the difference. Further, I asked you to identify which documents pertain to the specific records requests. Please do so.
2. I understand you have a town issued cell phone. Any emails or texts sent (or received) from your town cell phone are considered Public Records. You are obligated to provide me with all such emails and texts and it is my responsibility to determine whether they are subject to an exemption. Please send me all emails or texts sent or received from your town issued cell phone for the time periods covered by the two Public Records Requests, and I will determine whether they are (a) responsive to the Requests, and (b) exempt from disclosure under applicable statute. If you wish to have your counsel review such emails and texts, and annotate them with her belief as to what might constitute an exempt public record, that would be fine with me, as long as I see the full

## Jonathan Levin

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**From:** Jonathan Levin <jlevin@lawglm.com>  
**Sent:** Monday, January 3, 2022 2:20 PM  
**To:** 'clerk@montereyma.gov'  
**Cc:** 'Kathryn Crouss'  
**Subject:** FW: public records requests

Terry:

I hope you had a nice holiday.

This is my third request relative to the emails below. In order for me to properly respond to the outstanding Records Requests, I must have answers to the questions below. Your cooperation is necessary and required.

Thank you.

Jon Levin  
Town of Monterey  
Records Access Officer  
781-449-4095  
[jlevin@lawglm.com](mailto:jlevin@lawglm.com)

---

**From:** Jonathan Levin  
**Sent:** Tuesday, December 14, 2021 11:03 AM  
**To:** 'clerk@montereyma.gov' <clerk@montereyma.gov>  
**Cc:** 'Kathryn Crouss' <KCrouss@baconwilson.com>  
**Subject:** FW: public records requests

Terry:

As of today, I have not had a response to my email below. In order for me to properly respond to the outstanding Records Requests, I must have answers to the questions below. Your cooperation is necessary and required.

Thank you.

Jon Levin  
Town of Monterey  
Records Access Officer  
781-449-4095  
[jlevin@lawglm.com](mailto:jlevin@lawglm.com)

## Jonathan Levin

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**From:** Jonathan Levin <jlevin@lawglm.com>  
**Sent:** Monday, January 3, 2022 4:43 PM  
**To:** 'clerk@montereyma.gov'  
**Cc:** 'Kathryn Crouss'  
**Subject:** RE: FW: public records requests

Terry:

Unfortunately, you have not. I'll give you to the end of this week and if I have no substantive response to my email dated December 1, 2021, I will report to the Select Board that you have not responded to the email and the questions/requests posed necessary for me to properly respond and process the Records Requests.

Jon Levin  
Town of Monterey  
Records Access Officer  
781-449-4095  
[jlevin@lawglm.com](mailto:jlevin@lawglm.com)

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**From:** clerk@montereyma.gov  
**Sent:** Monday, January 3, 2022 4:33 PM  
**To:** Jonathan Levin <jlevin@lawglm.com>  
**Cc:** Kathryn Crouss <KCrouss@baconwilson.com>  
**Subject:** RE: FW: public records requests

Jon,

I answered your questions on November 30, 2021

Terry Walker  
Monterey Town Clerk

----- Original Message -----

**Subject:** FW: public records requests  
**From:** "Jonathan Levin" <jlevin@lawglm.com>  
**Date:** Mon, January 03, 2022 12:19 pm  
**To:** <clerk@montereyma.gov>  
**Cc:** "Kathryn Crouss" <KCrouss@baconwilson.com>

Terry:

I hope you had a nice holiday.

This is my third request relative to the emails below. In order for me to properly respond to the outstanding Records Requests, I must have answers to the questions below. Your cooperation is necessary and required. Thank you.

Jon Levin  
Town of Monterey