



Mark G. Saloio  
Chief of Police

**TOWN OF TISBURY**  
**Police Department**  
32 Water Street • P.O. Box 426  
Vineyard Haven, Massachusetts 02568  
508-696-4240 • Fax 508-693-5543



June 26, 2020

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Mr. Rich Saltzberg  
Martha's Vineyard Times  
30 Beach Road  
P.O. Box 518  
Vineyard Haven, MA 02568

Re: Public Records Requests Dated June 15-16, 2020 - Town of Tisbury Police Department

Dear Mr. Saltzberg:

The Town of Tisbury Police Department ("Police Department") is in receipt of your multiple public records requests to the Police Department, dated June 15 and June 16, 2020 and received by the Police Department on the same day, respectively. Enclosed please find the Police Department's consolidated response to the requests.

**Summary of Request**

In your requests, you seek the following records:

1. Any and all internal investigation reports, internal investigation notes, or other internal investigation documentation focused on Robert Fiske, an officer in the Tisbury Police Department.
2. This request includes any police reports that include Fiske as an alleged offender.
3. Any and all internal investigation reports, internal investigation notes, or other internal investigation documentation focused on Scott Ogden, an officer in the Tisbury Police Department.
4. This request includes any police reports that include Ogden as an alleged offender.
5. Any and all internal investigation reports, internal investigation notes, or other internal investigation documentation focused on Jeff Day, an officer in the Tisbury Police Department.
6. This request includes any police reports that include Jeff Day as an alleged offender.

**Response**

Please be advised that the Police Department's duty to respond to records requests extends only to records that are in existence and in its custody, and the Police Department is under no obligation to create records in response to your request. Furthermore, the Police Department is not required to answer questions in response to a public records request. See "A Guide to the Massachusetts Public Records Law," March 2020, published by the Secretary of the Commonwealth, at page 40. Where permitted by law, however, 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); Suffolk Construction Co. v. Div. of Capital Asset Management, 449 Mass. 444, 449-450 (2007); 950 CMR 32.06(3). Please note further that nothing herein shall limit the Police Department's ability to assert applicable exemptions under state or federal law.

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After the Police Department's initial, good faith efforts in receipt of your request, the Police Department can inform you that it has voluminous and extensive police records responsive to your request.

**Fee Estimate**

Based on its initial diligent work, the Police Department estimates that there are voluminous records responsive to this request, particularly since the categories of records do not have a specific time frame.

Given the volume of potentially responsive records to this request, it is estimated that it will cost \$2,901.60 to search for and locate electronic and hard copy records, which, at this stage is a very conservative estimate given the significant volume of records at issue. That amount is broken down as follows:

<i>Title</i>	<i>Hours</i>	<i>Per Hour Cost</i>
Pam Bennett, Human Resources Coordinator (to search for and locate responsive records)	<b>60 hours</b> (to search for files related to Day, Ogden and Fiske located in possibly 3 locations)	35.18 per hour; Reduced to \$25.00 per hour, as required
Meghan Montesion, Administrative Secretary (to review responsive records for exempt material)	<b>60 hours</b> (to search for files related to Day, Ogden and Fiske located in possibly 3 locations)	\$23.36/hour;
<b>TOTAL</b>	<b>120 hours</b>	<b>\$ 2,901.60</b>

As permitted by law, you will be charged for employee search time, which is charged at the hourly rate of the lowest paid person capable of locating the responsive records, in accordance with 950 CMR 32.07(2)(i). The employee time detailed above is charged at the hourly rate of the lowest paid person capable of searching for the responsive records, in accordance with 950 CMR 32.07(2)(i), which shall not exceed \$25.00 per hour, unless otherwise authorized by the Supervisor of Records. Moreover, because the Town has fewer than 20,000 residents, pursuant to the last Decennial U.S. Census (population 3,949), you will be charged for all work associated with this request.

Please note that the actual cost of producing the records may vary once the Police Department begins preparing the records for response. At this time, it is anticipated that the Police Department will be able to produce most of the records electronically. Please be advised, however, that if there are any responsive records that do not exist in electronic format, and if there are any documents that 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. At this time, it is anticipated that this will cost an additional \$50.

Based on the foregoing, upon receipt of your payment in the amount of \$2,951.60 made payable to the Town of Tisbury, the Police Department will begin the requested work necessary to comply with your request. 950

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CMR 32.06(2)(f). 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 SPR 17/1005. Furthermore, in accordance with the regulations of the Supervisor, the Police Department is not required to provide you with any public records until all fees related to your requests are paid in full. 950 CMR 32.06(2)(f). The Police Department will provide a further basis if any records, are withheld or redacted in compliance with the Public Records Law, including, but not limited to, on the grounds of attorney-client privilege.

As you are aware, in light of the COVID-19 virus outbreak and resulting pandemic, and the Governor's declared State of Emergency, Tisbury's Town Hall and public buildings are presently open to the public, but staffing levels have been reduced accordingly. As you know, the Police Department is currently managing and responding to this public health emergency and, its resources are extremely limited at this time, and for the near future. Please note that the Police Department anticipates that it will need the maximum amount of time permitted by law to respond to the request upon receiving payment. Thus, the Police Department will provide the responsive records within fifteen (15) business days of receiving payment. G.L. c. 66, § 10(b)(vi).

In the alternative, the Police Department will certainly work with you to clarify or modify the scope of your request, such as limiting the timeframe of the records or type of documents you are seeking. The Police Department is also in receipt of two additional and similarly large public records requests from you. If there is any way to narrow either of these requests, including by keyword or to provide specific time frames, the Police Department will be able to respond more efficiently particularly with limited staffing and its significant public responsibilities at this time related to COVID-19.

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 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 superior court, under G.L. c. 66, §10A(c).

Thank you.

Sincerely,

Mark G. Saloio  
Chief of Police  
Town of Tisbury

cc: Town Clerk (w/o enc.)

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