



The Human Right to Water

*A Guide to Using Freedom of Information
Laws to Understand Rising Water Rates*

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The Human Right to Water: A Guide to Using Freedom of Information Laws to Understand Rising Water Rates¹

Water prices are increasing nationwide, with price jumps of up to 150 percent in some places over the past few years.

If you are concerned about these dramatically increasing costs, you may be one of a growing number of community members who want to know what their own municipalities, and other communities, are doing when it comes to water affordability. But how do you access that information? What do you even ask for?

This Guide will help answer those questions. It is based on efforts of the Program on Human Rights and the Global Economy (PHRGE) at Northeastern University School of Law in Boston, MA to find out what communities are doing to address water affordability.

Through a systematic process of information-gathering focusing on twelve Massachusetts municipalities, PHRGE was able to uncover a trove of information regarding municipal water rate calculations, water bill assistance policies, non-payment processes, relevant city ordinances, and consumer demographic data.

Importantly, the tools that we used are available to anyone. You need not be a lawyer or a government insider to request this information from your local government. And once you have the information, you can use it to educate, inform, and motivate community members.

With this information in hand, we can begin to act on the rising water rates in our target cities and towns, with particular attention to the impacts of these increasing rates on economically vulnerable residents.

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As you begin your own information-gathering process, you will undoubtedly find some new variations that we did not see in our investigation. Demographics, infrastructure, and budgetary issues in municipalities will affect water affordability differently. Nevertheless, the steps we took at PHRGE can be generalized to other localities and our experiences will be useful to you as you start the process of uncovering this information. As we describe below, we began with fact gathering using online sources before initiating more formal inquiries, then following up by phone to make sure that our requests reached the right people and didn't just fall through the cracks in a busy municipal office.

As you review this guide, consider how to apply it in your community and use it as a template for your own investigation.

“Our Municipal Water System is a Complicated Bureaucracy. Where Do I Start?”

You might think the starting point for gathering information about local water policies would be a Freedom of Information (FOI) request directed to the municipal government. This is a useful tool, and one that PHRGE used in its own research, but it is not necessarily the best place to begin. A FOI request requires that you know in detail what information you are seeking. You do not have to know the answers already, of course, but you need to provide a significant level of detail to the recipients in order for them to supply answers and records that are really responsive to your request. Most municipalities, especially smaller ones, do not have the capacity to answer any and all questions over the phone.

You have to do your homework first to inform your inquiries and to show the municipal employees and officials that you are already up to speed on the basics. Respecting their time and energy is important; if they feel you respect them, they will respect you by providing useful information.

Because of this, PHRGE used, and recommends, a scaffold approach, in which you gradually build up knowledge before making phone calls or sending a FOI request. You should begin by researching readily available information online. Broadly speaking, this means performing simple searches to pull up relevant news articles, trawling websites of the municipal water department in question, and reviewing city ordinances and departmental regulations, many of which will be available

online. You can also call the water department's customer service line for any clarifications you may need.

To research the issue of water affordability, you will want to look in all of those places for information on the following:

- water and sewer rates and how they are calculated;
- whether there are any public assistance programs available for water/sewer bills; and
- the processes, notice requirements, and consequences around nonpayment of a water/sewer bill (e.g., in Massachusetts, municipalities might shut water off or put a tax lien on the associated property).

The different online resources and service line will yield a lot of this information as well as directing you down new paths. For example, PHRGE began its research with a focus on water shut offs, an issue that has had a lot of national news coverage. But as we looked at the different city ordinances, we found repeated references to a tax lien process based on a Massachusetts state law. In essence, state law permits municipalities to fold delinquent water bills into real estate liens designed to collect on unpaid real estate taxes. These liens compound interest at high rates, often requiring homeowners to make high payments in order to keep their homes. The municipalities' ability to add water bills to these liens means that a homeowner could lose their house based on unpaid water bills. This became a major point of inquiry for our research as we continued to build our scaffold.

You may also find inconsistencies between sources. Perhaps newspaper reports differ from what the municipal website says. Don't panic! These inconsistencies are important, and can be the basis for questions to the municipality in the next phase of the investigation.

“When Should I Reach Out to Contact Someone at the Municipal Government?”

After you have done your initial homework, you will have a better sense of what your local water department does and how that might affect you and your fellow residents. Now is the time to contact the water department(s) directly. While you may have talked briefly on the phone with someone in their office already, it is now the right time to initiate a somewhat more formal dialogue.

The purpose of this is to deepen your knowledge by beginning a conversation with the people who are neck deep in the world of municipal water bureaucracy.

To do that, and for it to work well, you have to begin creating relationships. Again, we repeat the importance of giving respect to receive respect. PHRGE started this process by sending emails to whomever was in the top position at the 12 water departments -- that is the directors, managers, commissioners, and so on.

Here is an example of one of those emails:

Hello Director [Last Name],

I am a Northeastern law student working as a research assistant with the Program for Human Rights and the Global Economy (PHRGE). I am a part of an interdisciplinary project researching water affordability in Massachusetts municipalities and would greatly appreciate your help. In the process of putting together information on the major water systems in the state, including the Cityville Water and Sewer Division (CWSD), I have a few remaining questions that I hope you or someone with CWSD can assist me in answering.

I would like to know the following:

- *What are Cityville's notice requirements when a water bill has a delinquent amount such that CWSD begins the process toward termination of water service to the associated property?*
- *What is the minimum delinquency amount for such process to take place.*
- *Taking these notice requirements into account, what is the minimum period before CWSD, or whoever directs this process, can shut off someone's water?*

If you could also direct me to which municipal codes or other sources contain this info that would be much appreciated. Thank you for your time.

This email served to introduce the researcher, PHRGE, and the project itself. By providing your contact with transparency, and giving the local officials all the information they need to ensure your credibility, they will be more likely to provide you with same transparency. Your email

Some communities in the United States have signed the Charter for Compassion, an effort to spread kindness and compassion worldwide. As the saying goes, being nice is its own reward, but it is also the case that strategic acts of kindness benefit both the giver and the recipient. More information on the advantages of kindness is available here.

should also explain quite clearly what you are trying to determine through your inquiry while remaining open-ended. This is how you show you have done your homework without pretending you know everything.

Once you send these emails, you should follow up soon after with a phone call, preferably in the same week so that your inquiry is fresh in their minds. Some of your contacts may reply to the email right away; some may pick up the phone when you call on your first follow-up (though you will likely be redirected a couple times between administrative staff members before you get through to the person in charge); and some may require a few phone calls and maybe another email. The idea is to be persistent without pestering them. As public servants, it is part of their job to communicate with local residents.

PHRGE was able to get in touch with everyone we wanted to, though in some cases it took a few weeks. This did not mean calling every day, but rather spacing out communications in a polite way. This part of the research -- figuring out how frequently to get in touch -- requires common sense and adaptability. If you are ever unsure of whether you should call again or send another email, just remind yourself of the Golden Rule: treat others how you want to be treated. This includes any staff member you speak to. If you are polite to administrative staff, they will actually pass on your message rather than put it down at the bottom of their to-do list. Keeping a communication log may help you keep track of how often you are contacting the city officials, and help you decide when to contact them again if you haven't received a response.

Communicating with different officials will provide a new level of nuance to your research. While a city ordinance is dry and stiff, a human being is not. For example, while most of the 12 Massachusetts municipalities PHRGE was researching had ordinances allowing for water shut off due to nonpayment, the officials at those municipal water departments had something else to say. Almost all of them confirmed they did not shut off water for nonpayment, saying that not shutting off water to a household was a policy decision based on a recognition by the city that access to water is an important human right.

Of course, saying that water is a human right does not change the fact that water rates continue to increase, forcing a growing number of low-income people to choose among necessities. Still, this unwritten policy of no shut offs is a reminder that local officials are people too and that working with them is the key toward creating change.

“When Should I Send a Freedom of Information Request?”

After performing all this preliminary research, you are likely to have a fair amount of information. You will probably also have inconsistencies between written rules and what officials have said. You will definitely have a lot more questions. Now, after constructing your initial scaffold, you have done your homework and are ready to craft well-worded and targeted questions that will be applied to whatever work you are planning to do on this issue. With those questions in mind, you can turn to a Freedom of Information request. For that, you need to look at your state’s public records request law.

In Massachusetts, public records can be requested as laid out in Massachusetts Public Records Act § 66-10 et seq. This law “applies to records made or received by a Massachusetts agency or municipality. Unless the requested records fall under an exemption to the Law, the responsive documents must be made available to a requester.”² Additionally, the law says we must send a records request to the statutorily-required Records Access Officer (RAO) of the agency or municipality. Once you send it, that agency or municipality must then respond to the request within ten (10) days from its receipt with their answers and responsive documents. They may also respond by saying that one or all of the requests fall under one of the statutory exemptions. At that point, you can appeal their decision. While this law is specific to Massachusetts, all states have similar laws. Research the laws for your state to make sure you know the specific provisions that will apply to your request. Links to state freedom of information laws are compiled by the National Freedom of Information Coalition, and are available [here](#).

A public records request can trigger charges based on the time spent compiling answers and resources used to print or otherwise make the responsive documents available. As you draft your letter, it is appropriate to include a line about these costs, as you will see below. You will want to establish a ceiling cost you’re willing to pay for the information. Establish that if the cost will exceed the ceiling, you would like to be informed before proceeding; below that cost, the records officer can move forward with the request. You can also request a waiver of fees due to the information being sought in the public interest.

Below is a model based on one of PHRGE’s FOI letters. It was sent by both email and U.S. mail. The

² <http://www.sec.state.ma.us/pre/prereq/reqidx.htm>

municipality is statutorily required to respond to your request, but being polite in your request will help encourage a response that is as complete and thorough as possible.



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[First Name, Last Name] Town Clerk

100 Main Street

Cityville, State 00000

Re: State Public Records Request

January 22, 2019

Dear Mr./Mrs. [Last Name]

Under the Massachusetts Public Records Act § 66-10 et seq., we are requesting copies of public records that provide answers to the questions listed below. If there are any fees for searching or copying these records, please inform me if the cost will exceed \$ 10.00. We would like to request, however, that you waive all fees on the grounds that your provision of the requested information is in the public interest and will contribute significantly to the public's understanding of water affordability issues. We are affiliated with the Program on Human Rights at the Northeastern University School of Law. This request is related to academic and research purposes. This information is not being sought for commercial purposes.

Demographics

1. What is the total number of residential customers the Cityville Water Department (CWD) served annually in 2016, 2017, and 2018? What is the total number of business/commercial customers that the CWD served annually in 2016, 2017, and 2018?
2. Is the CWD service district sub-divided by wards or some other geographic area? Please provide the annual customer data by ward or other geographic area.
3. Does CWD offer any water assistance or discount programs or payment plans for residential customers?

- a. How many residential customers applied for these programs annually in 2016, 2017, and 2018?
 - i. Please separate the annual data by the demographic group through which they are eligible (e.g. elderly customers, disabled customers, low-income customers).
 - ii. Please separate the annual data by ward or geographic area where the customers live.
- b. How many residential customers are currently using these programs?
 - i. Please separate the data by the demographic group through which they are eligible (e.g. elderly customers, disabled customers, low-income customers).
 - ii. Please separate the data by ward or geographic area where the customers live.
- c. Please provide public and internal documents about CWD policies and procedures around assistance or discount programs and payment plans.

Nonpayment

4. Has CWD ever shut off water services to residential customers for nonpayment of water bills? Has it ever shut off the water of business or commercial customers for nonpayment of water bills?
 - a. How many residential customers were shut off for nonpayment annually in 2016, 2017, and 2018?
 - b. Please separate the annual number of shutoffs by ward or geographic area where the customers live. Please also separate the annual number of shutoffs by demographic groups (e.g. elderly customers, disabled customers, low-income customers).
 - c. Are there options for tenants to halt a shut-off-for-nonpayment process caused by a landlord's failure to pay the water bill?
 - d. How many business/commercial accounts were shut off annually for nonpayment in 2016, 2017, and 2018?
 - e. Please provide public and internal documents about CWD policies and procedures about water services shutoffs.
5. Does Cityville use M.G.L. Ch. 40, Secs. 42A to 42F, which liens unpaid bills, including water/sewer bills, and applies them to the property tax at the end of the fiscal year?
 - a. If so, is this process used in place of water shut offs, or in addition to water shut offs?
 - b. How do you collect on these liens? Do you sell them to third-party tax collectors? If so, which companies do you use?

- c. Please indicate the number of tax liens resulting from unpaid water/sewer bills that occurred in each different ward or geographic area, per question (2). If wards or geographic areas are not used, please indicate the number of water bill tax liens by demographic group, per question 2.
 - d. Please provide public and internal documents about CWD policies and procedures around liens and unpaid water bills.
6. What happens when a water bill remains unpaid? Does CWD require that customers be given notices of their overdue water bills?
 - a. How many notices must be mailed to each customer and when are they sent?
 - b. How many of CWD's residential customers received notices of overdue bills annually in 2016, 2017, and 2018?

Continuing Responses to Unpaid Water/Sewer Bills

1. Does CWD charge interest fees and/or added costs when a water bill is overdue?
2. What must happen for water service to be reinstated? What are the fees involved?
3. Does CWD provide residential customers with avenues to dispute department decisions about their water bill and water service?
4. Please provide public and internal documents about CWD policies and procedures around unpaid water bills and reinstatement of water services.

The State Public Records Law requires you to provide us with a written response within 10 business days. If access to the records we are requesting will take longer than this amount of time, please contact us with information about when we might expect to receive copies or access to the requested records.

If you cannot comply with our request, you are statutorily required to provide an explanation in writing. If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify us of the appeal procedures available to us under the law.

“What Obstacles Might I Encounter and What Can I Do If I Get Pushback from the Municipality?”

In our project we encountered some obstacles that could also occur in your own records requests. First, finding out who the records officer is may take some time and some more phone calls. Sometimes it is readily apparent on the municipality’s or department’s website. For smaller communities with an outdated or minimal online presence, it may not be apparent. But someone at the department knows to whom you should send the FOI. It may be the municipality’s law department. It could also be the commissioner of the water department. If the appropriate recipient for your request isn’t identified online, make phone calls and get someone to tell you who to send it to.

Second, once you have sent your request, do not accept a response from the municipality saying your request is not a proper records request. This happened to PHRGE with a few of the cities for different reasons. Once it was because the requested information had to come from several different departments (e.g. water, treasury, etc.). But the Records Access Officer’s (RAO) job is to take your request and disseminate it to relevant departments until the answers are complete. If you get pushback of this kind, respond politely and tell them that while the request does involve multiple departments, there is only one RAO (as is often the case in small municipalities) and that, as you understand the law, the RAO must compile information from whomever and wherever needed. If there are multiple RAOs for different departments, it would probably be useful to send the request to each one from whom you will need answers.

Another challenge was a municipality’s claim that the request did not comply with the records law because it asked for answers that required analysis and interpretation of documents, as opposed to just the documents. If this happens to you, ask the RAO to explain to you how they interpret the public records law; this will let you know how to redraft your request. In some cases, this may only require you to edit your request to say, “Please provide a document that explains X.” In other cases, the municipality may ask that you make your inquiries more informally, just telling them more plainly what you are looking for. If the municipality is willing to provide the information on an informal basis, this is a good thing and will likely save both of you time.

A final obstacle we encountered was that some municipalities simply did not respond. In this instance, while it is still important to remain courteous, it is good to remind the RAO/municipality of their obligation to respond to the request in 10 days time (or whatever the timeline is in your state's statute).

The purpose of the FOI letter is not just to assemble detailed information and documents, though it is an efficient and useful tool for doing so. Rather, the FOI letter and the whole scaffolding process outlined above, provides the framework for

building relationships with your municipal officials, especially within the water department.

Once you have begun communicating with certain officials, they will be able to direct you to other officials who can answer different, specialized questions, such as questions about the city's capital improvement plan (i.e. infrastructure projects).

“I Can Do This!": Final Tips

If you want to understand the cost of your water bills, and what you can do to push for more water affordability, this guide can help you build the necessary relationships and gather the necessary information. At the end of the day, the first step in changing water policies is to understand them. And that understanding starts when you can get through the bureaucracy by knowing what's going on and who to talk to about it.

The key to addressing obstacles is to maintain communication with the municipality. Opening those lines of communication will create an information-sharing relationship that can help you really hone in on the processes and policies regarding water in your city and state.
