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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

FAR No.

Appeals Court No. 2025-P-235

BRUCE FRIEDMAN,
Defendant-Appellant

v.

CITY OF MALDEN,
Plaintiff-Appellee

PLAINTIFF-APPELLEE CITY OF MALDEN'S PETITION FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Respectfully submitted,

The Plaintiff-Appellee,
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By its attorneys,

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Dated: November 24, 2026

PLAINTIFF-APPELLEE CITY OF MALDEN'S REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Pursuant to Mass. R. App. P. 27.1, Plaintiff/Appellee City of Malden ("City") respectfully requests that the Supreme Judicial Court grant leave for further appellate review of the opinion issued by the Appeals Court in Case No. 2025-P-235, City of Malden v. Supervisor of Public Records ("Supervisor"), Secretary of State ("Secretary") and Bruce Friedman ("Friedman"), which reversed two (2) separate Superior Court decisions on Defendant/Appellant Bruce Friedman's ("Friedman") special motions to dismiss under G.L. c. 231, § 59H and ordered the dismissal of the City's complaints.

Further appellate review is appropriate because this appeal raises fundamental questions concerning state administrative law and the state Public Records Law. The Appeals Court's decision is of significant public concern because it denies a public records custodian the opportunity to obtain certiorari review of a Supervisor's determination, leaving a custodian with no options except to comply with the Supervisor's order or to disobey and invite a potential civil enforcement action by the Attorney General or the requestor—and in the latter case be vulnerable to a presumption in favor of awarding attorney fees and costs, at avoidable public expense. Despite the Appeals Court's argument to the contrary, this interpretation creates a

cognizable injury to a public custodian. This interpretation also contrasts with three decisions of the Superior Court and the Attorney General's argument on behalf of the Supervisor in a separate Malden Public Schools case, which is not in this appeal, that a records custodian has the authority to challenge a Supervisor's decision through a writ of certiorari. Foreclosing the availability of certiorari review to a records custodian would therefore overturn longstanding precedent and potentially affect the availability of certiorari review beyond the public records context.

Thus, as further detailed below, further appellate review is in the public's interest, would serve the interest of justice and judicial economy, and is necessary to clarify the due process rights of public records custodians throughout the Commonwealth at all levels of state, local and county government.

II. STATEMENT OF PRIOR PROCEEDINGS

The Superior Court's proceedings are accurately summarized in the "Background" section of the Appeal Court's opinion. Friedman appealed the denial of his special motions to dismiss pursuant to G.L. c. 231, § 59H in all three cases. The Appeals Court consolidated the below three Superior Court docket numbers into this one docket, Case No. 2025-P-235:

"Case One" = Middlesex Superior Court, Docket No. 2481CV02456

"Case Two" = Middlesex Superior Court, Docket No. 2481CV03069

"Case Three" = Middlesex Superior Court, Docket No. 2481CV03277

Friedman and the City filed briefs in the matter; the Supervisor of Public Records of the Commonwealth ("Supervisor") and the Secretary of the Commonwealth ("Secretary") (collectively, the "State Defendants") did not. On February 12, 2026, Friedman and the City participated in oral argument before the Appeals Court (Rubin, J., Henry, J., Wood, J.); the State Defendants did not. In a decision dated November 3, 2026, the Appeals Court reversed the Superior Court decisions in Cases Two and Three, allowing Friedman's special motions to dismiss and ordering the dismissal of the City's complaints. The Appeals Court dismissed the appeal of Case One but stated that further proceedings in Case One should be consistent with the Appeals Court's opinion.

The City now seeks further appellate review.

III. STATEMENT OF FACTS RELEVANT TO THE APPEAL

In addition to the "Statement of Prior Proceedings", *see supra*, the City states that in all three actions, Friedman – or more precisely, Friedman's claimed website OpenCommonwealth, under which name he made the public records requests at issue in the litigation – was named as a necessary defendant under Mass. R. Civ. P. 19.

IV. STATEMENT OF THE POINTS WITH RESPECT TO WHICH FURTHER APPELLATE REVIEW OF THE DECISION OF THE APPEALS COURT IS SOUGHT

The City seeks further appellate review with respect to the following points:

1. Did the Appeals Court correctly determine that a public records custodian cannot challenge an order from the Supervisor through certiorari review pursuant to G.L. c. 249, § 4?
2. Did the Appeals Court correctly determine that a public records custodian cannot challenge an order from the Supervisor through a request for declaratory judgment pursuant to G.L. c. 231A?
3. Did the Appeals Court correctly determine that the Supervisor's orders did not cause the City a cognizable injury at the time the City filed suit?
4. Did the Appeals Court correctly determine that the City's lawsuits were solely based on Friedman's protected petitioning activity to satisfy stage one of the *Bristol Asphalt* framework?

VI. STATEMENT OF WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

1. A public records custodian can bring suit to challenge an order from the Supervisor. Failure to allow such a challenge is a critical issue for public records custodians, public records requestors, the Supervisor, and the Attorney General.

The relevant section of the Public Records Law, G.L. c. 66, § 10A, is silent in setting forth an avenue of appeal for public records custodians from orders by the Supervisor. Whether a public records custodian can seek certiorari review under G.L. c. 249, § 4 or declaratory relief under G.L. c. 231A to challenge an order from the Supervisor is a critical question for all participants in a public records scheme designed to strike a reasonable balance between access to public information and the resource burden placed on public records custodians.

Consider the facts in Case One. The Supervisor has denied the City's fee petition to charge an estimated $62,368.75 to review and redact approximately 49,000 responsive emails which may contain attorney-client privileged information, personnel file information, and other information exempt under the Privacy Exemption to the Public Records Law, G.L. c. 4, § 7(26)(c). The Supervisor's denial is based on its determination that the City did not submit its fee petition within the required ten business days, a determination which Footnote 7 of the Appeals Court's opinion all but declares incorrect on its face.

Similarly, in another independent case, the Superior Court concluded that the Supervisor made an arbitrary and capricious decision towards Malden Public Schools relative to the calculation of "business days"; an error that if not challenged would have resulted in Malden Public Schools having to expend public tax dollars to produce 80,000 emails of the Special Education Director and a special education Team Chair to Mr. Friedman, at no charge. See Middlesex Superior Court Docket No. 2181CV01458 (Ellis, J.), Document No. 37, p. 2, 8-11. The Malden Public Schools estimated the cost of producing such records at approximately $150,000. Id. at 4.

A public records custodian must be able to sue the Supervisor to challenge the Supervisor's arbitrary orders, like the orders issued above. In these mere two examples involving Friedman's requests to the City of Malden and Malden Public Schools for a large number of emails reflect, these orders are a substantial injury requiring the expenditure of significant public funds, and from which Malden needed relief.

If the custodian instead acts in accordance with the Appeals Court's novel approach to state administrative law set forth in its opinion – simply ignore an order from a state administrative agency and chance whether it gets sued in Superior Court – it subjects itself to the risk of liability for the requestor's attorney's fees. Moreover, if the custodian

ignores an order from the Supervisor, and either the requestor or Attorney General brings an enforcement action pursuant to G.L. c. 66, § 10A(b) or (c), what defense would the custodian be left with? Would the custodian be permitted to challenge the merits of the Supervisor's order in an enforcement action, or would the opposing parties argue that the custodian waived any challenge to the order by failing to initiate earlier action to challenge it? Indeed, in all other proceedings, a party appeals a decision that they believe is incorrect; an enforcement action can only occur after a decision is final – it is not a mechanism to challenge the underlying decision. A public records custodian getting the answer incorrect might result in an unfathomable obligation to review, redact, and produce 49,000, 80,0000, or more documents without charge for state, county, and municipal government entities already stretched to their fiscal and resource limits.

If the requestor does not want to be named as a necessary party in a suit challenging a Supervisor's order, the requestor might be encouraged to narrow the scope of the request to a range approaching the realm of reasonableness. See Friedman v. Div. of Admin. L. Appeals, 103 Mass. App. Ct. 806, 814 ("The touchstone of reasonableness also extends to the conduct of the records requestor."). Conversely, if the public records custodian fails to name the requestor in a suit, the requestor

may want to intervene into the suit to present their arguments – as Friedman indicated he would do in Case Two if he was not named as a party.

For all involved parties, further appellate review will clarify the public records process, protect the public's tax dollars, and advance the public interest.

2. The Appeals Court's opinion injects confusion into a well-established process recognized by all previous authorities.

The right of a public records custodian to bring an action in certiorari pursuant to G.L. c. 249, § 4 to challenge an order from the Supervisor has thus far been universally recognized. At least three separate Superior Court judges have considered the question and come to the same conclusion. See Middlesex Superior Court Docket No. 2181CV01458 (Ellis, J.), Document No. 37, p. 6 ("The Court disagrees with Mr. Friedman's argument and reviews the decision of the Supervisor pursuant to the avenue of appeal set forth for records requestors in G. L. c. 66, § 10A(a) and (d) — certiorari review pursuant to G. L. c. 249, 4 to determine the propriety of the municipal action de novo."); Case Two (Barry-Smith, J.); Case Three (Sisitsky, J.). Additionally, the Appeals Court itself has previously considered an appeal in a suit originally brought by a public records custodian to challenge an order from the Supervisor without issue. City of

Somerville v. Supervisor of Pub. Recs. of the Commonwealth, 106 Mass. App. Ct. 39 (2025).

Moreover, the Supervisor, the state authority tasked with interpreting the Public Records Law, has previously recognized the availability of certiorari review for public records custodians. See Middlesex Superior Court Docket No. 2181CV01458, Document No. 35.2, p. 11 ("Although the Supervisor agrees with Malden that her April 2021 Determination is susceptible to certiorari review under G.L. c. 249, § 4 . . ."); see also SPR24/1690 ("If the city is not satisfied with the resolution of this administrative appeal, please be advised that this office [the Supervisor] shares jurisdiction with the Superior Court of the Commonwealth. See G.L. c. 66, § 10(b) (pursuing administrative appeal does not limit availability of applicable judicial remedies).").

As the Supervisor stated:

> To deny a public records custodian like Malden the opportunity to obtain certiorari review of the Supervisor's determination of such a violation would leave it with no options except to comply with the Supervisor's order or to disobey and invite a potential civil enforcement action by the Attorney General or the requestor—and in the latter case be vulnerable to a presumption in favor of awarding attorney fees and costs. *See* G.L. c. 66, §§ 10A(b), (c), (d), (e); *see also* 950 CMR § 32.09. Those options do not constitute reasonably adequate remedies.[] *See, e.g., Revere v. Mass. Gaming Comm'n*, 476 Mass. 591, 596, 600-04 (2017) (statutory citation omitted) (concluding that certiorari review is available from the denial of a gaming license notwithstanding statutory language that "[a]pplicants shall have no legal right or privilege to a

> gaming license and shall not be entitled to any further review if denied by the commission."). This is especially so in cases, like Malden's, where the Supervisor has applied an interpretation of her regulations on matters such as the timeliness of a response to a public records request—and thus whether the custodian may charge a reasonable fee to search for, compile, segregate, redact, or reproduce the requested records—or whether a custodian should be relieved of the obligation to produce requested records. *See Frawley v. Police Comm'r of Cambridge,* 473 Mass. 716, 725-27 (2016) (certiorari action appropriate vehicle to challenge a police commissioner's denial of application for replacement retired officer identification card); *Serv. Emp. Int'l Union, Local 509 v. Dep't of Mental Health,* 469 Mass. 323, 337 n.12 (2014) (certiorari action "is the proper vehicle for relief when challenging a decision made by the Auditor"); *Mancuso v. Mass. Interscholastic Athletic Ass'n, Inc.*, 453 Mass. 116, 134 (2009) (actions of the Massachusetts Interscholastic Athletic Association subject to certiorari review in the absence of a specific statutory remedy). Here, further, the statutory scheme does not expressly preclude a custodian from seeking judicial review. *See* G.L. c. G.L. c. 66, §§ 10A(a).
>
> …
>
> These decisions reflect an awareness that judicial review of an adverse determination by the Supervisor should be available to a public records custodian. As explained in the State Defendants' Opposition and Cross-Motion, that review should be conducted pursuant to the certiorari statute, G.L. c. 249, § 4.

Middlesex Superior Court Docket No. 2181CV01458, Document No. 36.3("STATE DEFENDANTS' RESPONSE TO DEFENDANT BRUCE FRIEDMAN'S MOTION FOR JUDGMENT ON THE PLEADINGS").

Beyond Massachusetts, the Texas Supreme Court considered a very similar challenge to Texas' then-existing Public Information Act, which only addressed the process for suits by

requestors but was silent as to custodians, just like the current Massachusetts Public Records Law. See City of Garland v. Dallas Morning News, 22 S.W.3d 351 (Tex. 2000). The Texas Supreme Court found that the absence of an express provision did not prohibit custodians from bringing declaratory judgment actions against requestors under the then-existing Public Information Act. See id. at 355 – 56. The Court also noted that the state legislature had since amended the law to add express language allowing declaratory judgment actions against the supervising administrative agency without naming the requestor. See id.; see also Tex. Gov't Code §§ 552.324, 552.325.

The Appeals Court's opinion flies in the face of this universally accepted authority and reaches the exact opposite conclusion. Upon minimal briefing within the context of a wider special motion to dismiss under G.L. c. 231, § 59H, and without meaningful consideration of any authority relating to G.L. c. 249, § 4, the Appeals Court contorts the language of the Public Records Law. The Appeals Court's determination that public records custodians cannot seek certiorari review of a Supervisor's order injects confusion into a well-established appeals process, and further appellate review would advance the public interest by clarifying this confusion.

3. The Appeals Court's opinion has broader implications for the availability of certiorari review of administrative agency determinations across the state.

Actions in nature of certiorari pursuant to G.L. c. 249, § 4 are commonly used by both individuals and municipal entities to challenge administrative agency decisions. See, e.g., Abner A. v. Massachusetts Interscholastic Athletic Ass'n, 490 Mass. 538 (2022) (reviewing student eligibility decision by state athletic association); State Bd. Of Ret. v. Woodward, 446 Mass. 698 (2006) (certiorari action brought by state retirement board to review retirement benefits decision by District Court judge). Certiorari review is available to correct errors in proceedings that "are not otherwise reviewable by motion or appeal." Johnson v. Com., 463 Mass. 1006, 1007 (2012). This is so "even when a statute provides that the ruling of the court whose decision is sought to be reviewed 'shall be final.'" Durbin v. Bd. of Selectmen of Kingston, 62 Mass. App. Ct. 1, 5 (2004), quoting Bartlett v. Greyhound Real Est. Fin. Co., 41 Mass. App. Ct. 282, 290 (1996).

Here, the Public Records Law does not contain any express language setting forth an avenue of appeal for public records custodians from the Supervisor's orders. Yet, the Appeals Court concludes that, because G.L. c. 66, § 10A(b) and (c) sets forth enforcement actions for the Attorney General or requestor, the Public Records Law does contain an avenue of appeal for custodians: refuse to comply.

This tortured reading of the Public Records Law invents an untenable appeals process found nowhere in the text of the statutory language, all to avoid recognizing a custodian's ability to bring an action in certiorari. By conjuring this unfounded process, the Appeals Court puts decades of state administrative law at risk. In future cases, if a statute explicitly provides a right of appeal for one party but not another, the silent party cannot bring an action in certiorari. Instead, the silent party is forced to comply or avail itself of an unwritten appeals process: refuse to comply with an order from an administrative agency. This unprecedented approach immediately devalues decisions from administrative agencies and introduces chaos into foundational administrative law processes, forcing law abiding governmental parties into the illogical position of unwillingly inviting enforcement efforts that efficiency, good order, and statutory language reserve for spare occasions.

Further appellate review would clarify the implications of the Appeals Court's opinion for state administrative law.

4. The Appeals Court's erroneous application of the *Bristol* framework for special motions to dismiss under G.L. c. 231, § 59H should be corrected.

The Supreme Judicial Court recently set forth a new, simplified framework for Courts to analyze special motions to dismiss under G.L. c. 231, § 59H. See Bristol Asphalt, Co. v.

Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024). With the *Bristol* framework in its infancy, it is important for courts, especially the Appeals Court, to apply the *Bristol* framework correctly and set the precedent for future applications of it.

Here, the Appeals Court concludes that Friedman satisfies stage one of the *Bristol* framework, which requires that he show the City's claims are "based on [] petitioning activity alone, with no substantial basis other than or in addition to said petition activity." See id. at 550 – 51. However, the Appeals Court makes clear that the City's claims are based on *both* Friedman's petitioning activity and the Supervisor's orders. The Appeals Court's finding that the Supervisor's orders depend entirely on Friedman's petitioning activity does not detract from the dual nature of the City's claims.

Further appellate review would clarify the application of the *Bristol* framework to certiorari actions, which are by their nature predicated on more than solely petitioning activity.

VII. CONCLUSION

For the foregoing reasons, Malden respectfully requests that this Court grant further appellate review.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the City of Malden's Petition for Leave to Obtain Further Appellate Review submitted herewith complies with the rules of the court that pertain to the filing of responses to applications for further appellate review, including but not limited to: Mass. R. A. P. 20(a) (form of responses to direct and further appellate review).

I further certify that the foregoing opposition complies with the applicable length limitation in Mass. R. A. P. 27 because it is produced in the monospaced font Courier New at size 12, 10 characters per inch, and contains ten pages of text in monospaced font indicating why further appellate review is appropriate.

I further attest that this brief is being filed under Mass. R. App. P. 13, and that the day of filing is within the time fixed by the court.

/s/ Felicia S. Vasudevan
Felicia S. Vasudevan

Dated: November 24, 2026

Respectfully submitted,

The Plaintiff-Appellee,
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By its attorneys,

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Dated: November 24, 2026

CERTIFICATE OF SERVICE

I, Felicia Vasudevan, counsel for City of Malden in the above-captioned case, certify that on this date I served the foregoing document via email and first class mail to the following recipients:

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Felicia Vasudevan

Dated: November 24, 2026

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 25-P-235

CITY OF MALDEN

vs.

SUPERVISOR OF PUBLIC RECORDS OF THE COMMONWEALTH & others (and two consolidated cases).

Pending in the Superior

Court for the County of Middlesex

Ordered, that the following entry be made on the docket:

The appeal of case one, docket no. 2481CV02456, is dismissed. Any further proceedings in that matter should be consistent with the memorandum and order of the Appeals Court.

In cases two and three, docket nos. 2481CV03069 and 2481CV03277, the orders denying Friedman's anti-SLAPP motions are reversed. Cases two and three are remanded to the Superior Court for entry of orders dismissing the city's complaints against Friedman and for further proceedings consistent with the memorandum and order of the Appeals Court, including resolution of Friedman's counterclaims should he choose not to dismiss them.

By the Court,

Paul Sitthe, Clerk

Date November 3, 2026.

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25-P-235 Appeals Court

CITY OF MALDEN vs. SUPERVISOR OF PUBLIC RECORDS OF THE COMMONWEALTH & others[1] (and two consolidated cases[2]).

No. 25-P-235.

Middlesex. February 12, 2026. - November 3, 2026.

Present: Rubin, Henry, & Wood, JJ.

Public Records. Municipal Corporations, Public record. Supervisor of Public Records. Strategic Litigation Against Public Participation Act. Administrative Law, Judicial review. Practice, Civil, Motion to dismiss, Action in nature of certiorari, Declaratory proceeding, Review of administrative action, Party pro se, Self-representation, Attorney's fees.

Civil actions commenced in the Superior Court Department on September 13, November 21, and December 16, 2024.

A special motion to dismiss was considered by William F. Bloomer, J.; a special motion to dismiss was heard by Christopher K. Barry-Smith, J.; and a special motion to dismiss was heard by Adam L. Sisitsky, J.

Bruce Friedman, pro se.

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[1] Secretary of the Commonwealth and Bruce Friedman, doing business as OpenCommonwealth.

[2] The consolidated cases involve the same parties.

James R. Donnelly (Felicia S. Vasudevan also present) for the plaintiff.

HENRY, J. This interlocutory appeal concerns the proper avenue for a public agency or municipality to challenge an order of the Commonwealth's supervisor of records (supervisor) issued pursuant to the public records law, G. L. c. 66, § 10A (§ 10A), concerning a particular requestor and request.[3] The plaintiff, the city of Malden (city), filed three separate lawsuits in the Superior Court against the defendants: the supervisor; the Secretary of the Commonwealth (Secretary); and Bruce Friedman, a private citizen of Malden who operates a website called OpenCommonwealth.org and who requested public records from the city.[4] In its lawsuits, the city sought to challenge orders of the supervisor through (1) judicial review pursuant to G. L. c. 30A, § 14; (2) certiorari review pursuant to G. L. c. 249, § 4; and (3) a request for a declaratory judgment pursuant G. L. c. 231A.

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[3] The supervisor is a public official within the Office of the Secretary of the Commonwealth (Secretary), appointed by the Secretary pursuant to G. L. c. 9, § 4, and is tasked with the supervision of public records pursuant to G. L. c. 66, § 1. Among other duties, the supervisor upholds the public records law and makes determinations on a requestor's appeal from a municipality's or an agency's response to a request for public records. See G. L. c. 66, § 10A.

[4] Neither the supervisor nor the Secretary filed a brief in this appeal.

Under the statutory framework set forth in § 10A, the procedure for a public agency or municipality to challenge an order of the supervisor in the context of a specific records request is to refuse to comply. See id. § 10A (b). If the records requestor or the Attorney General then brings an action to enforce the order, the public agency or municipality has the burden to prove that it is entitled to withhold the records notwithstanding the supervisor's order. See id. § 10A (d) (1). Because the Legislature has provided the city with a mechanism to challenge the supervisor's determinations if the Attorney General or the records requestor brings an enforcement action, the supervisor's orders, standing alone, did not cause the city a cognizable injury at the time the city filed these suits. Accordingly, the city's lawsuits against Friedman are based solely on his protected petitioning activity. We therefore conclude that Friedman's special motions to dismiss should have been granted in cases two and three. Accordingly, we reverse the orders denying those motions and remand cases two and three for the entry of orders dismissing the city's complaints against Friedman and for further proceedings consistent with this opinion.[5] The appeal in case one is dismissed because it is not

[5] Friedman has asserted counterclaims against the city in all three cases. In his brief, Friedman requested that his counterclaims be remanded for trial. At oral argument, however, Friedman expressed willingness to have all three actions

properly before us. However, any further proceedings in case one should be consistent with this opinion.

Background. We recite the facts as alleged in the pleadings and attached documents in each of the three cases before the Superior Court. See Bristol Asphalt Co., Inc. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024) (Bristol Asphalt).

1. Case one. On May 20, 2024, Friedman submitted a public records request to the city by e-mail message. In the request, Friedman sought "[a]ny and all electronic mail and calendar information exclusively for [a city employee's e-mail address] including any draft and any deleted items." Eight days later, the city denied the request on the grounds that it was overly broad and therefore did not comply with the public records law. Friedman appealed to the supervisor later that day, requesting that the supervisor order the city to provide all responsive records. The city responded to Friedman's appeal, stating that the request was overbroad and that a "precursory search of the records requested" by Friedman showed that there were at least 49,000 e-mail messages that were responsive to his request.

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dismissed. On remand, he can pursue his counterclaims or ask that they be dismissed. As discussed below, Friedman also may seek his costs.

On June 4, 2024, Friedman sent an e-mail message to the supervisor, claiming that the city failed to provide either a good faith response or a fee petition within ten business days of his records request.[6] See G. L. c. 66, § 10 (e) ("A records access officer shall not charge a fee for a public record unless the records access officer responded to the requestor within 10 business days . . ."); 950 Code Mass. Regs. § 32.06(4)(g) (2021) ("petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days following receipt of a request for public records"). The next day, the city filed a fee petition with the supervisor, requesting to charge a fee of $62,368.75, based on an estimated 2,496.75 hours to segregate and redact the requested documents. The supervisor denied the fee petition because she concluded that the city did not submit the petition

[6] A fee petition is a request by an agency's or municipality's records access officer to the supervisor for permission to charge the records requestor a fee under G. L. c. 66, § 10 (d), which limits the fees that a records access officer may charge for responding to a public records request, would not otherwise allow. See, e.g., G. L. c. 66, § 10 (d) (ii) (C), (iii) (C), (iv) (prohibiting fees for time spent segregating or redacting records); G. L. c. 66, § 10 (d) (iii) (A), (iv) (prohibiting municipalities from assessing fees based on rate in excess of $25 per hour). The supervisor may approve such a fee if they find that the records request is for a commercial purpose, or that the fee is a good faith, reasonable estimate of the cost necessary to comply with the request and is not designed to limit or deter access to the records. G. L. c. 66, § 10 (d) (iv) (A), (B).

within ten business days of receiving Friedman's request.[7] The city sought reconsideration, which the supervisor denied.

In September 2024, the city filed a complaint in the Superior Court, seeking review of the supervisor's order denying its fee petition pursuant to G. L. c. 30A, § 14; G. L. c. 249, § 4; and G. L. c. 231A. In January 2025, Friedman filed a special motion to dismiss pursuant to G. L. c. 231 § 59H, arguing that the city's lawsuit was based solely on Friedman's petitioning activity and meant to silence him. The motion judge denied Friedman's motion without prejudice for failure to comply with Rule 9A of the Rules of the Superior Court (2018) (rule

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[7] Friedman submitted his request at 10:33 P.M. on May 20, 2024. The city filed its fee petition on June 5, 2024. The city argued that a request at 10:33 P.M. should be considered received on the next business day. The city also argued that the supervisor erroneously counted Memorial Day, May 27, 2024, as a business day. Although we do not resolve the timeliness issues, the supervisor and the parties may want to consider G. L. c. 30, § 24 (State government departments' office hours are from 9 A.M.to 5 P.M., and "[w]hen the day or the last day for the performance of any act, including the making of any payment or tender of payment, authorized or required to be performed at such an office falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding business day"). See also G. L. c. 4, § 9 (when last day for performance falls on Sunday or legal holiday, performance on next business day suffices); 950 Code Mass. Regs. § 32.02 (2016) (defining "business day" as excluding "Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly"); 950 Code Mass. Regs. § 32.03(3) (2021) (computation of time under public records regulations begins with first business day following receipt of request); 950 Code Mass. Regs. § 32.06(2)(e) (2021) (request received on Saturday, Sunday, legal holiday, or day custodian's office is closed is deemed received following business day).

9A). Rather than refiling his special motion, Friedman appealed.

2. Case two. If the supervisor determines that a request is "part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor of records may . . . relieve the agency or municipality of its obligation to provide copies of the records sought." G. L. c. 66, § 10 (c).

The basis for case two arose from three separate petitions that the city filed with the supervisor pursuant to G. L. c. 66, § 10 (c), concerning Friedman's records requests. In each petition, the city sought relief from its obligation to provide the requested records, arguing that Friedman's requests were intended to harass the city (harassment petitions).[8] The supervisor ultimately rejected all three harassment petitions on the grounds that the city did not demonstrate that Friedman's requests were "frivolous and not intended for the broad dissemination of information to the public about actual or

[8] The first petition concerned twenty-six requests, the second petition concerned fourteen requests, and the third petition concerned two requests.

alleged government activity, as required by G. L. c. 66, § 10 (c)."

In November 2024, the city brought case two in the Superior Court, seeking judicial review of the supervisor's order rejecting the harassment petitions. In its complaint, the city again stated counts pursuant to G. L. c. 30A, § 14; G. L. c. 249, § 4; and G. L. c. 231A. The city alleged that Friedman's harassing behavior included sending a "personal investigator" to the home of a former city employee; publicly posting records disclosing a former city employee's home address and social security number; and submitting an "outrageous volume" of requests, many of which were duplicative of each other.[9] The city sought to be relieved from its obligation to respond to Friedman's pending public records requests and all of Friedman's future requests. The prayer for relief in the city's complaints did not seek any relief related to the assertions concerning the personal investigator or the posting of an employee's personal information.

In January 2025, Friedman filed a special motion to dismiss pursuant to G. L. c. 231, § 59H, arguing again that the city's

[9] By the time the city filed case two in November 2024, Friedman had submitted 165 public records requests, ninety-two appeals, and eighteen requests for reconsideration to the city that year.

lawsuit was based solely on his petitioning activity and meant to silence him. A second motion judge denied Friedman's motion, finding that the city's complaint had a legitimate basis beyond Friedman's petitioning activity because Friedman misused certain public records that he obtained and engaged in conduct that extended beyond bona fide petitioning. Friedman appealed.

3. Case three. On August 30, 2024, the city received four public records requests from Friedman. On September 17, 2024, the city responded to Friedman's request with a fee estimate and submitted a fee petition to the supervisor. As in case one, the supervisor denied the city's fee petition, concluding that the city had failed to submit its fee petition within ten business days of receiving Friedman's requests. The city requested reconsideration of the order, which the supervisor denied.

In December 2024, the city brought case three in the Superior Court, again seeking review of the supervisor's order pursuant to G. L. c. 30A, § 14; G. L. c. 249, § 4; and G. L. c. 231A. In January 2025, Friedman filed a special motion to dismiss pursuant to G. L. c. 231, § 59H, which was initially denied without prejudice for noncompliance with rule 9A. Friedman subsequently filed a renewed special motion to dismiss that was compliant with rule 9A. A third motion judge denied Friedman's renewed special motion, finding that the city's claims were substantially based on how the supervisor calculates

time restrictions, rather than Friedman's petitioning activity. Friedman timely appealed. Friedman's appeals in the three cases were consolidated.

Discussion. Friedman argues that his special motions to dismiss pursuant to G. L. c. 231, § 59H, should have been granted in cases two and three. We agree.[10]

1. Anti-SLAPP statute. The anti-SLAPP statute, G. L. c. 231, § 59H, allows a party to bring a "special motion to dismiss" claims, counterclaims, or cross claims that are "based on" that party's "exercise of its right of petition under the constitution of the United States or of the commonwealth." G. L. c. 231, § 59H. If the court grants the special motion, the underlying claim is dismissed and, ordinarily, the moving party recovers costs and reasonable attorney's fees. G. L. c. 231, § 59H.

The Supreme Judicial Court has recently simplified the framework that courts use to evaluate a special motion to

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[10] We agree with the city that the denial of Friedman's special motion to dismiss in case one is not properly before us because the motion was denied without prejudice for failure to comply with rule 9A. See Fabre v. Walton, 436 Mass. 517, 520-521 (2002), S.C., 441 Mass. 9 (2004) ("It is settled that absent special authorization, . . . an appellate court will reject attempts to obtain piecemeal review of trial rulings that do not represent final dispositions on the merits" [quotations and citation omitted]). In any event, any subsequent proceedings in that matter should be consistent with this opinion.

dismiss. See Bristol Asphalt, 493 Mass. at 542. Under that framework, the analysis proceeds in two stages. Id. at 554-560. At the first stage, the special motion proponent -- here, Friedman -- must show that the claims against him are based solely on his petitioning activity. Id. at 554-556. If he does, the burden shifts, at the second stage, to the special motion opponent -- here, the city -- to show that Friedman's petitioning lacked any reasonable factual or legal basis and caused the city actual injury. Id. at 557-558. If the opponent cannot make that showing, the special motion to dismiss must be allowed. Id. at 557. We apply this framework to cases two and three. As explained below, Friedman satisfies the first stage, and the city cannot satisfy the second.

2. Stage one: petitioning activity. To prevail on a special motion to dismiss pursuant to G. L. c. 231, § 59H, the moving party must first make "a threshold showing through the pleadings and affidavits that the claims against it are based on the [party's] petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities" (quotations and citation omitted). Bristol Asphalt, 493 Mass. 555 & appendix. Friedman has made that showing in cases two and three.

a. Case two. The second motion judge denied Friedman's special motion on the ground that the city's complaint had a

basis beyond Friedman's petitioning activity because Friedman misused public records that he had obtained and engaged in conduct extending "beyond bona fide petitioning." On this record, we disagree.

Although the city's complaint referenced Friedman's alleged misuse of records and his hiring of a private investigator, the city's prayer for relief sought no remedy related to that conduct. The relief the city sought in case two, to be relieved of its obligation to respond to Friedman's requests, arises entirely from Friedman's public records requests, appeals, and requests for reconsideration to the supervisor, which are themselves protected petitioning activity. Had Friedman not petitioned the supervisor, the city would have had nothing to challenge. Because the city's claims in case two therefore depend entirely on Friedman's protected petitioning activity, Friedman made the required threshold showing under the first stage of the anti-SLAPP framework.

b. Case three. The third motion judge similarly found that the city's claims were substantially based on how the supervisor "calculates time restrictions under the law," rather than on Friedman's petitioning activity. We disagree.

The city's fee petition was denied, and this lawsuit followed, only because Friedman submitted public records requests to the city on August 30, 2024, and the supervisor

determined that the city's fee petition was untimely relative to those requests. Therefore, although the city challenges the supervisor's interpretation of the law, the challenged order, and consequently the city's claims, arose from Friedman's petitioning activity. Therefore, as to case three, Friedman has made the required threshold showing under the first stage of the anti-SLAPP framework.

3. Stage two: no reasonable basis or actual injury. Once a special motion proponent makes the required threshold showing, the burden shifts to the special motion opponent to show that the proponent's "exercise of [his] right of petition 'was devoid of any reasonable factual support or any arguable basis in law' and . . . 'caused actual injury to the [special motion opponent].'" Bristol Asphalt, 493 Mass. at 557, quoting G. L. c. 231, § 59H. Passing over whether the city showed that Friedman's public records requests, appeals, or communications with the supervisor were devoid of reasonable factual or legal support, the city has not shown that Friedman's petitioning activity caused the city actual injury. Indeed, the city may not suffer any injury unless and until someone seeks to enforce the supervisor's orders and it is ordered to turn over records to Friedman without being able to recoup its costs. (Even then, should the city not prevail, we would be hesitant to conclude

that being ordered to comply with the law is an injury for purposes of G. L. c. 231, § 59H.)

Section 10A expressly permits someone who has requested public records, in this case Friedman, to seek judicial review of an order issued by the supervisor: "A requestor, aggrieved by an order issued by the Supervisor of records . . . may obtain judicial review only through an action in superior court seeking relief in the nature of certiorari under section 4 of chapter 249 . . . ." G. L. c. 66, § 10A (a). More broadly, "a requestor may initiate a civil action to enforce the requirements of . . . chapter [66]." G. L. c. 66, § 10A (c).[11] The statutory scheme does not expressly provide a means for a public agency or municipality aggrieved by an order of the supervisor to bring suit under G. L. c. 249, § 4, or any other statutory scheme. We interpret this absence to mean that the Legislature intended to foreclose public agencies and municipalities from initiating actions to challenge orders issued by the supervisor with respect to a specific requestor. See Donis v. American Waste Servs., LLC, 485 Mass. 257, 266 (2020) ("If the Legislature intentionally omits language from a statute, no court can supply it" [citation omitted]); Connolly

[11] Under certain circumstances, the Attorney General may also file an action to compel a public agency or municipality to comply with an order made by the supervisor. See G. L. c. 66, § 10A (b), (e).

v. Sullivan, 76 Mass. App. Ct. 316, 318 (2010) ("we do not read into the statute a provision which the Legislature did not see fit to put there, whether the omission came from inadvertence or of set purpose" [quotations and citations omitted]).

But that does not foreclose public agencies and municipalities from ever challenging an order of the supervisor. A public agency or municipality may refuse to comply with such an order. When a requestor or the Attorney General brings an action to enforce (or that implicates the correctness of) the supervisor's order, the public agency or municipality must prove that it is entitled to withhold the records on the grounds that withholding the requested records is lawful. See Boston Globe Media Partners, LLC v. Department of Criminal Justice Info. Servs., 484 Mass. 279, 282 (2020), quoting G. L. c. 66, § 10A (d) (1) (iv) ("Under the public records act, 'a presumption shall exist that each record sought is public and the burden shall be on the defendant agency or municipality to prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law'"). If no enforcement action is ever brought, then the public agency or municipality suffers no harm.

Put differently, the Legislature has established a framework in which, to challenge the lawfulness of the supervisor's order with respect to a requestor and request, the

public agency or municipality must first refuse to comply with the supervisor's order. At that point, either the requestor or the Attorney General can bring an action to enforce the order. See G. L. c. 66, § 10A (b), (c), (e). In such an enforcement action, the public agency or municipality has the burden to prove that it is entitled to withhold the records notwithstanding the supervisor's order. G. L. c. 66, § 10A (d) (1) (iv). If no enforcement action is ever brought, then the public agency or municipality suffers no harm.

Here, the city contends that under this interpretation of the statutory framework, a public agency or municipality seeking to challenge the supervisor's decision must risk paying the requestor's attorney's fees if the requestor ultimately prevails in an enforcement action. See G. L. c. 66, § 10A (d) (2). The city is correct about the statutory framework, but its argument should be addressed to the Legislature. See Donis, 485 Mass. at 270 (public policy argument "is best addressed to the Legislature"). If anything, the attorney's fee provision in the statutory scheme "reflects the Legislature's recognition that '[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner' and that broad access to governmental information is 'an essential ingredient of public confidence in government'"

(citation omitted). Attorney General v. Mystic Valley Regional Charter Sch., 497 Mass. 251, 253 (2026).

The absence of an actual injury not only defeats the city's claims at the second stage of the anti-SLAPP analysis, it also defeats the city's claims for certiorari, declaratory judgment, and judicial review pursuant to G. L. c. 30A.

a. Certiorari action. General Laws c. 249, § 4, "permits a party to bring '[a] civil action in the nature of certiorari to correct errors in proceedings' under certain circumstances." Marchese v. Boston Redev. Auth., 483 Mass. 149, 162 n.14 (2019). "The purpose of the certiorari procedure is to provide a remedy, where none would otherwise exist . . ." (citation omitted). Cumberland Farms, Inc. v. Planning Bd. of Bourne, 56 Mass. App. Ct. 605, 607 (2002). To bring such an action, the party must sufficiently allege "(1) a judicial or quasi judicial proceeding, (2) from which there is no other reasonably adequate remedy, and (3) a substantial injury or injustice arising from the proceeding under review" (citation omitted). Frawley v. Police Comm'r of Cambridge, 473 Mass. 716, 726 (2016).

Here, because the city cannot prove an injury at this time, the city fails stage two of the anti-SLAPP doctrine. For the same reason, the city cannot satisfy the substantial injury element of an action in the nature of certiorari. Because the absence of substantial injury is dispositive of the certiorari

claim, we need not consider whether the city has satisfied the remaining elements.

b. Declaratory judgment. General Laws c. 231A authorizes a party to seek a declaration of rights where an actual controversy exists, but a party has standing only if it "can allege an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred" (citation omitted). Enos v. Secretary of Envtl. Affairs, 432 Mass. 132, 135 (2000).

As discussed above, the city has not suffered any injury yet. Moreover, this is not a circumstance where "the absence of declaratory relief would prevent [the statutory scheme] from being administered properly and thus contravene the Legislature's intent." Service Employees Int'l Union, Local 509 v. Department of Mental Health, 469 Mass. 323, 336 (2014).

Here, because the Legislature created a statutory scheme in § 10A that provides an avenue of relief for public agencies and municipalities, the city may not bring an action under G. L. c. 231A to challenge the supervisor's orders about a particular requestor or request. If a public agency or municipality could seek declaratory relief before the requestor or the Attorney General brings an enforcement action, it would circumvent the statutory scheme, which gives only the records requestor and the Attorney General the right to file suit. Moreover, a records

requestor may have no intention to press the matter in court and cannot be forced to do so, as the city has attempted to do here. The threat that a records holder may sue a records requestor and require the requestor to defend that suit may deter requests for public records.[12] See Frawley, 473 Mass. at 724 ("a party may not seek declaratory relief to effect an 'end run' around the absence of a private right of action where the Legislature intended to foreclose certain remedies" [citation omitted]).

c. Chapter 30A review. General Laws c. 30A, § 14, entitles "any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding" to judicial review in the Superior Court. G. L. c. 30A, § 14. "[T]o maintain an action for review [under c.30A, § 14], a party must be aggrieved in a 'legal sense' and show that 'substantial rights' have been 'prejudiced'" (citation omitted). Board of Health of Sturbridge v. Board of Health of Southbridge, 461 Mass. 548, 557 (2012). An "[a]djudicatory proceeding" is "a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." G. L.

[12] In addition, the public records law requires the Superior Court, "when feasible," to expedite enforcement actions brought under § 10A. G. L. c. 66, § 10A (d) (1) (iii). The declaratory judgment statute does not include such a provision.

c. 30A, § 1 (1). Absent a hearing requirement, there is no "adjudicatory proceeding" to review, and G. L. c. 30A, § 14, does not apply. See Springfield Hotel Assoc. v. Alcoholic Beverages Control Comm'n., 338 Mass. 699, 702 (1959) ("Since no hearing was required by any provision of law, the petitioners were not entitled to a judicial review under G. L. c. 30A, § 14").

The city has not shown that the supervisor's orders prejudiced any of its substantial rights and therefore cannot establish that it is a "person aggrieved" entitled to judicial review under G. L. c. 30A, § 14. The city also cannot satisfy the separate requirement that the supervisor's orders have been rendered in an "adjudicatory proceeding." See G. L. c. 30A, § 14. Section 10A does not require the supervisor to hold a hearing before ruling on a records request or fee petition, and no provision of the public records law or its implementing regulations requires sworn testimony, cross-examination, or any of the other procedural hallmarks of an adjudicatory hearing. Because no hearing was required, the supervisor's determination does not qualify as a "final decision of any agency in an adjudicatory proceeding" within the meaning of G. L. c. 30A, §14, and the city is therefore not entitled to judicial review under that provision.

In sum, the city has failed to establish actual injury from Friedman's petitioning activity, and thus failed to satisfy its burden at the second stage of the anti-SLAPP framework. See Bristol Asphalt, 493 Mass. at 557. The statutory requirements governing the city's three causes of action likewise provide no basis for relief from the supervisor's orders at this time.

4. Attorney's fees and costs. Although Friedman's special motions to dismiss should have been granted in cases two and three, he is not entitled to attorney's fees because he was self-represented and has not incurred such fees. See G. L. c. 231, § 59H ("If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters").[13] See Miller

[13] Section 6F of G. L. c. 231 (§ 6F) provides a helpful contrast. In § 6F, which addresses insubstantial, frivolous or bad faith claims or defenses, the plain language of the statute addresses self-represented litigants, providing:

> "If such a finding is made with respect to a party's claims, the court shall award to each party against whom such claims were asserted an amount representing the reasonable counsel fees and other costs and expenses incurred in defending against such claims. If the party against whom such claims were asserted was not represented by counsel, the court shall award to such party an amount representing his reasonable costs, expenses and effort in defending against such claims."

The absence of similar language in G. L. c. 231 § 59H indicates that the Legislature did not intend for self-represented litigants to be compensated for their own efforts in bringing a

v. Commissioner of Correction, 36 Mass. App. Ct. 114, 120 (1994) (noting that a self-represented litigant "is not entitled to attorney's fees for his own services" under 42 U.S.C. § 1983).

However, Friedman is entitled to costs. See G. L. c. 261, § 1 ("In civil actions the prevailing party shall recover his costs, except as otherwise provided"); Mass. R. Civ. P. 54 (d), as appearing in 382 Mass. 821 (1980) ("Except when express provision therefor is made either in a statute of the Commonwealth or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs . . . "); Mass. R. A. P. 26 (a), as appearing in 481 Mass. 1655 (2019) ("Except as otherwise provided by law or ordered by the court, [1] if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed to by the parties; [2] if a judgment is affirmed, costs shall be taxed against the appellant; [3] if a judgment is reversed, costs shall be taxed against the appellee; [4] if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as ordered by the appellate court"). Friedman's appellate costs shall be taxed pursuant to Mass. R. A. P. 26.

Conclusion. The appeal in case one, docket no. 2481CV02456, is dismissed, though any further proceedings in

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successful special motion to dismiss pursuant to the anti-SLAPP statute.

that matter should be consistent with this opinion.[14] In cases two and three, docket nos. 2481CV03069 and 2481CV03277, we reverse the orders denying Friedman's anti-SLAPP motions and remand those cases to the Superior Court for entry of orders dismissing the city's complaints against Friedman and for further proceedings consistent with this opinion, including resolution of Friedman's counterclaims should he choose not to dismiss them.

So ordered.

[14] If the city does not voluntarily dismiss its claims in case one consistent with this opinion, Friedman may move to dismiss them.