Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss **SUPERIOR COURT DEPARTMENT**
CIVIL ACTION NO. 24CV3277

CITY OF MALDEN,
Plaintiff

RECEIVED 12/16/24 tc

v.

MANZA ARTHUR, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and WILLIAM FRANCIS GALVIN, Secretary of the Commonwealth and OPENCOMMONWEALTH (BRUCE FRIEDMAN A/K/A OPENCOMMONWEALTH.ORG),
Defendants.

VERIFIED COMPLAINT FOR JUDICIAL REVIEW AND REQUEST FOR STAY PURSUANT TO G.L. c. 30A, §14, AND FOR CERTIORARI REVIEW AND INJUNCTION PURSUANT TO G.L. c. 249, § 4.

INTRODUCTION

1. City of Malden, seeks relief from a determination by Defendant, Manza Arthur the Supervisor of Records and Defendant, Francis Galvin, Secretary of the Commonwealth regarding Malden's response to a public records request submitted by Defendant, OpenCommonwealth ("OC"). Malden seeks relief from this Court to prevent substantial injustice and prejudice to Malden.

JURISDICITION AND VENUE

2. The Court has jurisdiction over this dispute pursuant to the provisions of G.L. c. 30A, § 14; G.L. c. 249, § 4 and of G.L. c. 231A.
3. Venue is proper under of G.L. c. 30A § 14(1).

PARTIES

4. The Plaintiff, City of Malden ("Malden"), is a municipality organized and operating under the laws of the Commonwealth of Massachusetts with a place of business at 215 Pleasant Street in the City of Malden, MA.

5. Defendant, William Francis Galvin, is the Secretary of the Commonwealth of Massachusetts (the "Secretary"). The Secretary is sued in his official capacity as Secretary of the Commonwealth. His usual place of employment is One Ashburton Place, 17th Floor, Boston, MA 02108.

6. Defendant, Manza Arthur, is the Supervisor of Records of the Public Records Division (the "Supervisor"). The public Records Division is a division of the Office of the Secretary and is legislatively assigned the duty to adjudicate administrative appeals under the Massachusetts Public Records Law, of G.L. c. 66 § 10A. The Supervisor is being sued in her official capacity as Supervisor of Records. Her usual place of employment is One Ashburton Place, 17th Floor, Boston, MA 02108.

7. Defendant, OpenCommonwealth, ("OC") states it is a media organization run by Bruce Friedman doing business in the Commonwealth of Massachusetts, in Middlesex County, Malden, Massachusetts.

FACTS

8. The Massachusetts Public Records Law and its Regulations provide that each person has a right of access to public information.

9. Included in this right of access is the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.

10. G.L. c. 66, § 10(a) provides in part:

> A records access officer appointed pursuant to section 6A, or a designee shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-six of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...

11. of G.L. c. 66, § 10(b) provides in part:

> If the agency or municipality does not intend to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request, or of multiple requests from the same requestor, unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality is unable to do so within the timeframe established in subsection (a), the agency or municipality shall inform the requestor in writing not later than *10 business days after the initial receipt of the request for public records.* (*Emphasis added*).

12. G.L. c. 66, § 10(d) provides in part, "A records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection.".

13. A records access officer ("RAO") is an employee designated within a governmental entity to coordinate responses to requests for access to public records, assisting individuals seeking public records in identifying the records requested and preparing guidelines that enable requestors to make informed requests regarding the availability of such public records electronically or otherwise.

14. G.L. c. 66, § 10 does not include a definition of the phrase, "business day".

15. The Public Records Law Regulations defines Business Day as "Monday through Friday. Business days do not include Saturdays, Sundays, *legal holidays*, or other weekdays where a custodian's office is closed unexpectedly.". (*Emphasis added*).

16. On August 30, 2024 between 7:08 pm and 7:16 pm, OC submitted four public records request to Malden. (**See Exhibit A**).

17. OC requested the following:

    a. 7:08 PM- 7/18/24 – Present: Extract-To/From/CC/BCC/Date/any attachment for various "mayor accounts" as per 2 above and [Individual 1] and [Individual 2]
    b. 7:11 PM-7/18/24-Present: Extract -To/From/CC/BCC/Date/Subject/any attachment for [Individual 2]
    c. 7:13 PM-7/18/24-Present: Extract -To/From/CC/BCC/Date/any attachment for [3 Email accounts]

d. 7:16-1/1/24-Present: Extract -To/From/CC/BCC/Date/any attachment for [Individual 3]

18. OC's request was made through the City of Malden's email.

19. Malden responded timely to the request on September 17, 2024 with a Fee Estimate and informing OC that "the City has been overwhelmed by FOIA requests and would be petitioning the Supervisor for a time extension. (**See Exhibit B**).

20. Malden petitioned the Supervisor to allow Malden to charge a fee, as well as petitioning the Supervisor for a time extension. (**See Exhibit C**).

21. The Supervisor denied Malden's request, stating that Malden had not demonstrated it had submitted a timely Fee Petition. **(See Exhibit D).**

22. Malden requested the Supervisor to reconsider its decision indicating that Monday, September 2, 2024 was Labor Day, and should not have been counted as a Business Day because holidays are not included per the Public Records Law Regulations. As such, Malden Fee Petition should be allowed as Malden responded within ten (10) business days after receipt of the Request. (**See Exhibit E**).

23. On October 15, 2024, the Supervisor denied Malden's request for reconsideration. (**See Exhibit F**).

COUNT I
JUDICIAL REVIEW PURSUANT TO G.L. c. 30A, § 14

24. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 23 of this Complaint.

25. The Supervisor's Determination (a) exceeds the statutory authority or jurisdiction of the Supervisor (b) is based on an error of law; (c) is made upon unlawful procedure; and (d) is arbitrary or capricious, and abuse of discretion, or otherwise not in accordance with law and fundamental fairness.

26. It is therefore appropriate for the Court to enter an order, under G.L. c. 30A, § 14 (3), staying the enforcement of the Supervisor's Determination.

27. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that the original response was made in a timely fashion, and thus, Malden may charge a fee to produce the records sought in the Request.

COUNT II
CERTIORARI REVIEW PURSUANT TO G.L. c. 249, § 4

28. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 27 of this Complaint.
29. The Public Records Appeal process before the Supervisor regarding the Original Response constitutes a judicial or quasi-judicial proceeding.
30. If judicial review under G.L. c. 30A is not available to Malden, then Malden lacks reasonably adequate remedies to address the manifest injustice it is experience.
31. Malden has suffered a substantial injury or injustice arising from the proceeding before the Supervisor because it has been prevented from charging a fee of $25 per hour to review, redact and produce records sought in the Request, because Malden is being forced to act as OC's private investigator and segregate records without a fee and is being forced to respond to a public record request designed to harass Malden.
32. Certiorari review is appropriate to correct errors in the proceeding before the Supervisor which were not conducted in accordance with the course of common law.
33. The Court should issue an injunction preventing the Supervisor from taking any action to enforce her Determination.
34. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that the original response was made in a timely fashion, and thus, Malden may charge a fee to produce the records sought in the Request.

COUNT III – DECLARATORY JUDGMENT PURSUANT TO G.L. c. 231A

35. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 34 of this Complaint.

36. Malden responded to the Request within ten (10) business days in accordance with G.L. c. 66, § 10(a).

37. Thus, Malden was entitled to its fees since the reason given by the Supervisor was that Malden had not petitioned the Supervisor within ten (10) business days after receipt.

38. The Request made by OC was intended to harass Malden.

39. The Supervisor's Determination reflects a continuing dispute and an actual controversy between the parties with the meaning of G.L. c. 231A.

40. Malden seeks, and is entitled to a binding declaration of right, duty, status and other legal relations within the meaning of G.L. c. 231A in the manner herein described.

41. Malden respectfully requests that this Honorable Court declare that (a) the Original Fee Petition on September 17, 2024 was made in a timely fashion, thus allowing Malden to charge a fee to produce the records sought in the Request; and (b) the Request was intended to harass Malden.

WHEREFORE, Malden prays that this Court award the following relief:

a. Set aside the Supervisor's Determination;
b. Issue a stay, under G.L. c. 30A, § 14(3) that Malden is relieved from the production of any records in response to the Request;
c. Issue an injunction under G.L. c. 249, § 4 ordering the Supervisor not to take any action to enforce the Determination;
d. Modify the Supervisor's Determination to reflect that:
    i. The September 17, 2024 Fee Petition was made in a timely fashion, and therefore, Malden may charge a fee to review, redact, segregate and produce the records sought in the Request; and
    ii. The Request was intended to harass Malden.

e. Grant such other relief as is just and equitable.

PLAINTIFF CLAIMS A TRIAL BY JURY ON ALL ISSUES.

City of Malden
By its Attorney

/s/ *Alicia A. McNeil*

Alicia A. McNeil, Esq.
City Solicitor
City of Malden
Legal Department
215 Pleasant Street, 4th Floor
Malden, MA 01248
781-397-7106
BBO# 632134
amcneil@cityofmalden.org

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Exhibit A

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From: **Commonwealth Transparency** info@opencommonwealth.org
Subject: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
Date: August 30, 2024 at 7:08 PM
To: Public Records publicrecords@CITYOFMALDEN.ORG

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

- This is a new request and does not replace or modify any prior requests.

Please provide the following public records in the possession or under the control of the City of Malden, Massachusetts ("Malden"):

From 7/18/2024 through the date you receive this request, please ***extract*** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org)(thus search all systems), where any address under the control of Gary Christenson (including but not limited to mayor@cityofmalden.org, gchristenson@cityofmalden.org, gchristenson@maldenps.org) appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:) AND where any email address of Ronald Hogan appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:) AND where any email address of Maria Luise appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:). This request also seeks all responsive calendar items, including invitations, declinations, and/or acceptances.

- This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment.

- This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division

or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published. This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

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From: **Commonwealth Transparency** info@opencommonwealth.org
Subject: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
Date: August 30, 2024 at 7:11 PM
To: Public Records publicrecords@CITYOFMALDEN.ORG

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

- This is a new request and does not replace or modify any prior requests.

- Please ***extract*** the author and all recipients (To:, Cc:, and/or Bcc:), date, and subject heading of all email sent by and/or received by any electronic mail account for Ronald B. Hogan from July 18, 2024 through the date you receive this request.

- This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, the subject of the email and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.

- This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

This request specifically includes ALL email accounts and addresses in your possession and/or under your control, including group and resource email addresses.

OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

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From: **Commonwealth Transparency** info@opencommonwealth.org
Subject: Re: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
Date: August 30, 2024 at 7:13 PM
To: Public Records publicrecords@CITYOFMALDEN.ORG

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

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From 7/18/2024 through the date you receive this request, please ***extract*** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), The Schools (@maldenps.org), (thus search all systems), where any email address under the control of Gary Christenson (including but not limited to mayor@cityofmalden.org, gchristenson@cityofmalden.org, gchristenson@maldenps.org) appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:).

- This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment.

- This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

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With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this

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Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

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dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published. This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

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From: **Commonwealth Transparency** info@opencommonwealth.org
Subject: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
Date: August 30, 2024 at 7:16 PM
To: Public Records publicrecords@CITYOFMALDEN.ORG

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

- This is a new request and does not replace or modify any prior requests.

Please provide the following public records in the possession or under the control of the City of Malden, Massachusetts ("Malden"):

From 1/1/2024 through the date you receive this request, please ***extract*** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), The Schools (@maldenps.org), (thus search all systems), where any email address under the control of Charles Ranaghan appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:).

- This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment.

- This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

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With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the

entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published. This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

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Exhibit B

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

City of Malden
Massachusetts

Carol Ann T. Desiderio, City Clerk
cdesiderio@cityofmalden.org

City Clerk's Office
215 Pleasant Streets, Room 220
Malden, Massachusetts 02148

Phone 781-397-7116
cityofmalden.org

September 17, 2024
BY E-MAIL
Info@OpenCommonwealth.Org
Re: FOIA 2024-0462

RESPONSE

Between 7:08 PM and 7:16 PM on August 30, 2024, Malden received 4 requests that we assigned 2024-0462 as summarized below:

1)7:16 PM- 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for Charles Ranaghan

2) 7:13 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for mayor@cityofmalden.org, gchristenson@cityofmalden.org and gchristenson@maldenPS.org

3) 7:11 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/Subject/any attachment for Ronald Hogan

4) 7:08 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for various "mayor accounts" as per 2 above and Maria Luise and Ron Hogan

Calculation of Fee Estimate

Pursuant to *M.G. L. c. 66, § 10(d)(iii) et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested."

In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose hourly rate exceeds $25 per hour. In accordance with *950 CMR 37.02(2)(m)(1)*, you will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

Response Lines per Request

1) 18,074
2) 5,755 + 117 (3 separate extractions)
3) 4,933
4) 76 emails that contain ALL of the 3 email accounts

The City estimates 15 minutes for each extraction performed by IT. Further, it estimates 1 hour to review and possibly redact each of the email extractions listed above or 6 Extractions. This totals 7.5 hours less the 2 hours allowed or 5.5 hours. Therefore, at the rate of $25 per hour, a total fee estimate equals $137.50. The City will not begin to review the requested documents until it receives a check in the amount of $137.50. Note that the city is unable to list if any attachments are part of the email. Should it take less time, your fee will be reduced and refunded. Should it take longer, we will reach out to you before continuing.

Also, as the City has been overwhelmed by FOIA requests, we will be petitioning for a time extension.

Please be advised that your fee estimate may be reduced if you narrow the scope of your request or provide "key word" terms for the search. Please refer to 2024-0462 should you wish to amend your request.

Right of Appeal
Please be advised that pursuant to *M.G.L. c. 66, § 10(b)(ix)*, you have a right of appeal to the Supervisor of Records under *M.G.L. c. 66, § 10A(a)* and the right to seek judicial review by commencing a civil action in the Superior Court under *M.G.L. c. 66, § 10A(c)*.

Respectfully,

Stephanie Burke
Records Access Administrator, City of Malden

CC: Carol Ann Desiderio, City Clerk
Supervisor of Public Records

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

Exhibit C

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

City of Malden
Massachusetts

Carol Ann T. Desiderio, City Clerk
cdesiderio@cityofmalden.org

City Clerk's Office
215 Pleasant Streets, Room 220
Malden, Massachusetts 02148

Phone 781-397-7116
cityofmalden.org

September 17, 2024

VIA ELECTRONIC MAIL
Supervisor of Records
Division of Public Records
One Ashburton Place, Room 1719
Boston, MA 02108
Telephone: (617) 727-2832
Fax: (617) 727-5914
Email: pre@sec.state.ma.us

RE: Public Records Request dated, August 30, 2024-FOIA DIRECT 2024-0462/Fee & Time Petition

Dear Supervisor of Public Records:

Between 7:08 PM and 7:16 PM on August 30, 2024, Malden received 4 requests (original requests attached) that we assigned 2024-0462 as summarized below:

1)7:16 PM- 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for Charles Ranaghan

2) 7:13 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for mayor@cityofmalden.org, gchristenson@cityofmalden.org and gchristenson@maldenPS.org

3) 7:11 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/Subject/any attachment for Ronald Hogan

4) 7:08 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for various "mayor accounts" as per 2 above and Maria Luise and Ron Hogan

The City replied to the request in a timely fashion on September 17, 2024 (attached). The City now requests that you allow it to charge a fee of $25 per hour to produce and redact those records and grant the City additional time to produce the records.

Fee Petition

Calculation of Fee Estimate

Pursuant to *M.G. L. c. 66, § 10(d)(iii) et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested."

In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose hourly rate exceeds $25 per hour. In accordance with *950 CMR 37.02(2)(m)(1),* you will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

Response Lines per Request
1) 18,074
2) 5,755 + 117 (3 separate extractions)
3) 4,933
4) 76 emails that contain ALL of the 3 email accounts

The City estimates 15 minutes for each extraction performed by IT. Further, it estimates 1 hour to review and possibly redact each of the email extractions listed above or 6 Extractions. This totals 7.5 hours less the 2 hours allowed or 5.5 hours. Therefore, at the rate of $25 per hour, a total fee estimate equals $137.50.

Fee Petition
The City requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records contain documents that would qualify under Exemption (c) of the Public Records Law, and will require detailed review and redaction prior to production.

Grounds for Redaction
The records sought in the request need be reviewed, and potentially redacted. The City seeks the ability to charge for redactions under Exemption C.

These documents require redactions in accordance with the exemption set for at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:
personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

In terms of the second clause of the privacy exemption, it applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980).
Records responsive to your request will thus need to be reviewed and redacted to the extent they contain private email addresses and contact information and information concerning an applicant for a license, which are sensitive to them, such as home address, social security number, passport etc.

Grounds for Fee Estimate
General Laws c. 66, § 10(d)(iii) authorizes the City's fee petition and provides, in pertinent part, as follows:
(iii) if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested but the fee (A) shall not be more than $25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);
(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of $25 per hour, if the

supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of $25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

In making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances; G. L. c. 66, $ 10d(iii)-(iv); see also 950 CMR 32.06(4).

Time Petition

The Public Records Guide states the following: "If a custodian is unable to complete the request within the time provided in G.L. c. 66, § 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested record that the custodian intends to provide. A petition for an extension of time must be submitted within 20 business days of receipt of request or within 10 business days after receipt of a determination by the Supervisor that the requested record constitutes a public record." The City has filed this request within those time periods.

Given the broad scope of the request and the volume of potentially responsive records which require detailed review and redaction, the City submits that it is **not reasonable** to require it to produce the responsive records within 10 business days. Therefore, the City hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process have many other responsibilities which they cannot ignore. The City will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

Pursuant to M.G.L. c. 66, section 10(c), the City requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt of payment for the work, to respond to the request.

A copy of this petition has been sent to the requestor, Open Commonwealth.

Respectfully,

Stephanie Burke
Records Access Administrator, City of Malden

CC: Carol Ann Desiderio, City Clerk
Supervisor of Public Records

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

Exhibit D

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

September 24, 2024
SPR24/2605

Carol A. Desiderio
City Clerk
City of Malden
215 Pleasant Street
Malden, MA 02148

Dear Ms. Desiderio

On September 17, 2024, this office received your petition on behalf of the City of Malden (City) seeking an extension of time to produce records and permission to charge for time spent segregating or redacting responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, it is my understanding that the City furnished a copy of the petition to the requestor, Commonwealth Transparency ("requestor"). G. L. c. 66, § 10(c); G. L.c. 66, § 10(d)(iv)(2). On August 30, 2024, the requestor sought the following records:

> [1.] 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for [identified individual][;]
>
> [2.] 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for [identified email addresses][;]
>
> [3.] 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for [identified individual][;]
>
> [4.] 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for various "mayor accounts" as per 2 above and [identified individuals].

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:

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> (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 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) must provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

Current Petition

In its petition, the City requests, "an additional 30 business days…" In support of its request, the City provides the following information:

> Given the broad scope of the request and the volume of potentially responsive records which require detailed review and redaction, the City submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the City hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process have many other responsibilities which they cannot ignore. The City will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

In light of the need to collect the records and the capacity of the City to produce the records without an extension the City has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(iii). The City is granted an extension of 30 business days.

Date Filed 12/16/2024 10:50 PM
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Petition to Assess Fees – Municipalities

The Supervisor of Records (Supervisor) may approve a petition from a municipality to charge for time spent segregating or redacting or to charge in excess of $25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the municipality to comply with the request. G. L. c. 66, § 10(d)(iv).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of $25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Fee Estimates – Municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents ($.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than $25 per hour. Id. However, municipalities may charge more than $25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

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Docket Number

Petition to Assess Fees

The City submitted their petition on September 17, 2024, more than ten business days after receipt of the request. In light of the fact that the City has not demonstrated it submitted a timely petition, permission to charge for time spent segregation or redacting responsive records cannot be granted. 950 C.M.R. 32.06(4)(d).

Conclusion

Accordingly, I find that the City has established good cause for a time extension of 30 business days as described above.

However, in light of the fact that the City has not demonstrated it submitted a timely fee petition, permission to charge for time spent segregating or redacting responsive records cannot be granted. 950 C.M.R. 32.06(4)(g).

Please note, the requestor 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(c), 10(d)(iv)(4), 10A(c).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

Exhibit E

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

Outlook

Fwd: SPR24/2605 Petition Determination

[redacted]

Begin forwarded message:

From: Public Records <publicrecords@cityofmalden.org>
Date: September 24, 2024 at 12:15:00 PM EDT
To: "Campbell, Parker (SEC)" <Parker.Campbell@sec.state.ma.us>, info@opencommonwealth.org, Carol Ann Desiderio <CDesiderio@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: RE: SPR24/2605 Petition Determination

Hello Atty Campbell,
I would like to request reconsideration of this Determination. The request was submitted on 8/30/2024 at 7:08 PM or later. Thus received for our purposes on 09/03/2024 (09/02/2024 was Labor Day). Therefore, response due date was 09/17/2024. Bost the response to the requestor and the Fee/Time Petition were made on 09/17/2024. I have attached the original 4 requests and our Petition.

Regards,
Stephanie

Stephanie M. Burke
ARPA Director
Records Access Administrator
781-661-8943

From: Campbell, Parker (SEC) <Parker.Campbell@sec.state.ma.us>
Sent: Tuesday, September 24, 2024 10:39 AM
To: info@opencommonwealth.org; Carol Ann Desiderio <CDesiderio@CITYOFMALDEN.ORG>; Public Records <publicrecords@CITYOFMALDEN.ORG>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: SPR24/2605 Petition Determination

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

Hello,

Please be aware, the Supervisor of Records has issued a determination relating to a petition 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.

Thank you,
Parker Campbell

Parker Campbell (He/Him)
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA, 02108
617-727-2832

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Exhibit F

Date Filed 12/16/2024 10:50 PM
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Docket Number

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

October 15 2024
SPR24/2605

Carol A. Desiderio
City Clerk
City of Malden
215 Pleasant Street
Malden, MA 02148

Dear Ms. Desiderio

On September 17, 2024, this office received the petition of Stephanie Burke, on behalf of the City of Malden (City) seeking reconsideration of my September 24, 2024 determination pertaining to a request from Commonwealth Transparency ("requestor"). On August 30, 2024 the requestor sought the following records:

> 1) 7:16 PM- 1/1/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for [identified individual][;]
>
> 2) 7:13 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for [identified email addresses][;]
>
> 3) 7:11 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/Subject/any attachment for [identified individual][;]
>
> 4) 7:08 PM-7/18/24-Present,:Extract-To/From/CC/BCC/Date/any attachment for various "mayor accounts" as per 2 above and [identified individuals].

Previous Petition

This request was the subject of a previous petition from the City. See SPR24/2605 Determination of the Supervisor of Records (September 24, 2024). In my September 24th determination, I found that the City had established good cause for a time extension of 30 business days. However, in light of the fact that the City had not demonstrated it submitted a timely fee petition, permission to charge for time spent segregating or redacting responsive records was not granted. In an email to this office on September 24, 2024, the City requests that I reconsider my previous determination.

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Superior Court - Middlesex
Docket Number

Petition to Assess Fees – Municipalities

The Supervisor of Records (Supervisor) may approve a petition from a municipality to charge for time spent segregating or redacting or to charge in excess of $25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the municipality to comply with the request. G. L. c. 66, § 10(d)(iv).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv).

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of $25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Fee Estimates – Municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents ($.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than $25 per hour. Id. However, municipalities may charge more than $25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

Date Filed 12/16/2024 10:50 PM
Superior Court - Middlesex
Docket Number

Reconsideration Request

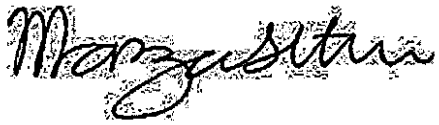
In its request for reconsideration, the City argues the following:

> The request was submitted on 8/30/2024 at 7:08 PM or later. Thus received for our purposes on 09/03/2024 (09/02/2024 was Labor Day). Therefore, response due date was 09/17/2024. Bost [sic] the response to the requestor and the Fee/Time Petition were made on 09/17/2024.

Conclusion

After another careful and thorough review of this matter, I respectfully decline to reverse the findings in the September 24th determination. Specifically, in light of the fact the City has not demonstrated that it submitted its petition within ten business days after receipt of a request, permission to charge for segregation or redaction that is not required by law cannot be granted. 950 C.M.R. 32.06(4)(g). Please note, however, this determination does not preclude the City from charging for segregation and redaction that is required by law.

Sincerely,



Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency