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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 21-1458

Malden Public Schools,

Plaintiff,

v.

Rebecca S. Murray, 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 Bruce Friedman,

Defendants.

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
JUL 01 2021
CLERK

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. Plaintiff Malden Public Schools (Malden) seeks relief from a determination by the Supervisor of Records regarding Malden's response to a public records request submitted by Defendant Bruce Friedman. Relief from the Court is necessary to prevent substantial injustice and prejudice to Malden.

JURISDICTION 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 G.L. c. 231A.

3. Venue is proper under G. L. c. 30A, § 14(1).

PARTIES

4. Plaintiff Malden Public Schools (Malden) is a public school system with a principal place of business located at 77 Salem Street, Malden, MA 02148.

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, Massachusetts 02108.

6. Defendant Rebecca S. Murray 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, G.L. c. 66 § 10A. The Supervisor is sued in her official capacity as Supervisor of Records. Her usual place of employment is One Ashburton Place, 17th Floor, Boston, Massachusetts 02108.

7. Defendant Bruce Friedman (Mr. Friedman) is an individual with a residential address of 8 Marvin Street, Malden, Massachusetts 02148.

FACTS

The COVID-19 Pandemic

8. In December 2019, a novel coronavirus known as SARS-CoV-2 was first detected, causing outbreaks of the coronavirus disease COVID-19.

9. The United States Secretary of Health and Human Services declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19.

10. On March 13, 2020, the President of the United States announced a national declaration of emergency concerning COVID-19.

11. On March 15, 2020, Governor Baker announced emergency actions to respond to the evolving COVID-19 public health emergency impacting the Commonwealth, including prohibitions on public gatherings of twenty-five or more people and prohibiting on-premises consumption of food or drink at bars and restaurants, as well as suspension of elementary and secondary school educational operations.

The City of Malden

12. On March 18, 2020, the Mayor of the City of Malden declared a state of emergency in the City of Malden. *A true and accurate copy of the declaration is attached hereto as Exhibit* 1.

13. As part of Malden's eventual re-opening process, effective August 17, 2020, the Mayor of the City of Malden, exercising his emergency powers during the pandemic, established hours for employees at City Hall on Mondays through Thursdays, and closed City Hall on Fridays. *A true and accurate copy of the Order is attached hereto as Exhibit* 2.

14. The closure of City Hall did not extend to the Malden Public Schools.

15. The closure was unexpected and due to the COVID-19 pandemic.

Public Records Law

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

17. This right of access includes the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.

18. 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-sixth 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*...(*Emphasis added*).

19. 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*).

20. 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.

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

22. The Public Records Law Regulations states that "[w]hile a records access officer must respond to a request for public records within 10 business days, a business day does not include a weekday where a custodian's office is *unexpectedly closed.*" 950 C.M.R 32.02 (*Emphasis added*).

Mr. Friedman's Public Records Request

23. On September 24, 2020, Mr. Friedman submitted three (3) public records requests to Malden (referred hereafter collectively as the "Request"). *A true and accurate copy of the Request is attached hereto as Exhibit 3.*

24. The Request included the following:

1. Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

2. Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including

52. Malden responded in writing to the Request on October 14, 2020 ("Original Response"). *A true and accurate copy of the Response is attached hereto as Exhibit 5.*

53. The Original Response was made within 10 business days, which did not include the intervening Fridays when City Hall was closed.

54. In the Original Response, Malden stated that it had identified over **80,000** emails that were responsive to the Request. *See Exhibit 5.*

55. Malden also stated that it believed that some of those emails were protected by the attorney-client privilege and that some of the records contained student and personnel information that was subject to redaction under the Public Records Law. *See Exhibit 5.*

56. Malden estimated that it would take approximately **7,020** hours to search, segregate and redact the records sought by Mr. Friedman in the Request. *See Exhibit 5.*

57. Accordingly, Malden included a fee estimate, in the Original Response, of **$175,400.00** to perform the search, segregation and redactions of the records sought by Mr. Friedman. *See Exhibit 5.*

Mr. Friedman's Appeal to the Supervisor

58. On October 21, 2020, the Supervisor responded to the appeal filed by Mr. Friedman on October 8, 2020. *A true and accurate copy of the Supervisor's October 21, 2020, letter is attached hereto as Exhibit 6.*

59. Malden, through counsel, responded to the Supervisor on October 22, 2020. *A true and accurate copy of Malden's October 22, 2020, letter is attached hereto as Exhibit 7.*

60. Malden indicated that the Original Response was timely because the Mayor had closed City Hall on Fridays, which therefore did not count as a business day. *See Exhibit 7.*

EXHIBIT 1

1

COMMONWEALTH OF MASSACHUSETTS

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INTRODUCTION

1. Plaintiff Malden Public Schools (Malden) seeks relief from a determination by the Supervisor of Records regarding Malden's response to a public records request submitted by Defendant Bruce Friedman. Relief from the Court is necessary to prevent substantial injustice and prejudice to Malden.

JURISDICTION 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 G.L. c. 231A.

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Mr. Friedman's Public Records Request

23. On September 24, 2020, Mr. Friedman submitted three (3) public records requests to Malden (referred hereafter collectively as the "Request"). *A true and accurate copy of the Request is attached hereto as Exhibit 3.*

24. The Request included the following:

1. Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

2. Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including

drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

3. Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

25. The Request seeks all the emails and calendar entries of the former Director of Student Services and the former Program Supervisor for substantially separate programming.

26. Both of these staff members' primary responsibility was to work with students with disabilities.

27. On October 8, 2020, Mr. Friedman filed an appeal with the Supervisor claiming that Malden had failed to respond to the Request within ten (10) business days. T*rue and accurate copies of the appeals filed by Mr. Friedman are attached hereto as Exhibit 4.*

Harassment

28. Mr. Friedman instituted litigation at the Bureau of Special Education Appeals ("BSEA") in September 2019 against Malden.

29. Mr. Friedman has instituted at least four BSEA cases against Malden.

30. Two of the cases involve records requests and some of the records requested will be subsumed within this request.

31. Specifically, 843 of Mr. Wood's emails relate to Mr. Friedman and 163 of Ms. Cushinsky's emails relate to Mr. Friedman.

32. Mr. Friedman instituted the records request litigation at the BSEA after filing the Request in this matter.

33. Mr. Friedman has filed Open Meeting Law complaints and appealed the BSEA decision to the Federal District Court of Massachusetts.

34. Since initiating litigation at the BSEA and the Request for Reconsideration from Malden, Mr. Friedman has made 159 public records requests.

35. Since initiating litigation at the BSEA and the Request for Reconsideration from Malden, Mr. Friedman has individually and through his organization, Open Malden, filed 139 appeals, which equates to approximately 4 appeals per month, or more than one per calendar week.

36. Since initiating litigation at the BSEA and the Request for Reconsideration from Malden, Mr. Friedman requests constitute 20% of the public records requests to Malden since January 1, 2019.

37. Since May 17, 2019, Mr. Friedman has made 125 public record requests under his name and 83 public record requests under Open Malden, bringing the total to 208.

38. Since September 17, 2019, Mr. Friedman has made 145 appeals under his name and 49 appeals under Open Malden, bringing the total to 194 appeals.

39. Since January 1, 2021 alone, Mr. Friedman has made 42 public record requests under his name and 83 public record requests under Open Malden, bringing the total to 125.

40. In Malden, there have only been a total of 300 FOIA requests made since January 1, 2021 and Mr. Friedman's requests account for more than a third of this number.

41. Since January 1, 2021, Mr. Friedman has made 68 appeals to the Supervisor under his name and 49 appeals to the Supervisor under Open Malden, bringing the total to 117.

42. Malden has expended countless hours, resources, and energy on responding to Mr. Friedman's requests.

Malden's Response and Fee Estimate

43. A records access officer 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.

44. The City of Malden has designated the City Clerk, the Chief of Police or his designee, the Chief of the Fire Department or his designee, and the Malden School Department or his designee as Records Access Officers. *A true attest copy of the Vote by the City Council is attached hereto as Exhibit 22.*

45. The Request was made through the City of Malden's Public Record Requests webpage.[1]

46. The City of Malden's Public Record Requests webpage uses FOIA Direct software to process public record requests.

47. City Clerk Greg Lucey oversees public record requests to the City of Malden, including, but not limited to, the Police Department, Fire Department and School Department.

48. The City Clerk's Office is located at City Hall.

49. Shirley Dorai, Executive Assistant to the Superintendent and School Committee Clerk, assists City Clerk Greg Lucey when responding to public record request directed to the Malden Public School.

50. City Clerk Greg Lucey designated Shirley Dorai as a "Record Access Officer" in the FOIA Direct system to assist in responding to public record requests directed to the Malden Public Schools.

51. In accordance with the order issued by the Mayor of the City of Malden to close City Hall effective August 17, 2020, the due date assigned to the Request was October 14, 2020.

[1] https://www.cityofmalden.org/311/Public-Records-Requests

52. Malden responded in writing to the Request on October 14, 2020 ("Original Response"). *A true and accurate copy of the Response is attached hereto as Exhibit 5.*

53. The Original Response was made within 10 business days, which did not include the intervening Fridays when City Hall was closed.

54. In the Original Response, Malden stated that it had identified over **80,000** emails that were responsive to the Request. *See Exhibit 5.*

55. Malden also stated that it believed that some of those emails were protected by the attorney-client privilege and that some of the records contained student and personnel information that was subject to redaction under the Public Records Law. *See Exhibit 5.*

56. Malden estimated that it would take approximately **7,020** hours to search, segregate and redact the records sought by Mr. Friedman in the Request. *See Exhibit 5.*

57. Accordingly, Malden included a fee estimate, in the Original Response, of **$175,400.00** to perform the search, segregation and redactions of the records sought by Mr. Friedman. *See Exhibit 5.*

Mr. Friedman's Appeal to the Supervisor

58. On October 21, 2020, the Supervisor responded to the appeal filed by Mr. Friedman on October 8, 2020. *A true and accurate copy of the Supervisor's October 21, 2020, letter is attached hereto as Exhibit 6.*

59. Malden, through counsel, responded to the Supervisor on October 22, 2020. *A true and accurate copy of Malden's October 22, 2020, letter is attached hereto as Exhibit 7.*

60. Malden indicated that the Original Response was timely because the Mayor had closed City Hall on Fridays, which therefore did not count as a business day. *See Exhibit 7.*

61. Mr. Friedman appealed Malden's Original Response on October 21, 2020. *A true and accurate copy of Mr. Friedman's appeal dated October 21, 2020, (without exhibits) is attached hereto as Exhibit 8.*

62. The Supervisor responded to Mr. Friedman's appeal on November 5, 2020. *A true and accurate copy of the Supervisor's response dated November 5, 2020, is attached hereto as Exhibit 9.*

63. In her letter dated November 5, 2020, the Supervisor concluded that Malden could charge Mr. Friedman for time spent redacting records that contained personnel and student information as well as communications protected by the attorney-client privilege. *See Exhibit 9.*

64. The Supervisor also requested that Malden clarify how it had arrived at its time estimate of 7,020 hours to search, segregate and redact the records sought by Mr. Friedman in the Request. *See Exhibit 9.*

65. The Supervisor also requested that Malden demonstrate whether the Original Response was made within ten (10) business days following Malden's receipt of the Request. *See Exhibit 9.*

66. Malden responded to the Supervisor in a letter dated November 30, 2020. *A true and accurate copy of the letter from MPS dated November 30, 2020, is attached hereto as Exhibit 10.*

67. Mr. Friedman appealed Malden's response on November 30, 2020. *A true and accurate copy of Mr. Friedman's appeal, without attachments) dated November 30, 2020, is attached hereto as Exhibit 11.*

68. Malden responded, through counsel, on December 2, 2020. *A true and accurate copy Malden's response, dated December 2, 2020, is attached hereto as Exhibit 12.*

69. On February 24, 2021, Mr. Friedman filed two (2) appeals of Malden's November 30, 2020, response to the Supervisor. *True and accurate copies of the appeals filed by Mr. Friedman (without attachments) are attached hereto as Exhibit 13.*

70. On March 2, 2021, Malden, through counsel, responded to Mr. Friedman's appeal and addressed the timeliness of the Original Response. *A true and accurate copy of the email (without attachments) dated March 2, 2021, is attached hereto as Exhibit 14.*

71. The Supervisor responded to Mr. Friedman's appeal on March 11, 2021. *A true and accurate copy of the Supervisor's response dated March 11, 2021, is attached hereto as Exhibit 15.*

72. In her letter dated March 11, 2021, the Supervisor appears to accept Malden's explanation that the Original Response was made in a timely fashion. *See Exhibit 15.*

73. The Supervisor also requested that Malden provide clarity regarding several other issues. *See Exhibit 15.*

74. Malden responded to the Supervisor's request in a letter dated March 16, 2021. *A true and accurate copy of a letter from MPS, dated March 16, 2021, is attached hereto as Exhibit 16.*

Mr. Friedman's Request for Reconsideration

75. Mr. Friedman requested that the Supervisor reconsider whether the Original Response was made in a timely fashion on March 12, 2021. *A true and accurate copy of Mr. Friedman's request for reconsideration, dated March 12, 2021, is attached hereto as Exhibit 17.*

76. The Supervisor responded to Mr. Friedman in a letter dated April 23, 2021 ("Determination"). *A true and accurate copy of the letter from the Supervisor dated April 23, 2021, is attached hereto as Exhibit 18.*

77. In her letter dated April 23, 2021, the Supervisor stated, "If the City and school District's Office are scheduled to be closed every Friday, it is unclear how the office is closed unexpectedly on Fridays. I find that the City did not meet its burden to prove that the City and School District's offices continue to be closed unexpectedly every Friday." *See Exhibit 18.*

Malden's Request for Reconsideration

78. In a letter dated May 7, 2021, Malden requested that the Supervisor reconsider her Determination on the grounds that Malden's Original Response was timely, that the records sought in the Request were protected by State and Federal Law and that the Request was intended to harass Malden. Malden also requested a hearing and extension of time to respond to the Request. *A true and accurate copy of the letter from Malden dated May 7, 2021, is attached hereto as Exhibit 19.*

79. Specifically, Mr. Friedman's request was to harass as Mr. Friedman instituted litigation at the Bureau of Special Education Appeals ("BSEA") in September 2019 against Malden. He has instituted at least four BSEA cases against Malden.

80. Two of the cases involve records requests and some of the records requested will be subsumed within this request and thus subject to the litigation privilege.

81. Mr. Friedman has filed several Open Meeting Law complaints.

82. Mr. Friedman has appealed a BSEA decision in which he did not prevail to the Federal District Court of Massachusetts.

83. Since initiating litigation at the BSEA and the Request for Reconsideration from Malden, Mr. Friedman has made 159 public records requests. Mr. Friedman has individually and through his organization Open Malden filed 139 appeals, which equates to approximately 4 appeals per

month, or more than one per calendar week. Mr. Friedman's requests constitute 20% of the public records requests to Malden since January 1, 2019.

84. Mr. Friedman did not seek to focus his requests on a specific topic in an email. Instead, he just asks for everything from two staff members who worked on his child's case.

85. Furthermore, Malden had noted that federal and state student records regulations prevent it from disclosing emails, even redacted, as emails and calendar entries planning for and discussing a student's special education services from the Director of Special Education and a special education provider are the quintessential type of records, which cannot be disclosed and through multiple releases could lead to disclosure of personally identifiable information.

86. Mr. Friedman responded to Malden's request for reconsideration on May 13, 2021. *A true and accurate copy of Mr. Friedman's letter dated May 13, 2021 is attached hereto as Exhibit 20.*

87. In a letter dated June 1, 2021, the Supervisor declined Malden's request to reconsider her Determination or schedule a hearing. *A true and accurate copy of the letter from the Supervisor dated June 1, 2021, is attached hereto as Exhibit 21.*

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

88. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 87 of this Verified Complaint as if each were set forth here and in their entirety.

89. The Supervisor's Determination is:

i. In violation of constitutional provisions;

ii. In excess of the statutory authority or jurisdiction of the Supervisor;

iii. Based upon an error of law;

iv. Made upon unlawful procedure;

v. Unsupported by substantial evidence; and

vi. Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

90. The Supervisor's Determination exceeds the Supervisor's statutory authority, is arbitrary or capricious, an abuse of discretion, and otherwise not in accordance with law and fundamental fairness.

91. 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.

92. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that:

a. the Original Response was made in a timely fashion and therefore Malden may charge a fee to produce the records sought in the Request;

b. the Request was intended to harass Malden; and

c. the Request seeks student records that are protected by state and federal law.

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

93. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 92 of this Verified Complaint as if each were set forth here and in their entirety.

94. The Public Records Appeal process before the Supervisor regarding the Original Response constitute a judicial or quasi-judicial proceeding.

95. 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 experiencing.

96. 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 $175,400.00 to produce the records sought in the Request, because it is being forced to produce records that are protected by

state and federal law, and is being forced to respond to a public records request designed to harass Malden.

97. 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.

98. The Court should issue an injunction preventing the Supervisor of the Secretary from taking any action to enforce her Determination.

99. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that:

a. the Original Response was made in a timely fashion and therefore Malden may charge a fee to produce the records sought in the Request;

b. the Request was intended to harass Malden; and

c. the Request seeks student records that are protected by state and federal law.

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

100. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 99 of this Verified Complaint as if each were set forth here and in its entirety.

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

102. Malden was therefore entitled to request fees from Mr. Friedman to complete its production of records in response to the Request.

103. The Request seeks student records that are protected by state and federal law.

104. The Request was intended to harass Malden.

105. The Supervisor's Determination reflects a continuing dispute and actual controversy between the parties within the meaning of M.G.L. c.231A.

106. Malden seeks and is entitled to a binding declaration of right, duty, status and other legal relations within the meaning of M.G.L. c. 231A, § 1 in the manner herein described.

107. Malden respectfully requests that this Honorable Court declare that:

a. the Original Response was made in a timely fashion and therefore Malden may charge a fee to produce the records sought in the Request;

b. the Request was intended to harass Malden; and

c. the Request seeks student records that are protected by state and federal law.

WHEREFORE, Plaintiff respectfully requests that the Court award the following relief:

1. Set aside the Supervisor's Determination;
2. Issue a stay, under G. L. c. 30A, § 14(3), of the production of any records by Malden in response to the Request
3. Issue an injunction, under G. L. c. 249, § 4, ordering the Supervisor of the Secretary not to take any action to enforce the Determination;
4. Modify the Supervisor's Determination to reflect that:
   a. the Original Response was made in a timely fashion and therefore Malden may charge a fee to produce the records sought in the Request;
   b. the Request was intended to harass Malden; and
   c. the Request seeks student records that are protected by state and federal law.
5. Grant such other relief as is just and equitable.

Respectfully submitted by
Malden Public Schools
By its Attorneys

Felicia Vasudevan, Esq., BBO #687463
Kevin S. Freytag, Esq., BBO #667860
MURPHY, HESSE, TOOMEY & LEHANE, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169
Telephone: (617) 479-5000
fvasudevan@mhtl.com
kfreytag@mhtl.com

Dated: July 1, 2021

VERIFICATION

I, John Oteri, former Superintendent of the Malden Public Schools, do hereby declare that I have read the above Verified Complaint and attest to the truthfulness and accuracy of the forgoing.

Signed this 30th, day of June 2021, under the pains and penalties of perjury.

John Oteri
Superintendent of the Malden Public Schools

1264455

EXHIBIT 1

City of Malden
MASSACHUSETTS

www.cityofmalden.org

Gary Christenson, Mayor

CITY OF MALDEN
DECLARATION OF EMERGENCY
EFFECTIVE Wednesday, March 18, 2020

WHEREAS, the 2019 novel Coronavirus (COVID-19) has been declared a Public Health Emergency of international concern by the World Health organization; and

WHEREAS, on March 10, 2020, the Governor of the Commonwealth of Massachusetts has declared a State of Emergency to respond to COVID-19 and has determined that immediate public action is needed to prevent, minimize, or mitigate damage to public health, safety or general welfare of people of the Commonwealth; and,

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency due to the evolving COVID-19 situation and has directed the agencies of the national government to take appropriate actions; and

WHEREAS, the ongoing transmission of COVID-19 can be expected to greatly impact the health and welfare of residents of the City of Malden; and,

WHEREAS, the Mayor of the City of Malden, in consultation with the City's Health Department and Emergency Management Director, has determined that COVID-19 poses a present, reasonable and imminent danger to public health, safety, or general welfare of the people of Malden so that it has become necessary for the Mayor, with such assistance and staff as he deems necessary, to utilize and coordinate the services, equipment, supplies, and facilities of existing departments, offices, and agencies or the community, both locally, regionally, statewide and nationally, if necessary, including the taking of ordinary and extraordinary actions for the purposes of emergency management and emergency functions to protect the public; and,

WHEREAS, immediate action is needed to prepare for, respond to and minimize or mitigate damage to public health, safety, or general welfare of the people of the City of Malden; and,

WHEREAS, a Declaration of Emergency will create a mechanism to facilitate and expediate the use of resources to protect from the impacts of the spread of COVID-19, including but not

limited to emergency expenditures pursuant to M.G.L. c. 44, §31 and will allow for the ability to obtain whatever resources may become available to the City of Malden to address the public health and safety crisis; and,

NOW THEREFORE, I, Mayor Gary Christenson, hereby declare that as of Wednesday, March 18th, 2020 a State of Emergency is declared to exist in the City of Malden. This Declaration of Emergency shall remain in effect until notice is given that the conditions leading to this State of Emergency no longer exist.

GARY CHRISTENSON
Mayor, City of Malden

DATED: March 18, 2020

EXHIBIT 2

City of Malden
MASSACHUSETTS

www.cityofmalden.org

Gary Christenson, Mayor

To: City Staff
From: Mayor Gary Christenson
Date: July 31, 2020
Re: City Hall Reopening Plan

There is no doubt that the past several months have been trying times for all of us. First, I want to thank each of you for your commitment to continuing to deliver first rate city services to our residents using every means possible during this pandemic. While we continue to be vigilant, I'm cautiously optimistic that we have set a good foundation for moving forward on a path to the "new normal" while continuing to put public health first.

As you know, we began the process of reopening city offices on June 1st with the return of staff on a modified basis. On **August 17th**, we will begin **"Phase 2"** of that process, with "Phase 3" anticipated to follow when public health conditions permit.

The Present to August 14th, Office Staffing Remains as per Phase 1 with no Public Access to City Hall

Employees should continue to follow the staffing guidelines set with Phase 1 for City Hall, as follows:

Offices with largely open workspaces (Treasurer, Controller, City Clerk, Assessor, Human Resources, Engineering, Inspectional Services):

- Department Heads full time in the office
- Staff works split shifts with at least 50% of staff in the office physically
- Department Heads should coordinate with Human Resources to make any adjustments and accommodations for employees based upon pre-existing conditions, or age-based vulnerabilities

Offices with largely private or separated workspaces or are considered essential to COVID19 response (Mayor's Office, Board of Health, Legal Department, Parking Admin, Cemetery Admin, Veteran Services, City Council, Information Technology, Senior Center):

- Department Heads full time in the office
- Staff full time in the office
- Department Heads should coordinate with Human Resources to make any adjustments and accommodations for employees based upon pre-existing conditions, or age-based vulnerabilities

Offices that largely perform work outside of the workplace (Department of Public Works, Public Facilities, Cemetery Staff, Parking Staff):

- Department head full time in the office
- Staff returns to a full work schedule with restrictions (i.e. number of people in a vehicle, etc.)
- Department Heads should coordinate with Human Resources to make any adjustments and accommodations for employees based upon pre-existing conditions, or age-based vulnerabilities

Please note that these are minimum guidelines and that Department Heads may use their discretion in determining the staffing needs of their Department as long as all safety and social distancing protocols are in place.

Internal Meetings:
Internal meetings may be conducted via Zoom calls or in person provided social distancing protocols are strictly followed.

Department Direction:
Any employee working remotely MUST make arrangements to have their office phone forwarded such that calls are answered as they would be in the office. Allowing all calls to go to voicemail to return later is not acceptable.

Where typical daily work is greatly reduced due to the lack of public presence (for example, the Library, Senior Center, Teen Center, Recreation Department, etc.), the Director shall determine value added work to be performed by the staff while the buildings and programming remains closed to the public. Departments should take advantage of the opportunity to perform tasks difficult to find time for, including filing and archiving, readying for a move, etc.

Phase 2 Begins August 17th, Office Staffing Remains as per Phase 1 with City Hall Reopening by Appointment Only

City Hall access to the public is re-established, following a modified schedule as outlined below.

- Employees working either in the office or remotely will work a modified schedule as follows:
    - **Monday, Wednesday and Thursday 7:45am to 5:00pm**
    - **Tuesday 7:45am to 7pm**
    - **Closed on Friday**

  The time from 7:45am to 8:00am each morning should be used to complete the cleaning protocols for each Department.

- On August 17th, we will begin serving the public 'by appointment.'
    - Residents should still be encouraged/required to conduct business online to the greatest extent possible so as to limit the in-person business to that which must be conducted in person.
    - Each department must maintain a log of appointments scheduled in 15-minute increments during the above outlined hours. Only one appointment per time block shall be scheduled for any individual department.
    - All members of the public entering City Hall will be welcomed by a greeter. The greeter will gather contact information for the visitor and ensure that they have an appointment by contacting the individual department. Only if a time slot is available will a walk-in be permitted.

- Greeters will ensure that visitors have face coverings and will have a supply to provide should that not be the case. The greeter will also provide hand sanitizer for the visitor to use prior to proceeding to the office where they are conducting business.

Office Modifications and Safety Policies:

- Each office has been outfitted with plexiglass dividers separating the public being served from the staff.
- Each workstation will have an extra plexiglass divider installed between the workstations. This is expected to be completed within 3 weeks and prior to all staff being required to return to the office.
- Floor markings are being installed at public facing departments to encourage appropriate social distancing when city hall does reopen to the public unrestricted.
- Each Department Head should make sure they have a supply of the following on hand at all times:
    - Face masks, hand sanitizer, gloves, sanitizing wipes.

Supplies may be secured through the Public Facilities Department.

Cleaning Protocols:

- Each individual department shall be responsible for the cleaning of personal workspaces and general office areas.
    - Personal workspaces, phones, keyboards, etc. shall be cleaned by the employee at least once per day.
    - Common areas within the individual department, including but not limited to shared copiers, doorknobs, service counters, etc. shall be cleaned at least twice per day.
- Common areas within the building will be handled by Public Facilities as follows:
    - Elevator buttons, doorknobs, restroom and kitchenettes and other similar high touch common areas will be cleaned by public facilities at least twice a day.
- Vehicles utilized by departments shall be disinfected between users by the users; vehicles shall be limited to single occupancy to the greatest extent possible.

General Health Guidelines, All Departments

Employees must:

- Wash hands or sanitize hands often.
- Stay 6 feet apart from others.
- Wear a face covering when you cannot stay 6 feet apart.
- Avoid sharing of office materials and disinfect between use.
- Minimize use of confined spaces, such as an elevator, to one or two people at a time and wear a face covering.
- Be vigilant for symptoms.
- Stay home when you feel sick.

The greatest impact we can have on preventing the spread of this virus is by doing our part when exhibiting any symptoms. As such, employees shall NOT report to work if any of the following symptoms exist or have within the prior 24 hours.

- Temperature above 99.4 degrees
- Shortness of breath or difficulty breathing
- Cough or sore throat

- Muscle pain or body aches
- Chills
- New loss of taste or smell
- Nausea, vomiting or diarrhea

Employees unable to work for any of the above reasons should seek medical attention and applicable testing. Additionally, employees who have had close contact with an individual diagnosed with COVID-19 or have been asked to self-isolate by their doctor or a health official should contact Human Resources and not report to work until cleared by a medical professional.

Additional Resources:

Issued by the Massachusetts Department of Public Health (DPH):

- Frequently Asked Question about COVID-19
- COVID Prevention and Treatment

Issued by the Center for Disease Control and Prevention (CDC):

- How COVID-19 Spreads
- How to Protect Yourself and Others
- Importance of Social Distancing
- Wearing a Mask

EXHIBIT 3

Malden, MA
Public Record Request Number:2020-0214
Requester: Bruce Friedman
Request Date:Thursday, September 24, 2020 9:08:08 AM
Response Due Date: Wednesday, October 14, 2020

Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

Malden, MA
Public Record Request Number:2020-0213
Requester: Bruce Friedman
Request Date: Thursday, September 24, 2020 8:58:57 AM
Response Due Date:Wednesday, October 14, 2020

Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

Malden, MA
Public Record Request Number:2020-0212
Requester: Bruce Friedman
Request Date: Thursday, September 24, 2020 8:57:00 AM
Response Due Date: Wednesday, October 14, 2020

Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

EXHIBIT 4

From:	Bruce Friedman
To:	SEC-DL-PREWEB
Cc:	ab; Greg Lucey; Brian DeLacey
Subject:	Re: Request for Appeal - Timeliness
Date:	Thursday, October 8, 2020 6:07:44 PM
Attachments:	2020-0212.pdf
Importance:	High

On 9/24/2020, the City of Malden received the following request from on their official FOIA request submission portal, https://www.townforms.com/FOIADirect-MaldenMACitizens/Public/Request/PublicRequest.aspx?ch=dabae301a899d4d745d5501b3f9ee5e1

"Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information."

As of today, the request is overdue, the request was due on 10/8/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond withing the legally required 10 business days.

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: ***"Section 10. (a) 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-sixth 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..."***

MGL Chapter 183B, Section 2: ""Business day", any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated."

209 CMR 32.02: "...all calendar days except Sundays and legal federal public holidays and any legal holiday under the laws of the Commonwealth."

The original request and response are hereto attached.
Kindest Regards,
Bruce Friedman

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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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Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.	8	Street	Marvin
City	Malden	State	MA
Zip	02148-____	Email	ab@amyandbruce.com
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]

Request Detail

Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

Request Documents

No Document.

Response Details

Response

Response Documents
No Document.

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From: Bruce Friedman
To: SEC-DL-PREWEB
Cc: ab; Greg Lucey; Brian DeLacey
Subject: Request for Appeal - Timeliness
Date: Thursday, October 8, 2020 6:08:26 PM
Attachments: 2020-0213.pdf
Importance: High

On 9/24/2020, the City of Malden received the following request from on their official FOIA request submission portal, https://www.townforms.com/FOIADirect-MaldenMACitizens/Public/Request/PublicRequest.aspx?ch=dabae301a899d4d745d5501b3f9ee5e1

"Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information."

As of today, the request is overdue, the request was due on 10/8/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond withing the legally required 10 business days.

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: ***"Section 10. (a) 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-sixth 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..."***

MGL Chapter 183B, Section 2: ""Business day", any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated."

209 CMR 32.02: "...all calendar days except Sundays and legal federal public holidays and any legal holiday under the laws of the Commonwealth."

The original request and response are hereto attached.
Kindest Regards,
Bruce Friedman

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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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Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.	8	Street	Marvin
City	Malden	State	MA
Zip	02148-____	Email	ab@amyandbruce.com
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]

Request Detail

Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

Request Documents

No Document.

Response Details

Response

Response Documents
No Document.

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From:	Bruce Friedman
To:	SEC-DL-PREWEB
Cc:	ab; Greg Lucey; Brian DeLacey
Subject:	Re: Request for Appeal - Timeliness
Date:	Thursday, October 8, 2020 6:09:18 PM
Attachments:	2020-0214.pdf
Importance:	High

On 9/24/2020, the City of Malden received the following request from on their official FOIA request submission portal, https://www.townforms.com/FOIADirect-MaldenMACitizens/Public/Request/PublicRequest.aspx?ch=dabae301a899d4d745d5501b3f9ee5e1

"Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

As of today, the request is overdue, the request was due on 10/8/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond withing the legally required 10 business days.

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MGL Chapter 183B, Section 2: ""Business day", any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated."

209 CMR 32.02: "...all calendar days except Sundays and legal federal public holidays and any legal holiday under the laws of the Commonwealth."

The original request and response are hereto attached.
Kindest Regards,
Bruce Friedman

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.	8	Street	Marvin
City	Malden	State	MA
Zip	02148-____	Email	ab@amyandbruce.com
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

Request Documents

No Document.

Response Details

Response

Response Documents
No Document.

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EXHIBIT 5

MALDEN PUBLIC SCHOOLS
77 Salem Street, Malden, MA 02148
Phone: 781-397-6100 Fax: 781-397-7276
www.maldenps.org

John Oteri, M.Ed.
Superintendent of Schools

Kelly Chase, Ed.D.
Pamela MacDonald, C.A.G.S.
Assistant Superintendents of Schools

October 14, 2020

BY E-MAIL

Bruce Friedman
20 Richard Street
Malden, MA 02148

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:
(1) Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.
(2) Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.
(3) Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

In terms of your first request, the Malden Public Schools ("Malden") has approximately sixty thousand ninety-four emails that are consistent with your request. For your second request, there are twenty thousand eight hundred forty emails that are consistent with your request. Malden does not have any documents responsive to your third request.

To comply with your request, Malden will need to redact and segregate the records as they contain emails between Malden and its attorneys. The Supreme Judicial Court stated that a

governmental entity may assert attorney-client privilege to protect documents against disclosure where they contain communications between lawyer and client for purpose of obtaining legal advice. Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt., 449 Mass. 444 (2007). Email communications between Malden and its attorneys were not shared with the public and were shared in confidence. There was no waiver of the privilege. They thus must be redacted or segregated in their entirety. "The privilege enable[s] clients to make full disclosure to legal counsel of all relevant facts, no matter how embarrassing or damaging these facts might be, so that counsel may render fully informed legal advice." Suffolk, 449 Mass. At 449.

Beyond attorney-client privilege, the records are subject to other exemptions that would need to be reviewed and segregated. In Champa v. Weston Public Schools, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon two different disclosure Exemptions, Exemption (a) (which protects from disclosure records that are "... specifically or by necessary implication exempted from disclosure by statute," MGL c. 4, § 7(26)(a)), and Exemption (c) (which protects from disclosure, among other things, "... materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy").

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). Further, given the well-settled right to privacy enjoyed by public school students and the fact that the settlement agreement at issue contained information that would specifically identify the special education student who was the subject of the agreement, the Champa court held that the agreement was protected from disclosure under the Public Records Law based upon Exemption (c). While Exemptions (a) and (c) each independently exempted the agreement from the definition of a public record, the Champa court nonetheless ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court "... regarding the necessary and appropriate redactions of personally identifying information to be made ..." 473 Mass. at 98-99.

Further explaining 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 first clause of the privacy exemption, the Supreme Judicial Court has held that "[w]hile the precise contours of the legislative term "personnel [file] or information" may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information

that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption 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).

Like the agreement at issue in Champa, emails and the calendars of Mr. Wood and Ms. Cushinsky contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming or would reveal identity from personnel records, which warrants non-disclosure under Exemption (c). These emails and calendars relate to the educational services and programming that is provided to students, especially special education students, and thus should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure. Additionally, since Mr. Wood was an administrator, your request may implicate personnel information, which will need to be segregated. Personnel information is not subject to redaction, as records which fall into the above-referenced "core categories of personnel information" may be withheld in their entirety. Wakefield, 431 Mass. at 799 ("Information falling within the 'personnel and medical files or information' category is absolutely exempt from disclosure.").

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (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. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds $25 per hour. Notwithstanding that rate, a rate of $25 per hour will be used to calculate the following fee estimate.

It will take approximately 7,020 hours to search, segregate and redact all of the records that you have requested. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

Seven Thousand Sixteen hours multiplied by $25 per hour yields a fee estimate of $175,400. Furthermore, please be advised that the actual fee to produce these records may vary based on the actual time needed to review these records. We will not begin to review the records which we have initially been compiled until we receive a check in the amount of $175,400.

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
Records Access Officer

EXHIBIT 6

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

Rebecca S. Murray
Supervisor of Records

October 21, 2020
SPR20/1941; SPR20/1942; SPR20/1943

Greg Lucey
Malden City Clerk's Office
166 Main Street, 1st Floor
Brockton, MA 02301

Dear Mr. Lucey:

I have received the petitions of Bruce Friedman appealing the nonresponse of the Malden City Clerk's Office (Office) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Friedman requested various documents in possession of the Office. Having received no response, the requestor petitioned this office.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4 § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Order

Despite being notified of the opening of these appeals from a member of the Public Records Division staff, no response has been provided. Accordingly, the Office is ordered to

provide Bruce Friedman with a response to the requests, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

EXHIBIT 7

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

Felicia Vasudevan, Esq.
fvasudevan@mhtl.com

October 22, 2020

VIA EMAIL AND FIRST-CLASS MAIL

Vinayak Kapoor
Public Record Division
Commonwealth of Massachusetts
One Ashburton Place, Room 1719
Boston, MA 02108

RE: Response to Appeal in SPR20/1941, SPR20/1942, SPR20/1943

Dear Attorney Kapoor:

This office represents the Malden School Department ("Malden") in connection with the appeals in SPR20/1941, SPR20/1942, and SPR20/1943. I am writing to respond to the appeals of Bruce Friedman ("Mr. Friedman"). Malden timely responded to Mr. Friedman's requests.

The Public Records Law states that "[w]hile a records access officer must respond to a request for public records within 10 business days, a business day does not include a weekday where a custodian's office is unexpectedly closed." M.G.L. c. 66 § 10(a); 950 C.M.R 32.02; see also SPR20/589 (concluding that closure due to COVID did not constitute business days).

Typically, the city of Malden's offices are open on Fridays. Effective the week of August 17, 2020, the Mayor, exercising his emergency powers during the pandemic, altered City Hall hours to afford one day, Friday, to deep clean City facilities. As a result, City buildings are unexpectedly closed on Fridays. These closures were unexpected and due to the pandemic. Consequently, Fridays do not constitute business days as they are a day where the custodian's office is unexpectedly closed.

Mr. Friedman filed all three public records requests in this matter on Thursday, September 24, 2020. Malden responded to all three requests on Wednesday, October 14, 2020. Excluding Saturday, Sunday, the public holiday of Columbus days and the Fridays when City offices are unexpectedly closed, Malden's response was timely and within ten business days.

Thank you for your consideration of this matter.

Very truly yours,

Felicia Vasudevan

cc: Attorney Fallon, City of Malden (via email only)
Bruce Friedman, Requestor (via first-class mail)
Superintendent Oteri, Malden Public Schools (via email only)

1238986v1

EXHIBIT 8

Robertson, Jack (SEC)

From: Bruce Friedman <Bruce@AmyAndBruce.com>
Sent: Wednesday, October 21, 2020 6:06 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1941 (Malden 2020-0212)
Attachments: 2020-0212-.pdf

Importance: High

Greetings:

Please accept this email as a formal request for appeal of the City of Malden's "response" to the attached request.

On 09/24/2020 at 08:57 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information."

This request was due on or before the close of business October 8, 2020 as calculated by Mr. Benjamin Chan of your office:

> From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
> Date: Thursday, October 8, 2020 at 8:59 AM
> To: Bruce Friedman <Bruce@AmyAndBruce.com>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
> Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
> Subject: Re: Request for Appeal - Timeliness
> Good Morning Mr. Friedman,
>
> In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.
>
> If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.
>
> Very Respectfully,
> Benjamin
>
> Benjamin Chan
> Office of the Secretary of the Commonwealth
> Public Records Division
> One Ashburton Place, Room 1719
> Boston, MA 02108
> 617-727-2832

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1941 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

I was able to find the response on their website which is attached to the original request attached to this email.

The "answer" is deficient in many ways, including

- **not specifically addressing each request independently (The "answer" to each of the three requests is the identical co-mingled answer),**
- **they failed to specifically account for the individual requests in calculating the number of emails,**
- **they failed to specify the amount of time required for each request for each email to segmenting and redacting.**

- **They failed to provide the names and verification that the lowest paid employee capable of segmenting and redacting**

This request was received by the City of Malden as #2020-0212 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of $175,400.00. This estimate fails to comply with Public Records Law in a number of ways.

It is my understanding that the Commonwealth defines a business day as M-F excluding state holidays. Further, it is my understanding "if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request ... in a manner consistent with 950 CMR 32.06(2)(i) and (4)."

Based on my calculation and that of Mr. Benjamin Chan of your office and the Order of your office today, the city had a "tenth day" obligation to respond to my request by 10/08/20. I did not receive an acceptable response from the city according to the "tenth business day rule".

As the Secretary of State's office makes clear, "it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)".

I hereby submit this appeal to your office for appropriate Orders to compel the City of Malden to comply with FOIA and the Commonwealth's regulations.

Please feel free to contact me for any reason.

- **Bruce Friedman**

From: Bruce Friedman <Bruce@AmyAndBruce.com>
Date: Wednesday, October 21, 2020 at 5:36 PM
To: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>, glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: SPR20/1941,42,43 Determination

Greetings:

Thank you for your responsiveness to this matter. Unfortunately The City has again failed to live up to it's responsibilities. Upon examining the requests on their website (Attached FOIA REQUESTS.PDF), the following "Answers" appear though their status shows as "completed, not sent".

SPR-20-1941 (Malden FOIA Number 2020-0212) – Attached

SPR-20-1942 (Malden FOIA Number 2020-0213) – Attached

SPR-20-1943 (Malden FOIA Number 2020-0214) – Attached

Obviously they failed to copy you as well.

I will have to appeal the nature of their "responses" immediately and those appeals will follow tonight.

Kindest Regards,

- Bruce Friedman

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Date: Wednesday, October 21, 2020 at 4:45 PM
To: glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman <Bruce@AmyAndBruce.com>
Subject: SPR20/1941,42,43 Determination

Hello,

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

Vinayak Kapoor
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Email: Vinayak.Kapoor@sec.state.ma.us

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.

EXHIBIT 9

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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

Shirley Dorai
Records Access Officer
Malden Public Schools
77 Salem Street
Malden, Ma 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of Malden Public Schools (the District) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Friedman requested:

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...
(2) ...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...
(3) ...all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

In its October 14, 2020 response, the District provided a fee estimate totaling $175,400 for the production of responsive records, and indicated that such records may be redacted pursuant to Exemptions (a) and (c) of the Public Records Law. Unsatisfied with the District's fee estimate, Mr. Friedman petitioned this office and this appeal, SPR20/2044, was opened as a result.

Fee Estimates

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

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 two (2) 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 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 under a petition under G. L. c. 66, § 10(d)(iv). G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

The District's Fee Estimate

In its October 14th fee estimate, the District states that it has identified 60,094 emails responsive to the first request, and 20,840 emails responsive to the second. The District states that it does not possess any records responsive to the third request. The District estimates it will require approximately 7,020 hours "to search, segregate and redact" these records.

Fees to search for, compile, segregate, redact or reproduce a record request

The Regulations provide that in cases where it is necessary to reproduce the requested records, a records access officer (RAO) may charge a fee to search for, compile, segregate, redact or reproduce a record requested based on the hourly rate of the lowest paid employee who is capable of performing the task. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.07(2). Additionally, the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record. Id.

In its estimate, the District indicates that the requested records contain information that is subject to redaction pursuant to Exemptions (a) and (c) of the Public Records Law, as well as the common law attorney-client privilege. The District states that the records include "emails

between Malden and its attorneys" that "were not shared with the public and were shared in confidence." The District additionally explains that the records "relate to the educational services and programming that is provided to students, especially special education students," and asserts therefore that the records "should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure." The District also asserts that the records "contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming" which is exempt under Exemption (c).

Based on the District's response I find that the District has demonstrated that the requested records are likely to contain information for which redaction is required by law. Accordingly, the District may charge for time spent redacting this information.

In its response, the District states that "[i[t will take approximately 7,020 hours to search, segregate and redact all of the records that you have requested." Despite the District's response, I find it is unclear how it arrived at the 7,020 hour figure. The District must clarify how much time it expects to spend searching for and segregating responsive records, reviewing for redactions, and producing copies, and how it arrived at this estimate.

Compliance with G.L. c. 66, § 10(e)

In his appeal petition, Mr. Friedman indicates that he submitted his requests on September 24, 2020, and received the fee estimate from the District on October 14, 2020.

The District may not be permitted to charge fees associated with the records request if the District did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2)(c). Based on Mr. Friedman's petition, it is uncertain whether the District complied with G. L. c. 66, § 10(e) when responding to this request. Therefore, I find the District must demonstrate whether it responded to the records request within ten business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).

For the reasons discussed above, I find the District must revise its fee estimate or provide further explanation of how the fee assessed in its October 14, 2020 estimate is consistent with G. L. c. 66, § 10(d).

Conclusion

Accordingly, the District is ordered to provide Mr. Friedman with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this

office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

EXHIBIT 10

MALDEN PUBLIC SCHOOLS
77 Salem Street, Malden, MA 02148
Phone: 781-397-6100 Fax: 781-397-7276
www.maldenps.org

John Oteri, M.Ed.
Superintendent of Schools

Kelly Chase, Ed.D.
Pamela MacDonald, C.A.G.S.
Assistant Superintendents of Schools

November 30, 2020

BY E-MAIL

Bruce Friedman
bruce@amyandbruce.com

Re: Public Records Request dated September 24, 2020/SPR20/2044

Dear Mr. Friedman:

Please see the revised response in accordance with SPR20/2044. We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

(1) Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

(2) Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

(3) Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

In terms of your first request, the Malden Public Schools ("Malden") has approximately sixty thousand ninety-four emails that are consistent with your request. For your second request, there are twenty thousand eight hundred forty emails that are consistent with your request. Malden does not have any documents responsive to your third request.

To comply with your request, Malden will need to redact and segregate the records as they contain emails between Malden and its attorneys. The Supreme Judicial Court stated that a governmental entity may assert attorney-client privilege to protect documents against disclosure where they contain communications between lawyer and client for purpose of obtaining legal advice. Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt., 449 Mass. 444 (2007). Email communications between Malden and its attorneys were not shared with the public and were shared in confidence. There was no waiver of the privilege. They thus must be redacted or segregated in their entirety. "The privilege enable[s] clients to make full disclosure to legal counsel of all relevant facts, no matter how embarrassing or damaging these facts might be, so that counsel may render fully informed legal advice." Suffolk, 449 Mass. At 449.

Beyond attorney-client privilege, the records are subject to other exemptions that would need to be reviewed and segregated. In Champa v. Weston Public Schools, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon two different disclosure Exemptions, Exemption (a) (which protects from disclosure records that are "... specifically or by necessary implication exempted from disclosure by statute," MGL c. 4, § 7(26)(a)), and Exemption (c) (which protects from disclosure, among other things, "... materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy").

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). Further, given the well-settled right to privacy enjoyed by public school students and the fact that the settlement agreement at issue contained information that would specifically identify the special education student who was the subject of the agreement, the Champa court held that the agreement was protected from disclosure under the Public Records Law based upon Exemption (c). While Exemptions (a) and (c) each independently exempted the agreement from the definition of a public record, the Champa court nonetheless ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court "... regarding the necessary and appropriate redactions of personally identifying information to be made ..." 473 Mass. at 98-99.

Further explaining 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 first clause of the privacy exemption, the Supreme Judicial Court has held that "[w]hile the precise contours of the legislative term "personnel [file] or information" may require case-by-case articulation, it includes, at a minimum, employment applications, employee work

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption 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).

Like the agreement at issue in Champa, emails and the calendars of Mr. Wood and Ms. Cushinsky contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming or would reveal identity from personnel records, which warrants non-disclosure under Exemption (c). These emails and calendars relate to the educational services and programming that is provided to students, especially special education students, and thus should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure. Additionally, since Mr. Wood was an administrator, your request may implicate personnel information, which will need to be segregated. Personnel information is not subject to redaction, as records which fall into the above-referenced "core categories of personnel information" may be withheld in their entirety. Wakefield, 431 Mass. at 799 ("Information falling within the 'personnel and medical files or information' category is absolutely exempt from disclosure.").

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (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. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds $25 per hour. Notwithstanding that rate, a rate of $25 per hour will be used to calculate the following fee estimate.

It will take approximately 7,020 hours to search, segregate and redact all of the records that you have requested. The District needs to review every email outlined. The District estimates that it will take 5,175 hours to review the emails in your first request and 1845 hours for your second request. The estimate is based on five minutes per email, with additional time required for calendar entries. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

Seven Thousand Sixteen hours multiplied by $25 per hour yields a fee estimate of $175,400. Furthermore, please be advised that the actual fee to produce these records may vary based on

the actual time needed to review these records. We will not begin to review the records which we have initially been compiled until we receive a check in the amount of $175,400.

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
School Department

cc: Rebecca Murray, Supervisor of Public Records
(pre@sec.state.ma.us)
Felicia Vasudevan, Attorney for Malden
Greg Lucey, Records Access Officer

EXHIBIT 11

Felicia S. Vasudevan

From: Bruce Friedman <Bruce@AmyAndBruce.com>
Sent: Monday, November 30, 2020 5:31 PM
To: pre@sec.state.ma.us; Puccini, Angela M (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Felicia S. Vasudevan; Brian DeLacey
Subject: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044
Attachments: SPR20_2044 113020 Response.pdf; spr202044.pdf; APPEAL Causing SPR20-2044.pdf; APPEAL Causing SPR20-1941.pdf; spr201941.pdf; City Response 10-14-2020.pdf

Importance: High

Greetings:

Please accept this email as a THIRD formal request for appeal of the City of Malden's "responses" to the attached request.

On 09/24/2020 at 08:57 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information." AND "Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information." AND "Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Chushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

This requests were due on or before the close of business October 8, 2020 as calculated by Mr. Benjamin Chan of your office:

> From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
> Date: Thursday, October 8, 2020 at 8:59 AM
> To: Bruce Friedman <Bruce@AmyAndBruce.com>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
> Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
> Subject: Re: Request for Appeal - Timeliness
> Good Morning Mr. Friedman,
>
> In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.
>
> If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.
>
> Very Respectfully,
> Benjamin
>
> Benjamin Chan
> Office of the Secretary of the Commonwealth
> Public Records Division
> One Ashburton Place, Room 1719
> Boston, MA 02108
> 617-727-2832

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1941 by your office (Attached as APPEAL Causing SPR 20-1941.pdf). On October 21, 2020, your office made an official determination that the City failed to provide a *timely* response and *Ordered them to do so* (Attached as spr201941.pdf).

On October 14, 2020, the City responded with the attached "City Response 10-14-2020.pdf".

On October 22, 2020 Appeal SPR 2020-2044 was opened (Attached as APPEAL Causing SPR 20-2044.pdf).

On November 5, 2020, your office again ordered the City to respond with specificity around several key issues, perhaps none more important than addressing the fee estimate, as the City failed to respond within 10 business days. This Order is attached as "spr202044.pdf".

After several communications from your office provoking the City to properly respond to SPR 2020-2044, the City responded today (11/30/2020) with the attached "SPR20_2044 113020 response.pdf".

If you compare their responses from October 14, 2020 and their response from November 30, 2020, they are nearly identical and do not address the specific findings of your Orders of SPR 2020-2044.

The City is making a mockery of the FOIA process, the timelines dictated and promulgated by the Commonwealth and are failing to follow the law. This request is outstanding from September 24, 2020; FORTY-FIVE business days after the request was filed, we now have a second identical response to the original out-of-time original response of October 14, 2020.

The City's responses are defective, including, but not limited to the following ways:

1. This request was received by the City of Malden as #2020-0212, #2020-0213, and #2020-0212 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of $175,400.00.
2. The Commonwealth defines a business day as M-F excluding state holidays. Further, "if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request ... in a manner consistent with 950 CMR 32.06(2)(i) and (4)."
3. Based on my calculation and that of Mr. Benjamin Chan of your office and the Order of your office, the city had a "tenth day" obligation to respond to my request by 10/08/20. I did not receive an acceptable response from the city according to the "tenth business day rule".
4. As the Secretary of State's office makes clear, "it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)".
5. The City's fee estimate has not explained with specificity why the indicated amount of time is necessary for producing the requested records. The City's fee estimate lacks confirmation that the provided rate of $25 an hour is of the lowest paid employee who is capable of performing the task(s). The City must provide additional information explaining why it takes 7016 hours and if that 7016 hours includes time to search for, compile, segregate, redact, or reproduce records as described under G. L. c. 66, § 10(d)(ii).
6. The City Does not explain why it would be required to search, segregate or redact. If the City is assessing a fee for segregating or redaction, please note that under the Public Records Law, a fee may 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)(ii); 950 C.M.R. 32.06(4). Please note that petitions seeking permission to assess fees must be made within ten business days after receipt of a request for public records. See 950 C.M.R. 32.06(4)(g). The City must provide information about whether the responsive records contain information that is required by law to be segregated or redacted, as well as the applicable statutes, if any. The simple statement that "Redactions are necessary under Exemption (c) privacy/employee record provision (MGL c. 4, Sec. 7, clause 26(c)). In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services."

7. **The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26). It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.**
8. ***A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived. See Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 450 n.9 (2017); see also Hanover Ins. Co. v. Rapa & Jepsen Ins. Servs., 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies).***
9. ***Pursuant to the Public Records Law, in assessing whether a records custodian has properly withheld records based on the claim of attorney-client privilege the Supervisor of Records "shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed." G. L. c. 66, § 10A(a).***

I hereby submit this THIRD appeal to your office for appropriate Orders to compel the City of Malden to comply with FOIA and the Commonwealth's regulations.

Please feel free to contact me for any reason.

- **Bruce Friedman**

From: Dorai, Shirley <sdorai@maldenps.org>
Date: Monday, November 30, 2020 at 4:14 PM
To: Bruce Friedman <Bruce@AmyAndBruce.com>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalden.org>
Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,
Shirley Dorai
Executive Assistant to the Superintendent
and School Committee Clerk
Malden Public Schools
77 Salem Street, Room H104
Malden, MA 02148
Phone: 781-397-6100 Ext 2201
Fax: 781-397-7276
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EXHIBIT 12

Felicia S. Vasudevan

From: Felicia S. Vasudevan
Sent: Wednesday, December 02, 2020 1:58 PM
To: 'Bruce Friedman'; pre@sec.state.ma.us; Puccini, Angela M (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Kenneth Rossetti; John Oteri
Subject: RE: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044

To Whom It May Concern:

Please find this as Malden's formal response to this email. First, Mr. Friedman emailed the Supervisor on Monday, November 30, 2020 alleging that we had not provided a response in SPR20/1941,42, 43. However, as Mr. Friedman's own timeline acknowledges, he was aware that we had responded on October 14, 2020.

Mr. Friedman appealed our October 14, 2020 response. Mr. Friedman recycles the same arguments that he raised in the initial appeal. In SPR20/2044, the Supervisor rejected most of those arguments and agreed that the records were likely to require redactions and that Malden may charge for time spent redacting the information. The order required Malden to further explain how the fee was assessed. As a result of that order, Malden explained that each email will need to be reviewed. It added the amount of time to review each email and the total amount of hours per request. This change was all that was required by the Supervisor's order and thus fulfilled Malden's obligation. Malden was not required to make any other changes to its letter.

Finally, in terms of the timing of the response, the City responded about the ten days in emails on October 30th, which copied the Supervisor.

Please let me know if you need me to provide any further information.

Felicia

From: Bruce Friedman [mailto:Bruce@AmyAndBruce.com]
Sent: Monday, November 30, 2020 5:31 PM
To: pre@sec.state.ma.us; Puccini, Angela M (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Felicia S. Vasudevan; Brian DeLacey
Subject: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044
Importance: High

Greetings:

Please accept this email as a THIRD formal request for appeal of the City of Malden's "responses" to the attached request.

On 09/24/2020 at 08:57 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information." AND "Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information." AND "Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they

exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Chushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

This requests were due on or before the close of business October 8, 2020 as calculated by Mr. Benjamin Chan of your office:

> From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
> Date: Thursday, October 8, 2020 at 8:59 AM
> To: Bruce Friedman <Bruce@AmyAndBruce.com>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
> Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
> Subject: Re: Request for Appeal - Timeliness
> Good Morning Mr. Friedman,
>
> In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.
>
> If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.
>
> Very Respectfully,
> Benjamin
>
> Benjamin Chan
> Office of the Secretary of the Commonwealth
> Public Records Division
> One Ashburton Place, Room 1719
> Boston, MA 02108
> 617-727-2832

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1941 by your office (Attached as APPEAL Causing SPR 20-1941.pdf). On October 21, 2020, your office made an official determination that the City failed to provide a *timely* response and *Ordered them to do so* (Attached as spr201941.pdf).

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On October 22, 2020 Appeal SPR 2020-2044 was opened (Attached as APPEAL Causing SPR 20-2044.pdf).

On November 5, 2020, your office again ordered the City to respond with specificity around several key issues, perhaps none more important than addressing the fee estimate, as the City failed to respond within 10 business days. This Order is attached as "spr202044.pdf".

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If you compare their responses from October 14, 2020 and their response from November 30, 2020, they are nearly identical and do not address the specific findings of your Orders of SPR 2020-2044.

The City is making a mockery of the FOIA process, the timelines dictated and promulgated by the Commonwealth and are failing to follow the law. This request is outstanding from September 24, 2020; FORTY-FIVE business days after the request was filed, we now have a second identical response to the original out-of-time original response of October 14, 2020.

The City's responses are defective, including, but not limited to the following ways:

1. **This request was received by the City of Malden as #2020-0212, #2020-0213, and #2020-0212 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of $175,400.00.**

2. The Commonwealth defines a business day as M-F excluding state holidays. Further, "if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request ... in a manner consistent with 950 CMR 32.06(2)(i) and (4)."
3. Based on my calculation and that of Mr. Benjamin Chan of your office and the Order of your office, the city had a "tenth day" obligation to respond to my request by 10/08/20. I did not receive an acceptable response from the city according to the "tenth business day rule".
4. As the Secretary of State's office makes clear, "it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)".
5. The City's fee estimate has not explained with specificity why the indicated amount of time is necessary for producing the requested records. The City's fee estimate lacks confirmation that the provided rate of $25 an hour is of the lowest paid employee who is capable of performing the task(s). The City must provide additional information explaining why it takes 7016 hours and if that 7016 hours includes time to search for, compile, segregate, redact, or reproduce records as described under G. L. c. 66, § 10(d)(ii).
6. The City Does not explain why it would be required to search, segregate or redact. If the City is assessing a fee for segregating or redaction, please note that under the Public Records Law, a fee may 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)(ii); 950 C.M.R. 32.06(4). Please note that petitions seeking permission to assess fees must be made within ten business days after receipt of a request for public records. See 950 C.M.R. 32.06(4)(g). The City must provide information about whether the responsive records contain information that is required by law to be segregated or redacted, as well as the applicable statutes, if any. The simple statement that "Redactions are necessary under Exemption (c) privacy/employee record provision (MGL c. 4, Sec. 7, clause 26(c)). In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services."
7. The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26). It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.
8. ***A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived. See Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 450 n.9 (2017); see also Hanover Ins. Co. v. Rapa & Jepsen Ins. Servs., 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies).***
9. ***Pursuant to the Public Records Law, in assessing whether a records custodian has properly withheld records based on the claim of attorney-client privilege the Supervisor of Records "shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed." G. L. c. 66, § 10A(a).***

I hereby submit this THIRD appeal to your office for appropriate Orders to compel the City of Malden to comply with FOIA and the Commonwealth's regulations.

Please feel free to contact me for any reason.

- **Bruce Friedman**

From: Dorai, Shirley <sdorai@maldenps.org>
Date: Monday, November 30, 2020 at 4:14 PM
To: Bruce Friedman <Bruce@AmyAndBruce.com>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalden.org>
Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,
Shirley Dorai
Executive Assistant to the Superintendent
and School Committee Clerk
Malden Public Schools
77 Salem Street, Room H104
Malden, MA 02148
Phone: 781-397-6100 Ext 2201
Fax: 781-397-7276

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EXHIBIT 13

Felicia S. Vasudevan

From: Bruce Friedman <Bruce@AmyAndBruce.com>
Sent: Wednesday, February 24, 2021 9:42 PM
To: pre@sec.state.ma.us; Puccini, Angela M (SEC)
Cc: Brian DeLacey; sdorai@maldenps.org; Felicia S. Vasudevan; Greg Lucey
Subject: SPR 20/2044 - Request for Appeal
Attachments: SPR20_2044 113020 Response.pdf; spr202044.pdf; 2020-0214.pdf; 2020-0212.pdf; 2020-0213.pdf

Importance: High

Greetings:

I am appealing the City's response of 11/30/2020, and asking for a second Order and/or referral to the Attorney General of Massachusetts for non-compliance.

On November 5, 2020, your office issued a determination requiring the City of Malden to respond, they have not.

On November 30, the attached response was received, however the issue of timeliness was completely skirted.

Per the attached Order from your Office, the City was required to provide a response specifically:

> "Compliance with G.L. c. 66, § 10(e)
>
> In his appeal petition, Mr. Friedman indicates that he submitted his requests on September 24, 2020, and received the fee estimate from the District on October 14, 2020.
>
> The District may not be permitted to charge fees associated with the records request if the District did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2)(c).
>
> Based on Mr. Friedman's petition, it is uncertain whether the District complied with G. L. c. 66, § 10(e) when responding to this request. Therefore, I find the District must demonstrate whether it responded to the records request within ten business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).
>
> For the reasons discussed above, I find the District must revise its fee estimate or provide further explanation of how the fee assessed in its October 14, 2020 estimate is consistent with G. L. c. 66, § 10(d)."

The City failed to address this portion of your Order specifically.

The City failed to timely respond to the original request made on September 24, 2020. The original requests are attached.

The City responded on October 14, 2020 as attached, this is 14 business days after the request, the City did not file for an extension.

While the City may segregate and redact per your Order, they are prohibited from charging any fees because they did not respond within 10 business days. They are obligated under your Order to provide responses, and are simply ignoring the Order.

I am asking for a second order and/or referral to the Attorney General of Massachusetts for non-compliance.

Please contact me if you have any questions.

Kindest Regards,

- Bruce Friedman

From: Dorai, Shirley <sdorai@maldenps.org>
Date: Monday, November 30, 2020 at 4:14 PM
To: Bruce Friedman <Bruce@AmyAndBruce.com>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalden.org>
Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,
Shirley Dorai
Executive Assistant to the Superintendent
and School Committee Clerk
Malden Public Schools
77 Salem Street, Room H104
Malden, MA 02148
Phone: 781-397-6100 Ext 2201
Fax: 781-397-7276
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Felicia S. Vasudevan

From: Bruce Friedman <Bruce@AmyAndBruce.com>
Sent: Wednesday, February 24, 2021 9:19 PM
To: Puccini, Angela M (SEC); pre@sec.state.ma.us
Cc: Stair, Joshua (SEC); Greg Lucey; sdorai@maldenps.org; Felicia S. Vasudevan
Subject: SPR20/2044
Attachments: spr202044.pdf; 2020-0214.pdf; 2020-0212.pdf; 2020-0213.pdf

Importance: High

Greetings:

On November 5, 2020, your office issued a determination requiring the City of Malden to respond, they have not.

The City failed to timely respond to the original request made on September 24, 2020. The original requests are attached.

The City responded on October 14, 2020 as attached, this is 14 business days after the request, the City did not file for an extension.

While the City may segregate and redact per your Order, they are prohibited from charging any fees because they did not respond within 10 business days. They are obligated under your Order to provide responses, and are simply ignoring the Order.

I am asking for a second order and/or referral to the Attorney General of Massachusetts for non-compliance.

Please contact me if you have any questions.

Kindest Regards,

- Bruce Friedman

From: Stair, Joshua (SEC) <joshua.stair@state.ma.us>
Date: Friday, November 20, 2020 at 4:54 PM
To: Bruce Friedman <Bruce@AmyAndBruce.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: Compliance Inquiry for SPR20/2044

Hello,

I am writing to follow up regarding your appeal as a response from the City of Malden will be past due as of Monday, November 23rd. Could you confirm that to date you have not received a response? On the assumption you haven't, I will reach out to the custodian regarding the status of the response and the availability of any responsive records for rolling production (to the extent this is applicable to your appeal).

Please note that should you wish to further appeal any response you receive, please email pre@sec.state.ma.us with your appeal number, a copy of the response and what you take issue within the scope of the Public Records Law.

Should you wish to discuss this matter or have any other questions please do not hesitate to contact me.

Joshua Stair
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
(617) 727-2832 (office)
(617) 727-5914 (fax)
http://www.sec.state.ma.us/pre/preidx.htm
A Guide to Public Records Law: https://www.sec.state.ma.us/pre/prepdf/guide.pdf
Review appeal determinations online: http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx

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EXHIBIT 14

Felicia S. Vasudevan

From: Felicia S. Vasudevan
Sent: Tuesday, March 02, 2021 9:28 AM
To: 'Sossavi, Fredson (SEC)'; sdorai@maldenps.org
Cc: SEC-DL-PREWEB; Sullivan, Lori (SEC); Bruce@AmyAndBruce.com; John Oteri; Kathryn M. Fallon; Greg Lucey
Subject: RE: SPR21/0491 Appeal Acknowledgement
Attachments: december 2 2020 email.pdf; october 30 2020 email.pdf; SIGNED PRD Letter dated 10-22-20.PDF

Hi Attorney Sullivan:

I am writing in response to this appeal. Malden has provide a response on November 30, 2020 and on the timeliness concern alleged by Mr. Friedman on multiple occasions, including to the Supervisor. Mr. Friedman raised these concerns repeatedly. The Supervisor has not agreed with Mr. Friedman's allegations or stated that Malden's response was deficient. Malden responded on December 2, 2020, November 30, 2020, October 30, 2020 and October 22, 2020. I have attached those emails and correspondence, with the exception of the November 30, 2020 letter.

Further, as outlined in this October 22, 2020 letter on this issue to the Supervisor, for which Mr. Friedman received a copy, and which is attached, effective the week of August 17, 2020, the Mayor, exercising his emergency powers during the pandemic, altered City Hall hours to afford one day, Friday, to deep clean City facilities. City Hall was closed on Fridays. City Hall was otherwise open before August and the need to close for pandemic related reasons. Thus, the Friday closure was unexpected, and extraordinary, not expected or routine and thus Fridays did not count as business days and Malden provided a response within 10 business days, not counting Fridays.

Finally, I note that we provided a response to this allegation on timeliness on October 22, 2020, as attached. A requestor who is denied access to any requested information may petition the Supervisor for an appeal of the response, or lack thereof, within 90 calendar days. Our response on this issue came on October 22, 2020. 90 days from October 22, 2020 is January 20, 2021. Mr. Friedman's appeal in February is thus not timely. Even if you take the October 30, 2020 response, it would be January 28, 2021. As a result, Mr. Friedman filing on February 25, 2021 is outside the window. For this reason, the appeal should be denied.

Please let me know if you need further information on this issue.

Felicia

From: Sossavi, Fredson (SEC) [mailto:fredson.sossavi@state.ma.us]
Sent: Thursday, February 25, 2021 1:17 PM
To: sdorai@maldenps.org; Felicia S. Vasudevan
Cc: SEC-DL-PREWEB; Sullivan, Lori (SEC); Bruce@AmyAndBruce.com
Subject: SPR21/0491 Appeal Acknowledgement

Good Afternoon,

Please be aware, this office has received an appeal relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact Staff Attorney Lori Sullivan: Lori.Sullivan@sec.state.ma.us.

Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Thank you,

Fredson Sossavi
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2832

EXHIBIT 15

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

Rebecca S. Murray
Supervisor of Records

March 11, 2021
SPR21/0491; SPR21/0526

Ms. Shirley Dorai
Office of the Superintendent
City of Malden Public Schools
77 Salem Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petitions of Bruce Friedman appealing the response of the City of Malden Public Schools (School District) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Friedman requested:

1. Any and all electronic communications created in, sent to and sent from Mr. Michael Wood's School District's electronic mail system including drafts, deleted items and calendar entries;
2. Any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's School District's electronic mail system including drafts, deleted items and calendar entries;
3. All materials relating to the conduct of any investigation within the School District; such as, witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the School's Special Education Department from the School District Year 2017-2018 through the date you respond to this request.

Prior appeals

The requested records are the subject of prior appeals. See SPR20/1941 Determination of the Supervisor of Records (Supervisor) (October 9, 2020); SPR20/1942 Determination of the Supervisor of Records (October 21, 2020); SPR20/1043 Determination of the Supervisor of Records; SPR20/2044 Determination of the Supervisor of Records (November 5, 2020). In my November 5, 2020 determination, I found that the School District may redact student records information pursuant to Exemption (a), the Family Education Rights Privacy Act (FERPA) and 603 C.M.R, 23.00 (student records), the finding in Champa v. Weston Public Schools, 473 Mass.

86 (2015). In addition, the School District demonstrated that certain records may be withheld and/or redacted under the common law attorney-client privilege.

In my November 5th determination, I also found pertaining to the School District's October 14, 2020 estimate of 7,020 hours to search, segregate and redact all of the records, that it was unclear how the School District arrived at the 7,020 hour figure. I ordered the School District to clarify how much time it expects to spend searching for and segregating responsive records, reviewing for redactions, and producing copies.

Furthermore, I ordered the School District to demonstrate whether it responded to the September 24, 2020 public records request within 10 business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).

Current appeals – SPR21/0491 and SPR21/0526

No duty to create records

The School District's October 14, 2020 response included a fee estimate for records responsive to Mr. Friedman's Requests Number 1 and 2. In addition, the School District indicated that it has no records responsive to Mr. Friedman's Request Number 3. Under the Public Records Law, the School District is not required to create records in response to a Public Records request. The duty to comply with requests for information extends only to those records that exist and are in the custody of the custodian of records at the time of the request. See G. L. c. 4, § 7(26); see also 32 Op. Att'y Gen. 157, 165 (May 18, 1977).

The School District, in response to my November 5th determination, provided Mr. Friedman with a November 30, 2020 response. The School District's November 30th response asserts,

> "[i]t will take approximately 7,020 hours to search, segregate and redact all of the records that you have requested. The [School] District needs to review every mail outlined. The [School] District estimate that it will take 5,175 hours to review the emails in your first request and 1845 hours for your second request. The estimate is based on five minutes per email, with additional time required for calendar entries. In accordance with 950 C.M.R. 37.02(2)(m)(1) you will not be charged for the first (2) hours of those services.
>
> [7,016] hours multiplied by $25 per hour yields a fee estimate of $175,400."

As a result of the November 30th response, Mr. Friedman petitioned the Supervisor and appeal SPR21/0491 was opened on February 21, 2020.

In his February 24th petition, Mr. Friedman asserts, "[o]n November 30, the attached response was received, however the issue of timeliness was completely skirted. Per the [Supervisor's November 5th order], the City was required to provide a response specifically: 'Compliance with G. L. c. 66, § 10(e).'" Mr. Friedman continues to assert that the School District cannot assess any fees because the School District did not respond to his request of September 24, 2020 until October 14, 2020. Mr. Friedman posits that the School District did not provide this response within ten (10) business days.

The School District, through its Legal Counsel, Felicia S. Vasudevan of *Murphy, Hesse, Toomey & Lehane, P.C.*, provided a March 2, 2021 email response to the Public Records Division to address the School District's timeliness in responding to Mr. Friedman's September 24, 2020 request through the City's web-based request system.

In her March 2, 2021 response, Attorney Vasudevan asserts, "...effective the week of August 17, 2020, the Mayor exercising his emergency powers during the pandemic, altered City Hall hours to afford one day, Friday, to deep clean City facilities. City Hall was closed on Fridays. City Hall was otherwise open before August and the need to close for pandemic related reasons. Thus, the Friday closure was unexpected, and extraordinary, not expected or routine and thus Fridays did not count as business days and Malden provided a response within 10 business days, not counting Fridays." Please note, while a records access officer must respond to a request for public records within 10 business days, a business day does not include a weekday where a custodian's office is unexpectedly closed. G. L. c. 66, § 10(a); 950 C.M.R. 32.02.

However, the School District did not explain how many of the 7,020 hours were for "search" of the records. The School District has only explained that all these hours are attributed to the task of review (segregation) and redaction. While the Supervisor ruled in the November 5th determination that the School District met its burden to segregate and redact under Exemption (a) and the attorney-client privilege, it is unclear whether the School District filed a fee petition to assess fees for content segregated and redacted under Exemption (c). The School District did not provide further explanation of the estimate pertaining to "search time" and any fees assessed for segregation and/or redaction under Exemption (c).

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).

The School District must clarify whether it has assessed time for segregating and/or redacting records under Exemption (c), how much time was allocated to "search of the records," and whether the School District filed a petition for approval to charge fees for segregation and redaction that is not required by law.

Conclusion

Accordingly, the School District is ordered to provide a further response to the request, in a manner consistent with this order, the Public Records Law and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia S. Vasudevan, Esq., *Murphy Hesse Toomey & Lehane*

EXHIBIT 16

MALDEN PUBLIC SCHOOLS
77 Salem Street, Malden, MA 02148
Phone: 781-397-6100 Fax: 781-397-7276
www.maldenps.org

John Oteri, M.Ed.
Superintendent of Schools

Kelly Chase, Ed.D.
Pamela MacDonald, C.A.G.S.
Assistant Superintendents of Schools

March 16, 2021

BY E-MAIL
Bruce Friedman
bruce@amyandbruce.com

Re: Public Records Request dated September 24, 2020/SPR20-2044/SPR21/491/ SPR21/526

Dear Mr. Friedman:

Please see the revised response in accordance with SPR20/2044, SPR21/491, and SPR21/526. We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

(1) Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

(2) Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.

(3) Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

In terms of your first request, the Malden Public Schools ("Malden") has approximately sixty thousand ninety-four emails that are consistent with your request. For your second request, there are twenty thousand eight hundred forty emails that are consistent with your request. Malden does not have any documents responsive to your third request.

To comply with your request, Malden will need to redact and segregate the records as they contain emails between Malden and its attorneys. The Supreme Judicial Court stated that a governmental entity may assert attorney-client privilege to protect documents against disclosure where they contain communications between lawyer and client for purpose of obtaining legal advice. Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt., 449 Mass. 444 (2007). Email communications between Malden and its attorneys were not shared with the public and were shared in confidence. There was no waiver of the privilege. They thus must be redacted or segregated in their entirety. "The privilege enable[s] clients to make full disclosure to legal counsel of all relevant facts, no matter how embarrassing or damaging these facts might be, so that counsel may render fully informed legal advice." Suffolk, 449 Mass. At 449. On November 5, 2020, the Supervisor ruled that Malden may segregate and redact for attorney-client privilege.

Beyond attorney-client privilege, the records are subject to other exemptions that would need to be reviewed and segregated. In Champa v. Weston Public Schools, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon Exemption (a) (which protects from disclosure records that are "... specifically or by necessary implication exempted from disclosure by statute," MGL c. 4, § 7(26)(a)).

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). The Champa court ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court "... regarding the necessary and appropriate redactions of personally identifying information to be made ..." 473 Mass. at 98-99.

Further explaining 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 first clause of the privacy exemption, the Supreme Judicial Court has held that "[w]hile the precise contours of the legislative term "personnel [file] or information" may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption 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).

Like the agreement at issue in Champa, emails and the calendars of Mr. Wood and Ms. Cushinsky contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming or would reveal identity from personnel records, which warrants non-disclosure under Exemption (c). These emails and calendars relate to the educational services and programming that is provided to students, especially special education students, and thus should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure. Additionally, since Mr. Wood was an administrator, your request may implicate personnel information, which will need to be segregated. Personnel information is not subject to redaction, as records which fall into the above-referenced "core categories of personnel information" may be withheld in their entirety. Wakefield, 431 Mass. at 799 ("Information falling within the 'personnel and medical files or information' category is absolutely exempt from disclosure.").

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to 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. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to

search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds $25 per hour. Notwithstanding that rate, a rate of $25 per hour will be used to calculate the following fee estimate.

It will take approximately 7,020 hours to segregate and redact all of the records that you have requested. Malden will not charge for any exemptions under Exemption (c) and removes 1,000 hours for personnel records under Exemption (c). Malden anticipates that the vast majority of hours will be needed to search and segregate for student records and attorney-client privilege as Mr. Wood's primary responsibilities related to student cases, rather than employee matters. Malden did not include any costs for search time in its original estimate or here.

The District needs to review every email outlined. The District estimates that it will take 5,175 hours to review the emails in your first request and 1,845 hours for your second request. The estimate is based on five minutes per email, with additional time required for calendar entries. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

Seven Thousand Sixteen hours minus 1,000, or six thousand sixteen hours multiplied by $25 per hour yields a fee estimate of $150,400. Furthermore, please be advised that the actual fee to produce these records may vary based on the actual time needed to review these records. We will not begin to review the records which we have initially been compiled until we receive a check in the amount of $150,400.

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
School Department

Cc: Supervisor of Public Records
Greg Lucey, Records Access Officer, City of Malden

EXHIBIT 17

Dorai, Shirley <sdorai@maldenps.org>

Re: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526 - Request for Reconsideration

Bruce Friedman <Bruce@amyandbruce.com> Fri, Mar 12, 2021 at 9:29 AM
To: "Boylan, Kassandra (SEC)" <kassandra.boylan@state.ma.us>, "Puccini, Angela M (SEC)" <angela.m.puccini@state.ma.us>, "pre@sec.state.ma.us" <pre@sec.state.ma.us>
Cc: "sdorai@maldenps.org" <sdorai@maldenps.org>, "glucey@cityofmalden.org" <glucey@cityofmalden.org>

Greetings:

I am writing to request a reconsideration of the above referenced and attached determination. I am specifically seeking a reconsideration of one specific finding in said determination:

> "The School District, through its Legal Counsel, Felicia S. Vasudevan of Murphy, Hesse, Toomey & Lehane, P.C., provided a March 2, 2021 email response to the Public Records Division to address the School District's timeliness in responding to Mr. Friedman's September 24, 2020 request through the City's web-based request system.
>
> In her March 2, 2021 response, Attorney Vasudevan asserts, "...effective the week of August 17, 2020, the Mayor exercising his emergency powers during the pandemic, altered City Hall hours to afford one day, Friday, to deep clean City facilities. City Hall was closed on Fridays. City Hall was otherwise open before August and the need to close for pandemic related reasons. Thus, the Friday closure was unexpected, and extraordinary, not expected or routine and thus Fridays did not count as business days and Malden provided a response within 10 business days, not counting Fridays." Please note, while a records access officer must respond to a request for public records within 10 business days, a business day does not include a weekday where a custodian's office is unexpectedly closed. G. L. c. 66, § 10(a); 950 C.M.R. 32.02."

I am offering proof that Ms. Vasudevan's statements are not truthful, nor are they consistent with the Malden Public Schools schedule, that of all of its staff and the schools themselves. Malden Public Schools is the record keeper and Ms. Dorai, the RAO is a Malden Public Schools employee.

In SPR20/2452, the City provided dozens of pages of visitor and staff logs for all of the schools. The School also claimed that they have provided all of the visitor/staff logs in their possession, despite the strict requirement that they use, manage and keep these logs for 3 or more years per the Secretary of the Commonwealths document retention program. Even with a greatly reduced data set, literally 100's of people are signing in and out of all school facilities on Fridays during the time periods covered in the original FOIA request and during the entire time period covering the FOI request and response. Because of the size of these documents, I am unable to attach them to this email, however they can be found at the City's original response site: https://drive.google.com/drive/folders/1IABrZ65-aW0HfuXoaL7sWAETFFHSR8Ox

The logs demonstrate that administrative staff, school principals, teachers and students are regularly egressing all of the schools on Fridays. Saying that Ms. Dorai could not produce the responses to the FOIA request because the City Hall was allegedly closed on Fridays for deep cleaning is a preposterous notion, it is disingenuous and does not account for the fact that all of these records are electronic, and that the City professes that it I functioning as normal, as the attachments from Facebook, the Official City of Malden Facebook account reports in the attachment.

Attached, you will also find the publicly published 2021-2022 school calendar.

We are parents of Malden Public Schools, we have been sending our child to school on Friday for months. All of the Malden Public Schools facilities have been and continue to be open an operating on Fridays and our children attend school on Fridays.

The City is attempting to find yet another way to block transparency, thwart FOIA requests, and shirk their duties. Allowing them to extend their FOIA response dates is not consistent with the law, it is not consistent with open government and it is not consistent with what the City says to it's citizens and whaty it actually does with people working in the buildings on Fridays.

Regards,

- Bruce Friedman

From: Boylan, Kassandra (SEC) <kassandra.boylan@state.ma.us>
Date: Thursday, March 11, 2021 at 4:53 PM
To: sdorai@maldenps.org <sdorai@maldenps.org>, glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman <Bruce@AmyAndBruce.com>
Subject: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526

Good Afternoon,

Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached and also 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.

Kassandra Boylan

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

617-727-2832

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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3 attachments

spr210491 spr210526.pdf
226K

2020-2021-DISTRICT-Calendar-FINAL.pdf
199K

City-Facebook-Open.pdf
162K

EXHIBIT 18

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

Rebecca S. Murray
Supervisor of Records

April 23, 2021
SPR21/0491

Ms. Shirley Dorai
Office of the Superintendent
City of Malden Public Schools
77 Salem Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the City of Malden Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Friedman requested:

1. Any and all electronic communications created in, sent to and sent from Mr. Michael Wood's School District's electronic mail system including drafts, deleted items and calendar entries;
2. Any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's School District's electronic mail system including drafts, deleted items and calendar entries;
3. All materials relating to the conduct of any investigation within the School District; such as, witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the School's Special Education Department from the School District Year 2017-2018 through the date you respond to this request.

Prior determinations

The requested records are the subject of prior appeals. See SPR20/1941 Determination of the Supervisor of Records (October 9, 2020); SPR20/1942 Determination of the Supervisor of Records (October 21, 2020); SPR20/1043 Determination of the Supervisor of Records; SPR20/2044 Determination of the Supervisor of Records (November 5, 2020); and SPR21/0491 Determination of the Supervisor (March 11, 2021).

Fees – Requirement of Timeliness in Responding

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

In my November 30th determination, I ordered the School District to demonstrate whether it responded to the September 24, 2020 public records request within 10 business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c). However, the School District's November 30th response did not address the issue of timeliness in response to Mr. Friedman's request. As a result, Mr. Friedman petitioned the Supervisor, and these appeals were opened on February 24, 2021.

On March 2, 2021, the School District, through its Legal Counsel, Felicia S. Vasudevan of *Murphy, Hesse, Toomey & Lehane, P.C.*, provided an email response to the Public Records Division to address the School District's timeliness in responding to Mr. Friedman's September 24, 2020 request. Attorney Vasudevan asserts, "...effective the week of August 17, 2020, the Mayor exercising his emergency powers during the pandemic, altered City Hall hours to afford one day, Friday, to deep clean City facilities. City Hall was closed on Fridays. City Hall was otherwise open before August and the need to close for pandemic related reasons. Thus, the Friday closure was unexpected, and extraordinary, not expected or routine and thus Fridays did not count as business days and Malden provided a response within 10 business days, not counting Fridays."

Unsatisfied with the March 2, 2021 response, Mr. Friedman requested that the Supervisor reconsider whether the School District timely responded within ten (10) business days to his September 24, 2020 request.

G. L. c. 66, § 10(e) provides that "[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 under subsection (b)." After reviewing the March 2nd response, the School District is advised, "business day" is defined as Monday through Friday, but does not include weekdays where a custodian's office is closed *unexpectedly*. See 950 C.M.R. 32.02. If the City and School District's offices are scheduled to be closed every Friday, it is unclear how the office is closed unexpectedly on Fridays. I find that the City did not meet its burden to prove that the City and School District's offices continue to be closed unexpectedly every Friday. The City is advised in order to assess a fee for the requested records, it must demonstrate it provided a response in compliance with G. L. c. 66, § 10(b).

Conclusion

Accordingly, the School District is ordered to review the requests, redact where necessary and provide Mr. Friedman with the responsive records in a manner consistent with this order, the Public Records Law and its Regulations within 10 business days. A copy of any such response

must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia S. Vasudevan, Esq., *Murphy, Hesse, Toomey & Lehane, P.C.*

EXHIBIT 19

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

Felicia Vasudevan
fvasudevan@mhtl.com

May 7, 2021

VIA FIRST CLASS MAIL
AND E- 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 September 24, 2020***
Request for Reconsideration and Extension of Time

Dear Supervisor of Records:

This firm represents the City of Malden ("Malden") in response to a public records request from Mr. Freidman dated September 24, 2020 (the "Request"). Malden hereby requests that the Supervisor of Records ("Supervisor") reconsider her decision in SPR21-491, which relates to the Request. See Public Records: SPR Bulletin 04-17. Alternatively, Malden requests that the Supervisor determine that Malden is not required to produce some of the records sought in the Request on the grounds that the Request is designed solely to harass Malden. If the Supervisor concludes that Malden must produce the records sough in the Request, Malden requests that it be granted an extension of time to provide the records.

Mr. Friedman seeks the following records in the Request:

1. Any and all electronic communications created in, sent to and sent from Mr. Michael Wood's School District's electronic mail system including drafts, deleted items and calendar entries;
2. Any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's School District's electronic mail system including drafts, deleted items and calendar entries;

3. All materials relating to the conduct of any investigation within the School District; such as, witness interviews, reports, and conclusions, specifically excluding anydisciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the School's Special Education Department from the School District Year 2017-2018 through the date you respond to this request.

On April 23, 2021, the Supervisor determined that Malden was required to produce the records sought in the Request and that Malden was prohibited from charging a fee to produce those records. See SPR21-491

Request for Reconsideration of SPR21-491

Malden requests that the Supervisor reconsider her determination in SPR21-491 on the following three grounds. First, Malden responded to the Request within ten (10) business days in accordance with G.L. c. 66, s. 10. Second, the Public Records Law does not require Malden to produce student records. Third, the request is intended to harass Malden and not intended to effect the broad dissemination of information to the public about actual or alleged government activity.

1. Malden's Response to the Request was Timely

"While a records access officer must respond to a request for public records within 10 business days, a business day does not include a weekday where a custodian's office is unexpectedly closed." M.G.L. c. 66 § 10(a) (emphasis added); 950 C.M.R 32.02; see also SPR20/589 (concluding that closure due to COVID did not constitute business days). Specifically, the regulation states in 950 CMR 32.02 that a business day is "Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly."

In SPR21-491 the Supervisor stated: "If the City and School District's offices are scheduled to be closed every Friday, it is unclear how the office is closed unexpectedly on Fridays." See SPR21-49.

First, the language of the regulation indicates that the purpose behind the definition is that a custodian is not responsible for responding when offices are closed. Effective the week of August 17, 2020, the Mayor of the City of Malden, exercising his emergency powers during the COVID-19 pandemic, altered City Hall hours to afford one day, Friday, to deep clean. As a result, City buildings were closed and custodians could not respond. To count that as a day and require staff to be responsible for responding when offices are closed violates the purpose behind the language.

Second, the Supervisor incorrectly concluded that because something is scheduled, it cannot be unexpected. The Supervisor's interpretation appears to mean that nothing can be unexpected – once a public entity plans for the unexpected event, it could no longer be unexpected. In that interpretation, closing for two weeks due to a flood would not be unexpected because the City planned the closure upon having the flood. According to the Merriam-Webster Dictionary, "unexpectedly," means "not expected UNFORESEEN." In this case, the closure the City and School District's offices on Fridays was not expected. Malden did not anticipate it would have to close on Fridays. The City did not anticipate the pandemic. In fact, Malden had never previously closed on Fridays. As a result, City buildings were unexpectedly closed on Fridays in an effort to keep City officials safe.

Thus, like the spring of 2020, when offices were closed for a set amount of time pursuant to state or local orders, Malden's decision to close City and School offices on Fridays was unexpected and the direct result of the Pandemic.

2. The Records Sought in the Request are Student Records Protected by State and Federal Law

Mr. Friedman is seeking all the emails and calendar entries of the former Director of Student Services and the former Program Supervisor for substantially separate programming. Both of these staff members' primary responsibility was to work with students with disabilities. As a result, most of their emails concern individual students.

These emails are protected from disclosure under the Family Education Rights Privacy Act ("FERPA") and Massachusetts student record regulations and statutes, specifically, 603 C.M.R. 23.00 and Massachusetts General Law, Chapter 71, Sections 34D to 34H.

Pursuant to the Public Records Law, records "specifically or by necessary implication exempted from disclosure by statute," are not subject to disclosure. M.G.L. c. 4, § 7(26)(a). FERPA and the Massachusetts student records regulations are statutes that prohibit the disclosure of student records. The Supervisor's position that any student record can be redacted and turned over to the requesting party, including student records, is inconsistent with FERPA and Massachusetts student records regulations. The Supervisor's positions requires school districts to have to decide between complying with FERPA and Massachusetts student regulations, to which school districts' Federal funding is dependent, or complying with the directive of the Supervisor.

When a record is an education record of a particular student, it is not subject to disclosure, in a redacted form or otherwise. For example, in Letter to Schad, 105 LRP 4754 (FPCO 2004), the issue before the Family Policy Compliance Office ("FPCO"), which administers FERPA, was whether a school district could disclose records pursuant to a freedom of information act request. The request sought records from a special education due process hearing that the parents agreed to open to the public. The FPCO stated explicitly: "Under FERPA, a parent (or eligible student) must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records. Assuming that the transcripts and exhibits from the Part B due process hearing are 'education records' (because they contain information directly related to a student), a public school district that maintains these records may not disclose them in response to a State FOI request without the parent's prior written consent even if they were created or submitted into evidence in a hearing that was open to the public at the parent's request." (Emphasis added.) It continued: "We are aware of no legal requirement, and certainly none in FERPA or the Part B Confidentiality of Information provisions, that would permit a public school district to disclose education records without prior written consent on the grounds that the records were derived from or admitted into evidence in an open due process proceeding." (Emphasis added.) Consequently, as stated in the FPCO letter, the education record itself, is not subject to disclosure, without written consent from a parent or guardian. The guidance does not allow a school district to redact pieces of a record and then turn it over to the public.

Furthermore, FERPA defines "personally identifiable information," at 34 C.F.R. § 99.3 as including "[i]nformation requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates." (Emphasis added.) If the requester knows the identity of a student, a school district cannot redact a record and turn it over as a public record because the requestor would know to whom the record relates.

It appears that the Supervisor is relying on Champa v. Weston Public Schools, 473 Mass. 86 (2015) to require any student record to be turned over, but with redactions. That requirements is not consistent with the Champa. In most cases, student records cannot be turned over even with redactions as doing so would disclose confidential student information. The Supreme Judicial Court was explicit in acknowledging that not every student record could be de-identified and that a school district has the authority to determine whether a record could even be de-identified. Id. at 92-93 ("[t]hrough its implementing regulations, FERPA provides a

mechanism that allows a school to disclose information from education records publicly after removal or 'de-identifi[cation]' of all personally identifiable information: "[a]n educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information without the consent [of parents or eligible students] required by [34 C.F.R.] § 99.30 after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information." (emphasis added.)) Consequently, the school district is able to refuse to turn over entire records and in making that determination does not have to rely on the singular request before the school district. The school district can consider the effect of multiple potential future requests. Emails and calendar entries planning for and discussing a student's special education services are the quintessential type of records, which cannot be disclosed and through multiple releases could lead to disclosure of personally identifiable information. This risk is especially present since Mr. Friedman is seeking all correspondence and calendar entries from the people directly involved in student programming.

Further, the Supreme Judicial Court was motivated in Champa because of the financial terms contained within settlement agreements. Id. at 98 ("Notably, once personally identifiable information is redacted, the financial terms of such agreements, which necessarily reflect the use of public monies, partially or fully, to pay for out-of-district placements, do not constitute an unwarranted invasion of personal privacy; indeed, the public has a right to know the financial terms of these agreements."). By contrast, the records sought in the Request do not contain the type of financial data at issue in Champa. As a result, the public interest at issue in Champa (i.e. use of the public fisc) does not exist in the records sought in the Request.

Therefore, Malden should not have to turn over any of the emails about individual student's special education services.

3. The Request is Intended to Harass Malden

The Request is part of a series of contemporaneous requests that are frivolous and designed to intimidate and harass Malden and not intended to effect the broad dissemination of information to the public about actual or alleged government activity.

Public records requests may not be used as part of a "pattern of harassment to government officials and anyone else" with whom a party has a dispute. Erickson v. Executive Office of Environmental Affairs, 2006 WL 3010949 (Superior Court, Suffolk County). Those circumstances exist here. Mr. Friedman is requesting Malden to redact over 80,000 emails and calendar entries, most of which include student record information that cannot be disclosed. He is requesting the emails of two staff members who were intimately involved in his child's BSEA case.

Mr. Friedman instituted litigation at the Bureau of Special Education Appeals ("BSEA") in September 2019 against Malden. He has instituted at least four BSEA cases against Malden. Two of the cases involve records requests and some of the records requested will be subsumed within this request and thus subject to the litigation privilege. Specifically, 843 of Mr. Wood's emails relate to Mr. Friedman and 163 of Ms. Cushinsky's emails relate to him. He instituted the records request litigation at the BSEA after filing this initial public records request. He has filed Open Meeting Law complaints and appealed the BSEA decision to the Federal District of Massachusetts. Since that time, he has made 159 public records requests. He has individually and through his organization Open Malden filed 139 appeals, which equates to approximately 4 appeals per month, or more than one per calendar week. His requests constitute 20% of the public records requests to Malden since January 1, 2019. Malden has expended countless hours, resources, and energy on responding to Mr. Friedman's requests. This is not what the Public Records Law was intended to facilitate. Except for one case, he has never paid the estimated fee for the production of records. SPR20/697. Mr. Friedman is well versed in the Public Records Law, but makes no attempt to limit or otherwise further define his request. He does not seek to focus his requests on a specific topic in an email. Instead, he just asks for everything from two staff members who worked on his child's case. This request is farcical indeed, because, as noted, with respect to the public records requests, he knows that some of the emails and calendar entries will involve his child and are matters currently in litigation and that other emails will have to be so heavily redacted because they involve student records that there will be no information on them.

These public records requests are voluminous and have already consumed hours and hours of staff and counsel time which Malden will never be able to recoup. It will take Malden's entire administrative office to be able to comply with this Request. Every request such as this one takes Malden away from its obligations to its students, residents and the public at large.

Mr. Friedman's Request is not made in good faith, or for any genuine public purpose, or in the public interest, because handling such a volume of documents is virtually impossible and would severely burden the office. As a result, the Supervisor should find that the Request is harassing and determine that Malden does not have to comply with the request.

Time Petition

If a custodian is unable to complete the request within the time provided in Massachusetts General Law, Chapter 66, Section 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested records that the custodian intends to provide. A petition for an extension of time must be submitted within ten (10) business days after receipt of a determination by the Supervisor. This request is being submitted within ten (10) business days of the Supervisor's decision.

Massachusetts General Law, Chapter 66, Section 10(c) states that "[u]pon a showing of good cause, the supervisor of records 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." It continues that:

> In determining whether the agency or municipality has established good cause, the supervisor of records shall consider, but shall not be limited to considering:
>
> (i) the need to search for, collect, segregate or examine records;
>
> (ii) the scope of redaction required to prevent unlawful disclosure;
>
> (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
>
> (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
>
> (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
>
> (vi) the public interest served by expeditious disclosure.

Id. Malden has a total of 80,934 emails and calendar entries that are responsive to the Request. On those grounds along, there is good cause to provide an extension of a minimum thirty (30) business days for Malden to respond to the Request, but much more time is needed. Each email and calendar entry needs to be reviewed. Mr. Wood was the Director of Student Services and Ms. Cushinsky is a staff member in the special education department. The vast majority of their emails and calendar entries concern student record information that is protected by law and the attorney-client privileged communications, and therefore must be redacted. Malden originally

estimated that it will take approximately 7,020 hours to segregate and redact all of the records requested. Please do note that in preparation for this time petition, Malden completed a portion of the review that will be necessary to produce the records sought in the Request. That partial review revelated that it will likely take, on average, 15 minutes to review each email, as multiple people needed to review them to ensure that student record information would not be disclosed. For the purposes of this response, Malden will use its original estimate, but notes that it does anticipate it to take significantly more time and the estimate at all times disclosed it was an estimate. Thus, the scope of redactions required to prevent for unlawful disclosure and the need to search for, collect, segregate or examine the records, all favor additional time to respond to the request.

Furthermore, the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension favors additional time. If Malden had to respond to this request within ten (10) business days, it would need 700 hours per day of staff working on it, which is 87.7 people working on the request. Malden does not have the personnel to spare responding to Mr. Friedman's request. If Malden has thirty (30) days, it will take 233.9 hours per day to comply with this request, which means that Malden will need 29.2 people to even comply with the request within thirty days. If Malden dedicated one person to spend two hours a day complying with this request, it would take 9.8 years.

Furthermore, there is no public interest served by expeditious disclosure nor did Malden believe that it needed to take steps free of charge to fulfill the Request until April 23, 2021. This request was originally made in September. The Supervisor up to April 23, 2021 had not stated that Malden had to produce these records without fees. If it received the fees, it would have had the ability to hire people to fulfill the Request. Except for requiring additional clarification, the Supervisor had upheld Malden's ability to charge to response to this Request. Thus, for the Supervisor to abruptly change its position left Malden with no anticipation of the April 23, 2021 ruling.

Finally, Malden states that the Supervisor of Records must determine 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 as outlined earlier.

For all these reasons, Malden should have at a minimum a thirty (30) day extension to respond, but should be given the ability to respond over thirty (30) business days as the records are available. Finally, Malden requests a hearing or conference pursuant to 950 CMR 32.08 to address these issues.

A copy of this request for additional time has been sent to the requestor. *See below.*

Respectfully,

Felicia Vasudevan

Felicia Vasudevan

cc: Bruce Friedman
John Oteri, Superintendent

EXHIBIT 20

From: Bruce Friedman [mailto:Bruce@AmyAndBruce.com]
Sent: Thursday, May 13, 2021 5:36 PM
To: pre@sec.state.ma.us; Puccini, Angela M (SEC)
Cc: Kathryn M. Fallon; kanderson@cityofmalden.org; sdoral@maldenps.org; Greg Lucey; Felicia S. Vasudevan
Subject: In re: Request for reconsideration of Determination SPR21/0491
Importance: High

Greetings:

I am briefly responding the City of Malden's petition for reconsideration of May 7, 2021.

The City seeks relief from your office, they should be barred from any relief for the following reasons.

1. The City comes with unclean hands.

   I would like to draw the Secretary's attention to the THIRTY outstanding Orders for which the City of Malden continues to run afoul and illegally withhold public records:

SPR Number	Original Filing Date	Determination Date	Due Date by Determination	Days Overdue	Days since request
SPR20/2372 –	Friday, November 6, 2020	Tuesday, December 15, 2020	Wednesday, December 30, 2020	134	188
SPR20/2373 –	Friday, November 6, 2020	Tuesday, December 15, 2020	Wednesday, December 30, 2020	134	188
SPR20/2455 –	Thursday, October 22, 2020	Tuesday, December 22, 2020	Thursday, January 7, 2021	126	203
SPR21/0004 –	Wednesday, October 21, 2020	Tuesday, January 19, 2021	Tuesday, February 2, 2021	100	204
SPR21/0021 –	Friday, December 11, 2020	Wednesday, January 20, 2021	Wednesday, February 3, 2021	99	153
SPR21/0628 –	Thursday, February 25, 2021	Monday, March 29, 2021	Monday, April 12, 2021	31	77
SPR21/0649 –	Thursday, February 25, 2021	Wednesday, March 31, 2021	Wednesday, April 14, 2021	29	77
SPR21/0667 –	Tuesday, March 2, 2021	Wednesday, March 31, 2021	Wednesday, April 14, 2021	29	72
SPR21/0825 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0827 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0828 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0829 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0830 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0831 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63

SPR21/0832 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0833 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0834 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0835 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	63
SPR21/0836 –	Friday, March 12, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	62
SPR21/0837 –	Friday, March 12, 2021	Wednesday, April 14, 2021	Thursday, April 29, 2021	14	62
SPR21/0853 –	Thursday, March 18, 2021	Tuesday, April 20, 2021	Tuesday, May 4, 2021	9	56
SPR21/0855 –	Thursday, March 18, 2021	Tuesday, April 20, 2021	Tuesday, May 4, 2021	9	56
SPR21/0856 –	Thursday, March 18, 2021	Tuesday, April 20, 2021	Tuesday, May 4, 2021	9	56
SPR21/0879 –	Sunday, March 21, 2021	Tuesday, April 20, 2021	Tuesday, May 4, 2021	9	53
SPR21/0880 –	Sunday, March 21, 2021	Tuesday, April 20, 2021	Tuesday, May 4, 2021	9	53
SPR21/0881 –	Sunday, March 21, 2021	Tuesday, April 20, 2021	Tuesday, May 4, 2021	9	53
SPR21/0912 –	Wednesday, March 24, 2021	Friday, April 23, 2021	Friday, May 7, 2021	6	50
SPR21/0941 –	Sunday, March 28, 2021	Tuesday, April 27, 2021	Tuesday, May 11, 2021	2	46
SPR21/0973 –	Wednesday, January 6, 2021	Wednesday, March 3, 2021	Thursday, March 4, 2021	70	127
SPR21/1018 –	Wednesday, April 21, 2021	Friday, April 23, 2021	Friday, April 30, 2021	13	22

2. The City is withholding evidence that directly contradicts Ms. Vasudevan.

In SPR21/0836 The specific request was "Please provide all documents of city business conducted by any employee of the City Clerk's Office on the following dates:

Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020
Friday, September 25, 2020
Friday, October 2, 2020
Friday, October 9, 2020
Friday, October 16, 2020
Friday, October 23, 2020
Friday, October 30, 2020
Friday, November 6, 2020
Friday, November 13, 2020
Friday, November 20, 2020
Friday, November 27, 2020
Friday, December 4, 2020
Friday, December 11, 2020
Friday, December 18, 2020
Friday, December 25, 2020
Friday, January 1, 2021
Friday, January 8, 2021
Friday, January 15, 2021
Friday, January 22, 2021
Friday, January 29, 2021
Friday, February 5, 2021
Friday, February 12, 2021

Friday, February 19, 2021
Friday, February 26, 2021
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021
Friday, March 26, 2021

This request specifically seeks electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seek the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

AND

In SPR21/0855 the specific request was: "Please provide all emails sent by any City of Malden employee on these specific dates:

Friday, August 7, 2020
Friday, August 14, 2020
Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020
Friday, September 25, 2020
Friday, October 2, 2020
Friday, October 9, 2020
Friday, October 16, 2020
Friday, October 23, 2020
Friday, October 30, 2020
Friday, November 6, 2020
Friday, November 13, 2020
Friday, November 20, 2020
Friday, November 27, 2020
Friday, December 4, 2020
Friday, December 11, 2020
Friday, December 18, 2020
Friday, December 25, 2020
Friday, January 1, 2021
Friday, January 8, 2021
Friday, January 15, 2021
Friday, January 22, 2021
Friday, January 29, 2021
Friday, February 5, 2021
Friday, February 12, 2021
Friday, February 19, 2021
Friday, February 26, 2021
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021

Friday, March 26, 2021

Please provide the responsive emails including all electronic header information electronically to the email address info@openmalden.com. This request and all responsive documents are for express purposes of gathering information to promote citizen oversight."

Both of these requests are attached and were NEVER responded to at all. Not even under Order from your office. So while the City through Ms. Vasudevan have claimed that they were "Closed", the actual evidence of the City being open and it's employees working is being actively concealed and withheld in an attempt to prevent the truth from coming to light.

Wherefore, your Office Properly determined SPR21/0491 and the City should be Ordered to abide by your April 23, 2021 decision, provide all the records without charge and without delay.

Kindest Regards,

- Bruce Friedman

From: Bottorf, Augustine (SEC) <augustine.bottorf@state.ma.us>
Date: Friday, April 23, 2021 at 9:55 AM
To: sdoral@maldenps.org <sdoral@maldenps.org>, Bruce Friedman <Bruce@AmyAndBruce.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: Determination SPR21-0491

Hello,
Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached and available online at: http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx.
If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.
Thank you,

August Bottorf
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2832

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.

EXHIBIT 21

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

Rebecca S. Murray
Supervisor of Records

June 1, 2021
SPR21/0491

Ms. Shirley Dorai
Office of the Superintendent
City of Malden Public Schools
77 Salem Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the City of Malden Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Friedman requested:

1. Any and all electronic communications created in, sent to and sent from Mr. Michael Wood's School District's electronic mail system including drafts, deleted items and calendar entries;
2. Any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's School District's electronic mail system including drafts, deleted items and calendar entries;
3. All materials relating to the conduct of any investigation within the School District; such as, witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the School's Special Education Department from the School District Year 2017-2018 through the date you respond to this request.

Prior determinations

The requested records were the subject of prior appeals. See SPR20/1941 Determination of the Supervisor of Records (October 9, 2020); SPR20/1942 Determination of the Supervisor of Records (October 21, 2020); SPR20/1043 Determination of the Supervisor of Records; SPR20/2044 Determination of the Supervisor of Records (November 5, 2020); and SPR21/0491 Determination of the Supervisor (March 11, 2021 and April 23, 2021).

Fees – Requirement of Timeliness in Responding

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

In my November 30th determination, I ordered the School to demonstrate whether it responded to the September 24, 2020 public records request within 10 business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c). However, the School's November 30th response did not address the issue of timeliness in responding to Mr. Friedman's request.

On March 2, 2021, the School, through its Legal Counsel, Felicia S. Vasudevan of *Murphy, Hesse, Toomey & Lehane, P.C.*, provided an email response to the Public Records Division to address the School's timeliness in responding to Mr. Friedman's September 24, 2020 request. Attorney Vasudevan asserts, "...effective the week of August 17, 2020, the Mayor exercising his emergency powers during the pandemic, altered City Hall hours to afford one day, Friday, to deep clean City facilities. City Hall was closed on Fridays. City Hall was otherwise open before August and the need to close for pandemic related reasons. Thus, the Friday closure was unexpected, and extraordinary, not expected or routine and thus Fridays did not count as business days and Malden provided a response within 10 business days, not counting Fridays."

Unsatisfied with the March 2, 2021 response, Mr. Friedman requested that the Supervisor reconsider whether the School timely responded within ten (10) business days to his September 24, 2020 request. In my April 23, 2021 determination, I advised the School:

> G. L. c. 66, § 10(e) provides that "[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 under subsection (b)." After reviewing the March 2nd response, the School District is advised, "business day" is defined as Monday through Friday, but does not include weekdays where a custodian's office is closed *unexpectedly*. See 950 C.M.R. 32.02.

Given that the School's offices are scheduled to be closed every Friday, I found that the School did not meet its burden to prove that its office was closed unexpectedly every Friday. I ordered the School it must demonstrate it provided a response in compliance with G. L. c. 66, § 10(b) if it intended to assess fees. See SPR21/0491 Determination of the Supervisor (April 23, 2021).

Reconsideration of April 23, 2021 determination

The School provided a May 7th response, asking the Supervisor to reconsider the April 23rd determination regarding the timeliness issue.

Conclusion

After another careful review, I decline to reverse my April 23, 2021 determination.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Felicia S. Vasudevan, Esq., *Murphy, Hesse, Toomey & Lehane, P.C.*
Bruce Friedman

EXHIBIT 22

Malden, MA Date: April 13, 2017

His Honor the Mayor has approved Paper #176 of 2017

Below please find a copy

Order: In accordance with the provisions of Massachusetts General Laws Chapter 66 Section 6A, the following individuals are hereby appointed as the City of Malden's record access officers:

The City Clerk

The Chief of Police or his designee

The Chief of the Fire Department or his designee

The Malden School Department Superintendent or his designee

Said appointments to take effect immediately

DAVID D'ARCANGELO, COUNCILLOR AT LARGE

Paper #176 of 2017, of which the above is a true copy

Adopted, April 11, 2017, by the City Council , by yea (11) and nay (0) vote, the City Council consisting of eleven members.

Attest:

A TRUE COPY
ATTEST:

City Clerk