



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

Manza Arthur
Supervisor of Records

September 4, 2026
SPR26/3321

Joanne Perperian
Records Access Officer
City of Malden
215 Pleasant Street, Suite 420
Malden, MA 02148

Dear Ms. Perperian:

I have received the petition of Open Commonwealth (requestor) appealing the response of the City of Malden (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On April 8, 2026, the requestor sought the following:

Please provide the following documents/records in the same way produced in the attached public records response on April 17, 2026 (attached hereto for your reference).

[1] All invoices paid by the City of Malden including the Malden Public Schools from the following vendors for the time period January 1, 2016 through April 7, 2026[;]

[a] Vender #: 9090 – Murphy, Hesse, Toomey & Lehane, LLP[;]

[b] Any other Vender number(s) for Murphy, Hesse, Toomey & Lehane, LLP[;]

This request includes but is not limited to electronic and or physical documents[;]
This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained and specifically includes all electronic metadata.

Previous Appeals and Petition

This request was the subject of previous appeals and a petition from the City. See SPR26/1533 Determination of the Supervisor of Records (May 5, 2026), SPR26/1880 Determination of the Supervisor of Records (May 22, 2026), SPR26/2024 Determination of the Supervisor of Records (June 10, 2026), and SPR26/2900 Determination of the Supervisor of

Records (August 10, 2026). In my August 10th determination, I ordered the City to clarify whether it possesses additional records responsive to the request. Subsequently, the City responded on August 24, 2026. Unsatisfied with the City's response, the requestor petitioned this office, and this appeal, SPR26/3321, was opened as a result.

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 agency or municipality 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.

Current Appeal

In the appeal petition, the requestor contends the following:

Malden has failed to maintain these records and accordingly, OpenCommonwealth hereby petitions the Supervisor to find and Order that Malden has failed to maintain Public Records, they have destroyed and deleted public records outside of the law and that they must cease and desist from destroying public records without proper authority.

In a subsequent communication to this office on September 2, 2026, the requestor states the following:

It has recently come to the attention of OpenCommonwealth that the law firm, Murphy, Hesse, Toomey, and Lehan of Quincy, Massachusetts who's [sic] original invoices that were requested and Malden denies possession of, is in possession of these invoices and can provide them to Malden upon request. Malden has a duty to capture, maintain and provide public records. Malden has a duty to request these records if they are in the possession of a third-party whom Malden contracts services from and is in possession of them.

Wherefore OpenCommonwealth hereby requests that the SPR contemplate this additional and new information in her determination of SPR26/3321 and Order Malden to produce the specifically requested public records and if necessary, that Malden request the records from the law firm that maintains them separately.

The City's August 24th Response

In its August 24, 2026 response, the City states, “[t]he City does not have any additional records responsive to this request. All records in the City’s possession that are responsive to the request have been provided, as reflected in the requester’s attachment submitted with his appeal.”

Agency Relationship

Please be advised that the duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Further, in accordance with the Public Records Law, custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5). Additionally, public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request. G. L. c. 66, § 10(a); see also Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 289-90 (1979).

The City is advised that where a public entity contracts with a third party to fulfill its public duties, and the public entity exercises control over that third party, an agency relationship is created. See Fifty-one Hispanic Residents of Chelsea v. Sch. Comm. of Chelsea, 421 Mass. 598, 607 (1996) (while subject to control of a public entity as a principal for purposes of performing public duties, private university is a public agent). Wherever a record custodian keeps original public records in a location other than the government building, the custodian has a duty to make the public records available in a location convenient to the general public for inspection and copying.

Based on the information provided in the City’s response, it is unclear whether there is an agency relationship between the City and Murphy, Hesse, Toomey & Lehane, LLP. As such, I find the City must provide additional information regarding the relationship between it and Murphy, Hesse, Toomey & Lehane, LLP, and the scope of any such relationship, in order to determine whether the City has met its burden under G. L. c. 66, § 10(a)(ii) to provide records that are in the possession, custody or control of the custodian of records at the time of the request.

Conclusion

The City is ordered to provide the requestor 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

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send an electronic copy of the response to this office at pre@sec.state.ma.us. The requestor may appeal the substantive nature of the City's response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Open Commonwealth