



# Activist's Guide to Public Records Requests in Massachusetts

This guide was produced for [Citizens for Juvenile Justice \(CfJJ\)](#) in partnership with Northeastern University School of Law. This does not constitute legal advice. This guide was written in April 2023, so be sure to check for updates to the law at the time you file your request.

## [Table of Contents](#)

I.	Purpose of the Guide .....	1
A.	A Very Basic Overview of Public Records in Massachusetts .....	1
B.	Examples of How PRRs can Help Advocates and Activists .....	2
C.	Massachusetts is an Outlier .....	3
II.	“The Law” in Plain English .....	4
A.	Drafting Your PRR .....	6
B.	Actually “Filing” Your Request .....	8
1.	<i>How to use MuckRock</i> .....	8
2.	<i>Following up on Requests</i> .....	9
III.	What to Do If the Response to your PRR is Negative .....	10
A.	First - Communicate! .....	10
B.	Second—Do Some Digging .....	12
C.	Third—Consider Filing an Appeal .....	12
D.	Last Resort—Litigation .....	17
1.	<i>Relevant Provisions of The Massachusetts Public Records Law</i> .....	17
IV.	Controlling Authorities on PRRs: Legislation & Case Law .....	18
A.	Sample Complaints .....	20
V.	PRRs for Advocacy .....	21
VI.	Helpful Sample Documents .....	23
1.	Sample Request 1 .....	24
2.	Sample Request 2 .....	25
3.	Sample Appeal Letter .....	30
4.	Sample Determination Letter .....	32
5.	Sample Complaint .....	35

## **I. Purpose of the Guide**

As noted on the cover page, this Guide was created for CfJJ by law students at Northeastern University School of Law. This is not official legal advice, but it is intended to help you file a public records request as efficiently and successfully as possible within Massachusetts.

### **A. A Very Basic Overview of Public Records in Massachusetts**

First, let's start with what a "public record" is. Public records are any documents, recordings, or correspondence created or received by officers of government agencies. These could be emails, handwritten notes, information in an electronic database, or even maps; the definition of a "record" is very broad. The Massachusetts law that controls this space gives everyone the right to request to review and copy these records held by town, city, county, and state agencies (aka governmental agencies). To get access to this information, you have to go through the process of filing a public records request, or PRR. This guide will help people with no background in law to file a PRR. The law can be complicated, and there are exceptions to what can be requested. Yet, filing this type of request and getting the records can be powerful for activists in many ways. The goal of this guide is to increase the likelihood that your PRR will be successful (that you get your records) and, if applicable, enable you to advocate for change in your space.

Why might someone file a PRR? They can be immensely powerful tools and are frequently used by journalists and lawyers to gather information. These requests give access to information from government agencies and allow you (as the requestor) to examine government decision making—and go on to advocate for legislative, policy, or practice change within your community! The process is designed to increase transparency among agencies and build trust within communities within the municipality. This encourages residents to hold leadership accountable while also fostering a system where agencies openly take

responsibility. But as this guide will detail, the law is not always in line with these goals.

More officially, public records requests are the formal process of connecting the requestor (you) to the records access officer (RAO). Every town, city, county, or state agency has at least one RAO, and they are responsible for coordinating and facilitating responses PRRs. There is a partial list [here](#), and most state agencies have a link on their website with RAO contact information. Their role is to identify records that are available to produce, if there needs to be modifications or redactions, or if the records need to be withheld.

## **B. Examples of How PRRs can Help Advocates and Activists**

Many individuals and organizations have successfully taken advantage of PRRs as a resource for problem-solving. For example, non-profit organizations like Citizens for Juvenile Justice (CfJJ) use PRRs as an advocacy tool to access data. In one instance, CfJJ [requested records](#) about how students were being disciplined in school and whether this led to an arrest. CfJJ requested policies and data to better understand which students were being disciplined and arrested in different schools. Students being disciplined disproportionately (for example [harsher discipline for Black students](#)) impedes their growth and learning making them at risk to encounter the “school to prison” pipeline. This pipeline is, in reality, [two pipelines that combine to drive students out of the classroom](#), away from a pathway to success, and towards or into the juvenile or criminal justice system. Change around public policy within schools can result in the dismantling of the school to prison pipeline. While CfJJ’s work is still ongoing, the responses to the PRRs exposed not only inconsistencies in the data that should be reported, but also worrying trends that disciplinary policies are negatively impacting certain groups more than others, especially Black and brown students.

Another example is the American Civil Liberties Union of Massachusetts (ACLU), which [filed public records requests](#) to the Springfield Police Department (SPD) following years of scrutiny over racially motivated abuse by officers against

individuals. The SPD was involved in a series of police misconduct accusations, including fourteen SPD officers assaulting four Black men at a local bar. Additionally, a Massachusetts legislature-commissioned study found SPD engaged in a pattern of racial profiling at least since 2018. The ACLUM filed PRRs to get documents related to these issues. The hope is that access to these public records will help shine light on the policies and practices of SPD that allowed this misconduct to run rampant. Without knowing the information, it is hard to know what change is needed or could be advocated for. With knowledge of pertinent issues, Massachusetts residents can take steps to assist their communities and put pressure on their legislature to enforce public policy.

### **C. Massachusetts is an Outlier**

Every state has differences in the public records law. However, it is worth mentioning at the beginning of our guide that Massachusetts is very unique in its relative lack of accountability and transparency for PRR laws. Our state is the only state where the Governor's Office as well as both the legislative and judicial branches claim to be "exempt" from our public records law. This means those branches are claiming that the law does not apply to them, and they do not have to turn over public records. This is based on a 1997 case that said the law does not apply to the Governor. There is no other state that has a public records law that works like ours.

Although there were some positive changes made to our public records law in 2016, many advocates think that we need additional change to the law. This guide was written in Spring 2023, so it would be important to check whether there were updates to the law at the time you file your request. As of Spring 2023, our law applies only to executive agencies (but not the Office of the Governor). Residents and non-residents of Massachusetts can file PRRs and there is one agency that handles any issues or appeals that follow. The next section will get into more detail about the specifics of the Massachusetts law.

## II. “The Law” in Plain English

In Massachusetts, there is [a law that controls public records](#), similar to the federal law called FOIA, or the Freedom of Information Act. While you would [use FOIA](#) to get records from a federal entity, this guide is focused on the Massachusetts law and getting records from state entities. The official reference for this law (which you might see on websites or other guides) is M. G. L. c. 66, § 10(a), which stands for “Massachusetts General Law.” This means that within the broader statutory framework for Massachusetts, [the PRR law](#) can be found at Chapter 66, Section 10 of our General Laws.

This law states that: [“Every government record in Massachusetts is presumed to be public unless it may be withheld under a specifically stated exemption.”](#) The default position is that whatever “record” is made or received by an officer or an employee of a MA governmental entity should be turned over, which could include books, papers, maps, photographs, financial statements, statistical tabulations, or documentary materials. The term “record” applies regardless of the “form” of the record, meaning information stored electronically falls under the law.

However, the law includes an exception for “exemptions.” This means that there is a specific reason that prevents the disclosure of some government records. There are 22 listed exemptions for public records requests. The exemptions serve to balance the right to information and the right to privacy, the importance of public safety, and other considerations. While the exemptions protect certain information, in many cases, Massachusetts courts have ordered the exempt information to be redacted from the overall public records request while still releasing some of the information requested. What we suggest is to pull up the actual language of the exemption if your request comes up against an exemption. This guide explains some of the more commonly claimed exemptions below, but you can also look at this [additional information](#). Here are a few examples of the 22 exemptions that are listed in our law.

### ***Exemption A: Records are Excluded by Statute (FERPA) (CORI)***

Under this exemption, you may not be able to access public records because of certain Massachusetts statutes, or laws. The public records law is just one of many laws in our state, and there are other laws that protect information that is private or sensitive. One example of a statute, or law, that protects certain information is the Family Educational Rights and Privacy Act (FERPA). FERPA protects information that relates directly to a student and information held by an educational agency. For example, when CfJJ requested data related to students, FERPA is one thing that the RAO would have to consider when providing documents to comply with both rules.

### ***Exemption B: Internal Practices***

Information that is related solely to internal personnel rules and practices of the government units may be withheld. For Massachusetts to withhold public records under Exemption B, the records custodian must show that proper performance of the government entity will be inhibited by releasing the requested information. [So far there are no court decisions regarding Exemption B.](#) Because there are no cases that detail when this would apply to a PRR, it is hard to understand what “proper performance” actually means under this exemption. However, police misconduct [does not fall](#) within this exemption and must be reported under the law.

### ***Exemptions C, O, P: Medical and Address Protection***

These three exemptions for public records are based on personal privacy. Exemption C deals with personal and medical files or information and any other materials or data relating to a specifically named individual. As you can imagine, something like a medical record with an individual's name could lead to an unwarranted and unwanted invasion of personal privacy. Exemption O focuses on protecting the release of employees addresses and Exemption P protects the names and home addresses of family members. Here is a case that discusses what this exemption means in more detail: [Worcester Telegram & Gazette Corp. v.](#)

[Chief of Police of Worcester](#). Massachusetts courts have found that [“core categories of personnel information that are ‘useful in making employment decisions regarding an employee’”](#) may be withheld from disclosure. Worcester recently [agreed to pay \\$185,000](#) in fines for “misconduct” in failing to turn over the records at the center of this case.

### ***Exemption F: Investigatory Materials***

This exemption deals with information used in an investigation. The purpose of exemption F is to protect the ability of the law enforcement agency or its officials to conduct investigations. While this statute protects investigatory materials, the courts have ruled that investigatory materials provided to the state from federal agencies can be requested as well. Here is a case that discusses what this exemption means in more detail: [Rahim v. Dist. Att’y for Suffolk Dist.](#) This case involved both MA state entities and the FBI in connection with a fatal shooting. The court had to decide whether the FBI records were exempt under the law. Ultimately, they decided that because a MA governmental agency had “received” records from the FBI, they must be disclosed and did not qualify as exempt.

We hope these examples are helpful to understanding some of the exemptions listed in the PRR law. These can be complicated legal decisions, and whether something is “exempt” from disclosure is not always going to be clear. The next section will discuss how to draft your PRR to be the most effective, and what to do if an exemption or other roadblock comes up after you file your request.

### **A. Drafting Your PRR**

If you want public records, you have to make a request. This might include filling out a form online or creating your own document that outlines what you want (more on this below). The specific request will vary depending on who you are requesting records from. There are some important things to think about when making your request. When writing a public records request, make sure to

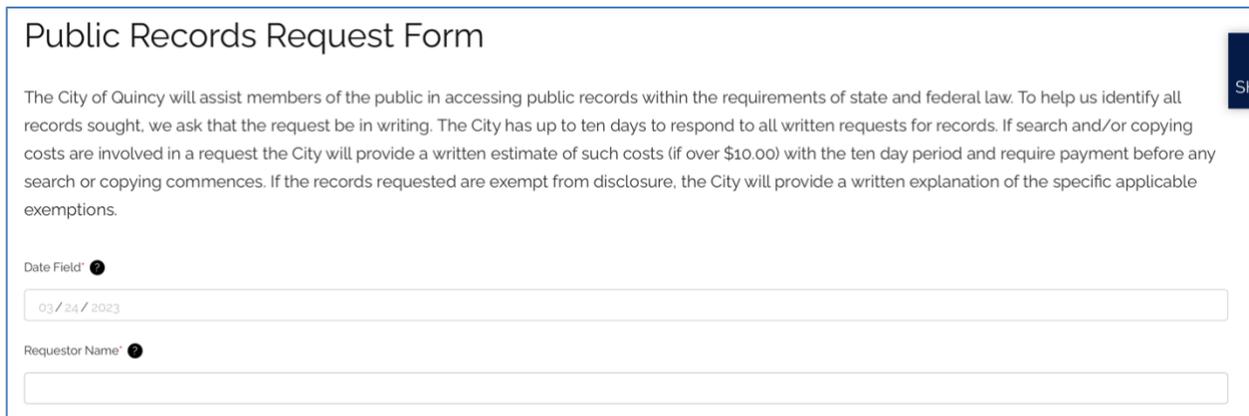
consider the length, scope, and agency the records are being requested from. Here are some best practices:

- Make your request in writing. This will save time and energy later.
- Shorter requests are easier for RAOs to understand.
- What are you hoping to get in terms of records? Make sure the request includes the exact information you are looking for. A request that is narrow in scope will be easier to fulfill.
- Work from the sample in the back of this Guide or look at other samples on [MuckRock](#) (which is a website platform for submitting and publishing results from public records requests).
- It can be helpful to touch base with the RAO prior to filing the request to let them know you are filing it. You can also ask questions about the availability of the information/records you want that. That initial conversation or email might help to make a clearer request.
- You don't have to include a purpose for your request. However, if you are requesting that no fees be associated with your request, this may be a helpful line to include (as in our samples).
- For the most part, you need to identify yourself as the requesting party.

If you want to search through requests that have already been filed to find an example, you can do so [here](#). For example, if you were requesting documents from the Plymouth District Attorney and you wanted to see what other requests had been made to them in the past, you can select that from the "Agency Name" field. You can further refine that search by keyword, for example writing the word "misconduct" into the field for "Nature of Request." That brings you to [this past request](#) from 2020. You can also look at the samples at the back of this Guide.

## B. Actually “Filing” Your Request

There are numerous ways to deliver your request to the RAO, but technology allows you to do this in a simple way. Some places have an online portal where you can upload a request (although [you are not required](#) to do that). Some places list an email address. Here is an example from Quincy, MA with an online request form:



**Public Records Request Form**

The City of Quincy will assist members of the public in accessing public records within the requirements of state and federal law. To help us identify all records sought, we ask that the request be in writing. The City has up to ten days to respond to all written requests for records. If search and/or copying costs are involved in a request the City will provide a written estimate of such costs (if over \$10.00) with the ten day period and require payment before any search or copying commences. If the records requested are exempt from disclosure, the City will provide a written explanation of the specific applicable exemptions.

Date Field 

03/24/2023

Requestor Name 

The initial request should be in writing. If you have to file an appeal, you are required to send a request in writing to the agency—this is why it is best practice to send your initial request in writing from the start to save time in case of an appeal. After you deliver your request to the RAO, they have to respond within ten BUSINESS days (not including weekends or holidays). Usually, you start counting as “Day 1” the day after you submit your request. If agencies take more than 10 business days to respond, they cannot charge fees. Additionally, agencies cannot charge for information that is removed from a record unless such segregation or redaction [is required by law](#) or approved by the Supervisor of Records (Supervisor) through a petition.

### 1. How to use MuckRock

You can also use an open access PRR automation site, such as [MuckRock](#). This is a website that gives you a useful guide explaining the benefits of open access public records requests. MuckRock does require a login and paid

subscription to use the service, but it can be particularly helpful if you are filing numerous PRRs because it creates a dashboard for you to keep track of them all in one consolidated space. They also give links and information on the public record laws of every state. The day after you file your request, it is time to start the clock on the 10 business days! It can be helpful to wait until after 10 business days have passed to reach out to your RAO to follow up on your PRR—that way, if no response, they will be unable to charge fees later for fulfilling the request.

### **Example of MuckRock Dashboard**

Title	User	Agency	Jurisdiction	Updated	Submitted
<a href="#">School-Based Arrest Data Request (Springfield Police Department)</a> <span style="background-color: #28a745; color: white; padding: 2px;">Completed</span>	Erin Stewart	Springfield Police Department	Springfield, MA	03/10/2023	05/12/2022
<a href="#">ShotSpotter Contract (Springfield Police Department)</a> <span style="background-color: #ffc107; color: white; padding: 2px;">Awaiting Response</span>	Jacob Wourms	Springfield Police Department	Springfield, MA	01/23/2023	07/25/2022
<a href="#">Massachusetts Police Data Collection (Springfield Police Department)</a> <span style="background-color: #28a745; color: white; padding: 2px;">Completed</span>	Samuel Sinyangwe	Springfield Police Department	Springfield, MA	12/23/2022	08/17/2021
<a href="#">Local/State Police Trained by FLETC (Springfield Police Department)</a> <span style="background-color: #dc3545; color: white; padding: 2px;">No Responsive Documents</span>	Curtis Waltman	Springfield Police Department	Springfield, MA	09/07/2022	01/22/2017

## ***2. Following up on Requests***

Through MuckRock, requests are sent to an email address associated with whichever agency the request was filed to. The date sent on MuckRock and the date the agency receives the request may differ, which can affect the start of the 10 business days. In addition, the requestor is given an update if the responding agency reaches out with more information. This automated response and update system provides filers and responding agencies with a digital trail similar to that of an email chain. Additionally, following up via phone call could lead to positive results (but remember, wait the 10 business days). When calling

agencies, it is best to use a script that is similar to the request filed. A sample script might look something like this:

*“Good morning. My name is Jane Doe and I am calling to speak to someone about a public records request that I filed on [DATE]. Is there someone that can help me?”*

*“I filed this request on [DATE] and I have not gotten any response. I wanted to follow up to see when I would be receiving a response to my request.”*

*[Add Reference number if you have one]*

### **III. What to Do If the Response to your PRR is Negative**

In a perfect world, you would file your request, the RAO would send you the right documents within 10 business days, free of charge, and you would be able to use the records for whatever goal or purpose they are needed. As anyone who has filed a PRR can tell you, this is rarely the case. Factors like the scope of the request or the particular agency will impact outcome. Many times, the RAO or agency may completely ignore your request. Or, they may say your PRR cannot be filled because of an exemption (those exclusions we talked about above). Even more frustrating, they may say that it will cost X amount to fill your request and that is not something that is affordable. While they can charge fees in certain circumstances, it is important to understand some of the basic rules around those “reasonable” fees. Here are some tips to continue your attempts at getting records if you get a negative response.

#### **A. First - Communicate!**

If you get a response that you don't find helpful, treat it as the beginning of a conversation with the RAO. Consider following up via email or phone with questions, get clarity on their responses, and/or try to build a relationship with the

entity you want records from. Here are some more detailed examples of negative responses to your PRR and ways to move forward:

- If you get an itemized list of how much it will cost to produce each record you asked for, and you realize you don't need one of the records they are searching for, you can narrow the scope of your request and ask for certain parts (less vital records) to be taken off the list in order to cut down on the cost. Most likely, you will need to call the contact to clarify which records you are trying to get.
- If they are claiming an exemption, but do not explain why they are choosing that exemption, this is an opportunity to ask questions and gain clarity on why that exemption is being claimed. Then, go back to look at the specifics of that exemption. Don't forget you can communicate with the RAO and the Supervisor of Records to better understand the specific exemption.
- If you get a response that just "confirms receipt" or says they are "working on it" without giving you documents, this does not count as a response, according to conversations with the Supervisor of Records. That also means that if that is all you get within the 10-day window, they can't charge fees.

If you get to a point in your conversation with the agency/municipality that you think it isn't going anywhere or making any progress, or if the agency/municipality has not responded to you for a considerable time, you can consider making an appeal with the Division of Public Records. We have helpful samples for that too! But before you do, call the Division of Public Records at the Secretary of the Commonwealth's Office and ask to speak with them about where you are in the process. They may have additional information that will aid you.

If at any point you have a question about the appeals process, you can call the [Division of Public Records](#) 9am - 5pm, Monday - Friday: (617) 727-2832.

## **B. Second—Do Some Digging**

Imagine that you request records from a police department related to instances of misconduct. The RAO responds within 10 days and tells you that they do not have any records that are responsive. Do you have any knowledge that this might be a case? Is there a newspaper article that details misconduct? Did you hear a story online? Is there a social media post somewhere that you can find that contradicts this? See if you can use some basic research skills at the library or on the internet to find a document that shows that those records really do exist.

If you do find a record that shows there was police misconduct (and therefore there should be responsive records), you are back to step one: communication. You should get back in touch with the RAO and potentially the Supervisor of Public Records as well and tell them what you found. This may not change their position, but it can be helpful evidence for filing an appeal.

Doing your own research may also include reaching out to organizations or activists who are in this space already. For example, in the creation of this guide, we relied on the advice and materials from experts and activists (like [this](#)) on the PRR law in Massachusetts. It could be helpful to figure out if you can identify someone already doing work in this space who has experience with PRRs.

If at any point you have a question about the appeals process, you can call the [Division of Public Records](#) 9am - 5pm, Monday - Friday: (617) 727-2832.

## **C. Third—Consider Filing an Appeal**

Appealing a public records request is a free process orchestrated by the Division of Public Records. The word “appeal” seems intimidating, but samples are included at the end of this Guide. It is another piece of writing that explains the steps you have taken in the PRR process so far, including dates, what happened, etc., and asks the Supervisor of Public Records to reconsider your issue and decide if they will take action on your behalf. If you are wondering whether you should appeal or not, check out some of the rules below that agencies and municipalities have to follow when someone requests a public record from them.

In most cases, it makes sense to appeal (and there is no filing fee associated with it). You must do this within 90 business days of your original request, [or within 90 days of the entity's most recent communication](#) with you.

This list contains some of the scenarios that might require you to file an appeal. Therefore, if the agency/municipality does anything that falls below, your next step might be [to file an appeal](#) with the Secretary of the Commonwealth to try and force production of the records you want. If the agency/municipality:

- Offers to give you the request, but only for a very high fee that seems too extreme:
  - If the agency/municipality did not respond to you within 10 business days, they cannot charge any fees for producing the records. If you are using MuckRock to send your request, the date is not always accurate and so you should double check with the agency or MuckRock for the day the request was sent. If you are using email or an agency's online portal, then the date you sent the request should be accurate.
  - Reasonable fees by agencies need to be estimated in "good faith." The public records "good faith" limit on fees tries to make sure that agencies aren't using fees to prevent people from accessing records. In general, "good faith" estimates should be reasonable. More specifically, a good faith estimate should be rooted in: (1) the costs of reproduction of documents (5 cents per black and white page) and (2) the lowest hourly rate of an employee able to segregate records (not to exceed \$25 dollars per hour).
  - The maximum price per hour an agency or municipality may charge is \$25/hour. However, a municipality (not an agency) may petition the Supervisor of Public Records to charge a higher price.

- A municipality is a local government unit that has corporate status and elects its own government.
    - Examples: Towns, cities, and villages
  - An agency is an entity or government organization that is responsible for managing a specific administrative department
    - Examples: Massachusetts Executive Office of Health and Human Services, Massachusetts Department of Energy Resources, and Division of Consumer Protection
- A municipality or an agency may not charge a fee for redacting or separating records unless they are given permission from the Supervisor of Public Records, or it is required by law. Statutes like CORI, FERPA, and HIPPA define the information that is required by law to be redacted or removed. The requirements of law loosely correspond with personally identifiable and personally sensitive information.
- If you are requesting information from an agency (an agency can be any federal, state, or local government organization entrusted with a certain government responsibility):
  - The agency cannot charge you for the first 4 hours they spend putting together your records.
- If you are requesting information from a municipality (a municipality is a local government in charge of providing government services for a town or city):
  - If the municipality has a population over 20,000, they may not charge you for the first 2 hours of work done in gathering your records. If you are unsure whether your population is over 20,000, you can look up your population on Google or ask the RAO.

- Claims that the documents you are asking for fall under an exemption:
  - First, look above to make sure the documents they are claiming an exemption to actually fall under an exemption category. If you think they do not fall under an exemption (see above for list of exemptions), file an appeal after exhausting steps 1 (subheading A, above) and 2 (subheading B, above).
- If the agency/municipality doesn't seem to be violating any specific rule, but:
  - Claims not to have the documents you asked for;
  - Gives you a document that is overly-redacted;
  - Gives you documents that do not respond to your request; or
  - Does not respond at all within a reasonable time.

You can appeal to the Division of Public Records in writing to this address.

Email: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)

Address: Division of Public Records

One Ashburton Place, Room 1719 Boston, MA 02108

In your email or letter, say that you want to file an appeal and include your original request to the agency/municipality and any conversation you had with the agency/municipality. Make sure to send a timely request for appeal. The deadline to send an appeal is within 90 days of the most recent contact with the agency. If you did not receive any contact, your most recent contact would be the date of your request. The Division of Public Records is required to make a decision on your appeal within 10 business days of receiving all your documents. If they determine that the agency/municipality needs to produce the records, they will order the agency/municipality to produce them.

Here is one very frustrating thing about the MA public records law. There is really no efficient way, short of litigation, to force an RAO to produce records. And this might be the case more often than not. If the agency/municipality still does not give you the records or requests unreasonable fees after your first appeal (even when ordered to do so), you can **re-appeal** with the Division of Public

Records. Re-appealing is just appealing, again! The process to re-appeal is the same as the initial appeal process, but make sure to include the information about your initial appeal when you email or mail them your wish to re-appeal.

If the agency/municipality still does not respond adequately, the Supervisor of Public Records may forward the case to the Attorney General to request further action. This does not happen frequently. The Attorney General could file a lawsuit against the agency/municipality, but it is up to the Attorney General's discretion whether to do so. This also does not happen frequently. This is also one of the parts of the process that is impacted by elections and what individuals are serving in those roles. Moreover, the Attorney General cannot herself request to oversee the production of any requests. In 2016, then Attorney General Maura Healey used the PRR law to sue Plymouth County District Attorney for failure to turn over records. "[The lawsuit was sparked last year by the refusal of the three prosecutors to release data sets about cases their offices have handled to the Boston Globe newspaper.](#)" Ultimately, the government was ordered to turn over the records and were found to be in violation of the PRR law. This was the [first time](#) the Attorney General sued for failure of a governmental actor/agency to turn over records.

Beyond this extreme action by the Attorney General, the Division of Public Records does not have an enforcement mechanism. That means that although they may send determination letters ordering an agency/municipality to produce records, there is no way for the Division of Public Records to actually enforce this beyond their determination.

[If at any point you have a question about the appeals process, you can call the Division of Public Records 9am - 5pm, Monday - Friday: \(617\) 727-2832.](#) Generally, the employees who pick up the phone are very informative and helpful. If you have a specific legal question that they are unable to answer, they will help you get in touch with an attorney in their office (the "Attorney of the Day"), though it usually takes quite a bit of time for them to respond due to their heavy workload.

## **D. Last Resort—Litigation**

Litigation means bringing the issue to a court. There is no requirement that you must work through all the steps above before filing a lawsuit in court. You can file suit without appealing. However, because of the cost and time associated with this, we are suggesting it as the *final* option for a negative response. If, after submitting a request, communicating with the agency/municipality, and appealing, there is still no satisfactory response, you can sue in civil court under the public records law. After the 2016 update, there is a possibility to recover attorneys' fees when litigation is necessary if you decide to hire an attorney (subject to a few exceptions). In general, whenever the litigation proves that the municipality/agency unlawfully withheld records, you are able to recover fees. This option is not ideal for numerous reasons, the most obvious of which are time and money. Hiring an attorney/litigating are expensive, and there is no guarantee of success.

For example, the Worcester case that was mentioned above [resulted in an award](#) of fees at the trial court level. The award was significantly less than what the attorneys who worked on the litigation were requesting. This case was appealed to a higher court for review, and it is yet to be determined what the specific amount is that Worcester must pay.

### **1. Relevant Provisions of The Massachusetts Public Records Law**

Although there is an appeals process when an agency or municipality fails to comply with an initial request within 10 business days, there is no formal enforcement mechanism from the Secretary of the Commonwealth Division of Public Records. One way that advocates have attempted to hold non-compliant agencies or municipalities accountable is through litigation. The following section will highlight examples of litigation surrounding awards of attorneys' fees and punitive damages that are allowed for under the Massachusetts Public Records Law (MPRL). It should be noted that litigation is costly and time-consuming, so it is not always accessible to the general public.

## **Attorneys' Fees**

### **§ 10A. Petition for determination of violation of Sec. 10; enforcement by Attorney General; civil actions**

Following litigation, reasonable attorneys' fees and costs may be awarded to a requester when a judge decides that it is appropriate. What constitutes reasonable attorneys' fees is also at the discretion of the judge (meaning, the judge has wide latitude in deciding what "reasonable" fees would be in your case). *Berman v. Linnane*, 434 Mass. 301, 302–03 (2001). In addition, [G. L. c. 66, § 10A\(d\)\(3\)](#) provides that an award of damages can also be accompanied by a court order compelling the agency or municipality to waive fees associated with production of records. For example, Worcester recently [agreed to pay](#) for the attorneys' fees stemming from a PRR where they refused to turn over records, requiring the requestor to [file litigation](#). Unfortunately, the trial court judge cut the total amount of fees by more than 50%, which could be a disincentive to litigation (cutting from \$217,000 to \$101,000).

## **Punitive Damages**

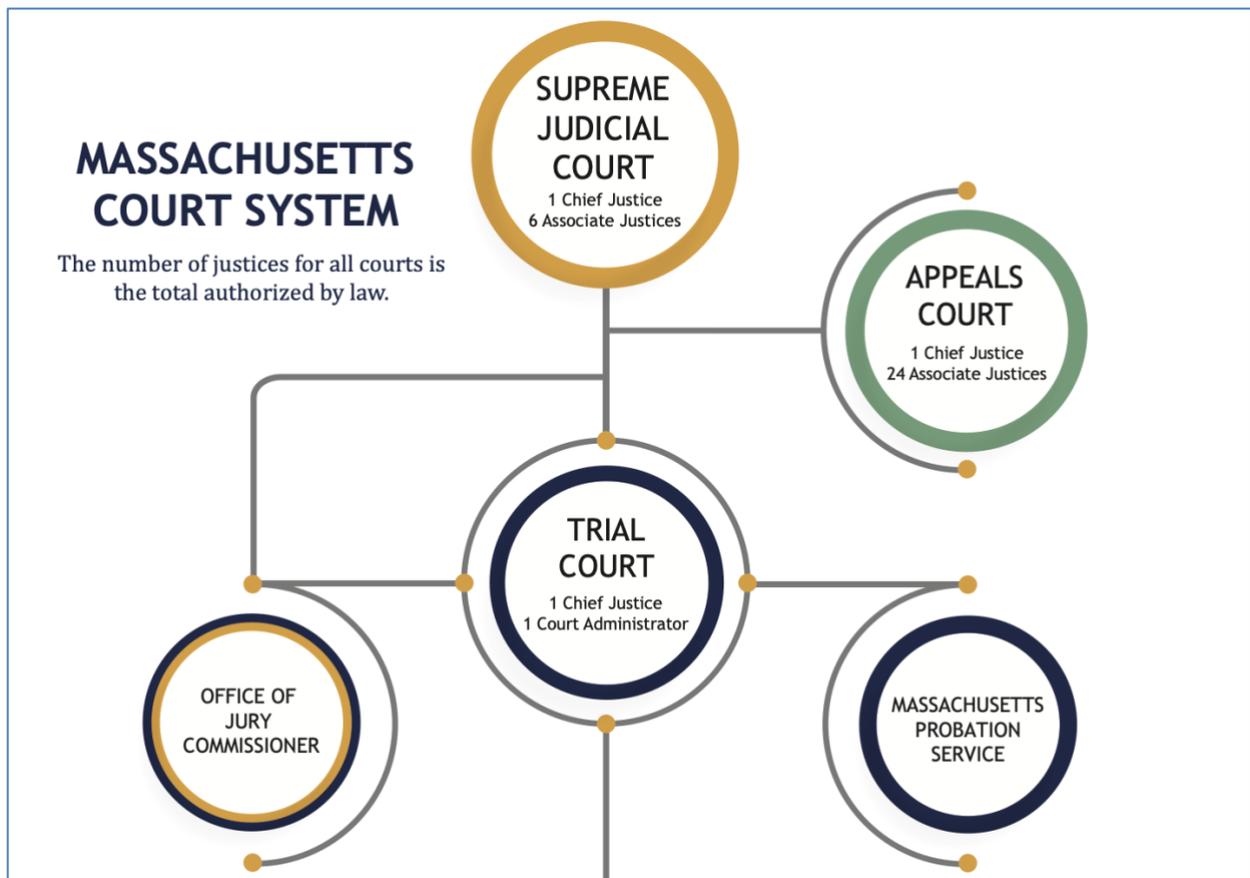
In 2016, the Massachusetts Public Records Law was amended to allow plaintiffs to recover, in part, monetarily. Under [G. L. c. 66, § 10A\(d\)\(4\)](#), punitive damages may also be awarded in particular circumstances. These particular circumstances include when an agency or municipality is non-compliant or makes it burdensome for the requestor to access the requested records. An award of punitive damages is also at the discretion of the judge but are intended to prevent certain behavior of the defendant or others from happening again in the future. § 33:12. Exemplary or punitive damages, Trial Handbook for Massachusetts Lawyers § 33:12 (3d ed.) (2023). Punitive damages of up to \$5000 can be awarded by the courts.

## **IV. Controlling Authorities on PRRs: Legislation & Case Law**

There are numerous rules that apply to PRRs in Massachusetts. One rule is something we have already discussed above: [the PRR Law](#) passed by the

Massachusetts legislature that governs these requests. A second source of rules is case law, meaning court decisions that have already been decided by Massachusetts courts. These decisions are helpful to understand how the court's view and decide matters of potential public records violations. They expand on and explain the law itself. Cases are also a useful source for potential strategies to use in litigation. The following section will walk you through a few complaints. A complaint is a detailed document that is submitted to the court at the very start of litigation. A complaint explains how the submitting party has been harmed and what they are seeking to get for the harm suffered. This should give you an idea of where litigation starts and how it plays out in real cases.

First, it is helpful when talking about cases to understand the structure of our courts here in Massachusetts (remember, just like the PRR laws, every state is different). You can see part of that [structure](#) here:



Our highest court is referred to as the SJC, or Supreme Judicial Court. They have the final say on all issues related to Massachusetts state law. Below that is the appellate court, and at the bottom is the trial court. Litigation begins in the Trial Court/Superior Court.

### **A. Sample Complaints**

[Gatehouse Media, LLC v. City of Worcester, 2022 WL 1260367, at \\*1 \(Mass. Super. Ct. 2022\) modified by Gatehouse Media, LLC v. Worcester, 102 Mass. App. Ct. 1107 \(2023\)](#)

Previous sections of this guide have explained the exemptions in the public records law and how agencies or municipalities have tried to claim them to avoid turning over records. *Gatehouse Media, LLC v. City of Worcester* was one of several cases in which an entity (the City of Worcester) claimed to be exempt from disclosure of certain public records. For more specific details about this case, you may refer to the preceding sections. However, the complaint that was filed with the court by Gatehouse Media LLC can be accessed and reviewed [here](#). This complaint is intended to serve as a launch point should you be pursuing litigation against entities withholding public records by claiming exemptions which you believe should be challenged. This is a recent case that was first filed 2022 in the Superior Court (the lowest court) and was later heard by the appellate court, which is a higher court.

Attorneys in *Gatehouse Media* successfully argued against the city of Worcester for a bad faith claim of exemption. The records requestors won those fees AND punitive damages. Fees are presumptively awarded any time a suit successfully enforces a public records law. This is meant as an incentive for attorneys where public records suits may not otherwise be financially appealing. A court may assign punitive damages wherever there is sufficient evidence that a public entity did not act in good faith in their claims of exemption to the public

records law. Punitive damages are awarded “in an amount not less than \$1,000 nor more than \$5,000, to be deposited into the Public Records Assistance Fund.” Thus, they are not part of the financial reward available individually to the party seeking relief. Still, punitive damages represent a powerful reprimand to public entities and carry reputational deterrence. As an example, punitive damages were awarded in this case because the City of Worcester had previously been involved in public records request litigation that should have made them aware that their claims of exemption would not apply. Their continued claim of exemption despite this knowledge was viewed by the court as persuasive evidence of bad faith.

[Larrabee v. Massachusetts Comm'n Against Discrimination, 96 Mass. App. Ct. 516 \(2019\)](#)

Another case, *Larrabee*, may also prove helpful to you. This case is older and was decided by an appellate court. In *Larrabee v. Massachusetts Comm'n Against Discrimination*, J. Whitfield Larrabee was denied public records on the basis that the Massachusetts Commission Against Discrimination (MCAD) was exempt under exemption (a) and exemption (f). First, it was decided that MCAD could not claim exemption (a) because of a “statute permitting investigating commissioner to hold a conciliation conference.” *Id.* Additionally, MCAD could not claim exemption (f), although “disclosure of open and pending charges and investigations would disclose details of highly personal nature.” *Id.* Judgment on count 1 was entered for Larabee following the court's analysis. *Id.* at 527. The complaint that initiated litigation can also be found [here](#) for further reference.

## **V. PRRs for Advocacy**

In Massachusetts, it has become eminently clear to frustrated requestors of public records is that the process needs to be more efficient and effective than it currently is. The biggest problems—resulting in slow agency response, untenable fees, and stonewalling—could be prevented through multi-faceted change.

<p><b>Legislate Stronger Enforcement</b></p>	<ul style="list-style-type: none"> <li>• Require action from the Secretary of the Commonwealth's Office</li> <li>• Mandate response from the Attorney General's office</li> </ul>
<p><b>Increase Public Awareness</b></p>	<ul style="list-style-type: none"> <li>• Train and prepare Records Access Officers in how to respond to requests</li> <li>• Promote public information on the importance of transparency</li> </ul>
<p><b>Rethink Exemptions</b></p>	<ul style="list-style-type: none"> <li>• Approve a more detailed exemptions section</li> <li>• Remove the exemption applying to the Governor's office, Legislature, and Judiciary</li> </ul>

## VI. Helpful Sample Documents

1: [Sample Request 1](#) from the Commonwealth of MA

Date request mailed

[Records Access Officer

Name of Municipality or Agency

Address of Municipality or Agency

City, State, Zip Code]

Re: Massachusetts Public Records Request

Dear \_\_\_\_\_:

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

[Please include a detailed description of the information you are seeking.]

I recognize that you may charge reasonable costs for copies, as well as for personnel time needed to comply with this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing.

Sincerely,

Your Name

Contact Information (address, email, telephone)

## 2: Sample Request 2 from CfJJ related to records on “school based arrests”

January 2023

### **Re: Public Records Request for Data on School Policing**

To whoever it may concern:

This letter constitutes a request pursuant to the Public Records Act, G.L. c.66, § 10, for public records in the custody of your school district. Under the Criminal Justice Reform Act,<sup>1</sup> school districts and law enforcement agencies must “specify the manner and division of responsibility for collecting and reporting the school-based arrests, citations and court referrals of students to the Department of Elementary and Secondary Education” (DESE).<sup>2</sup> DESE began collecting data on school-related arrests in the 2018-19 school year. In the 2019-20 school year, DESE has expanded that collection to include data on all referrals to law enforcement. DESE has defined these terms as follows, borrowing the same definitions used by the U.S. Department of Education since its 2009 Civil Rights Data Collection.<sup>3</sup>

A **school-related arrest** “[r]efers to an arrest of a student for any activity conducted on school grounds, during off campus school activities (including while taking school transportation), or due to a referral by any school official. All school-related arrests are considered referrals to law enforcement.”<sup>4</sup>

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<sup>1</sup> An Act Relative to Criminal Justice Reform, 2018 Mass. Acts Ch. 69.

<sup>2</sup> G.L. c. 71 § 37P(b). In turn, the Department of Elementary and Secondary Education “shall collect and publish disaggregated data in a like manner as school discipline data made available for public review.”  
*Id.*

<sup>3</sup> U.S. Department of Education, Master List of 2015-2016 CRDC Definitions 18 & 20, at <https://ocrdata.ed.gov/Downloads/Master-List-of-CRDC-Definitions.pdf>.

<sup>4</sup> Massachusetts Department of Elementary and Secondary Education, School Safety and Discipline Report Data Handbook v. 20.0, at <http://www.doe.mass.edu/infoservices/data/ssdr/>.

A **referral to law enforcement** “[i]s an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken. Citations, tickets, court referrals, and school-related arrests are considered referrals to law enforcement.”<sup>5</sup>

I request the following public records, as defined in G. L. c. 4, § 7 (twenty-sixth):<sup>6</sup>

1. An extract of your records management system or database that includes each **school-related arrest** and each **referral to law enforcement** conducted during the 2018-2019, 2019-2020, 2020-2021, and 2021-2022 school year (up until the day the records are produced). Specifically, we request an extract of the database to include the following columns:
  - a. Date of arrest or referral to law enforcement
  - b. Time of arrest or referral to law enforcement
  - c. Charge (or charges)
  - d. Whether the individual(s) was arrested or referred to law enforcement
  - e. Sex of individual(s) arrested or referred to law enforcement
  - f. Age of individual(s) arrested or referred to law enforcement
  - g. Race of individual(s) arrested or referred to law enforcement
  - h. Ethnicity of individual(s) arrested or referred to law enforcement
  - i. Disability status of the individual(s) arrested or referred to law enforcement

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<sup>5</sup> *Id.*

<sup>6</sup> "Public records" include "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee" of any Massachusetts governmental entity." See also *Attorney General vs. District Attorney for the Plymouth District* SJC-12722, at 4 (2020) (mandating compliance with a public records request even if it requires extrapolation of categories of information from an existing database).

- j. Whether the individual arrested or referred to law enforcement is a student at the school.
  - k. Name of arresting officer, if applicable, and
  - l. Badge number of the arresting officer or the officer that referred the youth to law enforcement, as applicable.
2. If such an extract of the database in question 1 is not possible, please provide school incident reports on each school-related arrest and referral to law enforcement conducted during the 2018-2019, 2019-2020, 2020-2021, and 2021-2022 school year (up until the day the records are produced).
  3. A copy of any active standard operating procedures developed with the police department and/or other law enforcement agencies regarding police placement or activity in your corresponding school;<sup>7</sup> and,
  4. Any records instructing or informing police personnel of, or otherwise describing data reporting requirements and procedures for complying with G.L. c. 71 § 37P(b).
  5. The cost to the school district of assigning a school resource officer to each school; and,
  6. The total number of school resource officers and total number of guidance counselors for each school in your district for school years 2018-2019, 2019-2020, 2020-2021, and,
  7. The total number and a brief description of 911 calls from schools in your district to local police departments conducted during the 2018-2019, 2019-2020, 2020-2021, and 2021-2022, and,
  8. A description of the proposed budget for mental, social, or emotional health support personnel for the school district.

As this request involves a matter of public interest and will not be used for any commercial purpose, we ask that all fees associated with this request be waived

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pursuant to 950 C.M.R. 32.07(2)(k). The purpose of this request is to determine whether your school district and police department are complying with their reporting obligations under the Criminal Justice Reform Act. "The public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner."<sup>8</sup>

It would be ill-advised to impose a fee for data that your school district may have failed to report in violation of statutory and regulatory duty. Moreover, as you know, municipalities with a population of over 20,000 may not assess a fee for the first 2 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record. Finally, pursuant to 950 C.M.R. 32.07(2)(i), a records access officer shall assess no fee greater than the lowest hourly rate of a person capable of compiling, segregating, redacting and reproducing a requested record. If a charge is incurred for this request which you will not waive, please so indicate and include an itemization of estimated good faith costs.

Please provide public records to a requestor in an electronic format unless the record is not available in an electronic format. G.L.c. 66, § 6A(d).

The Public Records Act requires that you comply with this request within ten (10) business days following receipt. If you believe that documents or data responsive to any request herein is not public record and thus not subject to disclosure, please set forth in writing the specific reasons for such assertion, including the specific exemption or exemptions that you believe apply. To the extent that you determine that records need to be redacted in order to be produced under any law protecting the privacy of named individuals, please do so rather than withholding them in their entirety.

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<sup>8</sup> *Boston Globe Media Partners v. Department of Corrections Information Services*, SJC-12690 (2020) (quoting *Attorney Gen. v. Collector of Lynn*, 377 Mass. 151, 158 (1979)).

If you have any questions about this request, or need additional time to respond, please contact me by phone at X or by email at X. Thank you in advance for your prompt response to this request.

Sincerely,

X

### 3: Sample Appeal Letter (based on lack of response by the RAO)

[DATE]

Supervisor of Records, Public Records Division  
One Ashburton Place, Room 1719  
Boston, MA 02108  
Via email: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)

#### **Re: Appeal of public records request to [ENTITY/RAO]**

To the Supervisor of Records, Public Records Division:

I am writing to appeal the [Entity/RAO]'s failure to respond to a public records request. Citizens for Juvenile Justice (CfJJ) sent [Entity/RAO] the attached public records request on [DATE], using the [MuckRock](#) platform. This request seeks information that is integral to better understand the intersection of school policing, immigration policy, and the juvenile justice system. CfJJ sent a follow up message on [DATE]. [Entity/RAO] did not respond to the request and did not produce the requested documents.

The public records request law requires that [Entity/RAO] furnish a copy of any responsive public record “not later than 10 business days following the receipt of the request.”

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 days.

The principal purpose of the public records law is to give the public broad access to records because the public has an interest in knowing whether public servants

are carrying out their duties in an efficient and law-abiding manner. Greater access to information is increasingly essential. "Information is the bread and butter of democracy, and the government is in a unique position to collect and aggregate information from which the public may benefit." Disclosure of the requested policies and data is in the public interest because it is likely to contribute to public understanding of the intersection of school policing, immigration policy, and the juvenile justice system.

CfJJ requests that [Entity/RAO] be required to produce responsive records to the original request free of charge.

Respectfully,

/s/

4: Sample Determination Letter (after you have filed your appeal)



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

Manza Arthur  
Supervisor of Records

July 28, 2022  
**SPR22/1651**

Michael Vigneux  
Records Access Officer  
Worcester Police Department  
911 Lincoln Square  
Worcester, MA 01608

Dear Mr. Vigneux:

I have received the petition of Erin Stewart, of *Citizens for Juvenile Justice*, appealing the response of the Worcester Police Department (Department) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On May 16, 2022, Ms. Stewart requested eight (8) categories of documents concerning school-related arrests and referrals. Claiming to not yet have received responsive records, Ms. Stewart petitioned this office and this appeal, SPR22/1651, 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. Att'y 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.

***The Department's July 22<sup>nd</sup> response***

In a July 22, 2022 letter to this office, the Department maintained that they had searched

Michael Vigneux  
Page 2  
July 28, 2022

SPR22/1651

their records and had no requests submitted from Ms. Stewart's name or email address. The Department also noted their intention to continue communicating with Ms. Stewart, stating that "... based [on] the information in the appeal acknowledgement, her request may require further clarification."

Subsequently, I learned that a representative from the Department intends on providing a further response to Ms. Stewart. Accordingly, the Department is ordered to provide Ms. Stewart with a response in accordance with the Public Records Law, its Regulations and this order within ten business days. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us). Ms. Stewart may appeal the substantive nature of the Department'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 written in a cursive, flowing style.

Manza Arthur  
Supervisor of Records

cc: Erin Stewart  
Janice E. Thompson

## 5: Sample Complaint

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC. and TAYLOR R. CAMPBELL,

Plaintiffs,

v.

CITY OF BOSTON, BOSTON POLICE DEPARTMENT, and REBECCA S. MURRAY, in her official Capacity as the Supervisor of Records of the Public Records Division of the Commonwealth of Massachusetts,

Defendants.

RECEIVED

AUG 12 2020

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND ACTION IN THE NATURE OF CERTIORARI

Docket No. \_\_\_\_\_

INTRODUCTION

1. The public's ability to hold their government accountable relies on their timely access to public records. Over the past seventeen months, the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") and Taylor R. Campbell (collectively, "Plaintiffs") have submitted public records requests seeking information about the Boston Police Department's ("BPD") use of force against, and surveillance of, people in Massachusetts, as well as the BPD's and the City of Boston's ("City") potential communications with federal law enforcement agencies. In response, Plaintiffs have regularly been met with silence or unmet assurances of future updates rather than records. Nine of these requests are now well past-due, including four that have been pending for seven months or more. Plaintiffs therefore seek declaratory and injunctive relief requiring the City and the BPD (collectively, "City Defendants") to comply with their obligations

to produce responsive documents in the timeframe required by the Massachusetts Public Records Law (“PRL”), G.L. c. 66, § 10.

2. In the wake of the recent nationwide unrest over the police killings of George Floyd and Breonna Taylor, conversations about police practices in Massachusetts have taken on new urgency as the State House and local city councils consider various policing bills and ordinances. At the same time, federal intervention in racial justice demonstrations throughout the country has ignited a conversation about local communication and collaboration with federal law enforcement agencies.

3. Individuals and organizations throughout the Commonwealth are searching for facts to inform these important, and time-sensitive, discussions.

4. To obtain such information, both Mr. Campbell and ACLUM sent public records requests to the BPD and the City in June 2020. Specifically, Plaintiffs submitted requests regarding the BPD’s use of force during the May and June racial justice demonstrations in Boston, as well as the City Defendants’ potential communications about and with federal law enforcement agencies during that same period. ACLUM additionally submitted a request regarding the BPD’s deployment of teargas and other chemical weapons since 2016 to contextualize reports of the Department’s recent use of such weapons.

5. To date, Plaintiffs have not received any documents responsive to these requests.

6. This is not an isolated occurrence, nor is it due to complications related to the coronavirus. Instead, it is reflective of a longstanding pattern of delay that violates the PRL.

7. In March 2019, ACLUM submitted a public records request to both BPD and City Hall regarding potential collaboration between the BPD and U.S. Immigration and Customs Enforcement (“ICE”), including any requests by ICE that the City provide information or take

particular action. Although the BPD produced some responsive records in October 2019, City Hall provided none. ACLUM agreed to the City's request to extend the deadline to produce any documents in its possession until December 23, 2019. To date, City Hall has neither produced responsive documents nor stated that none exist.

8. In September 2019, Plaintiffs each submitted a public records request regarding the BPD's use of force during the so-called "Straight Pride Parade," and ACLUM submitted a public records request for the location of surveillance cameras in Boston. The City Defendants still have not produced responsive documents or stated that none exist.

9. The City Defendants responded to the majority of the requests described above with a combination of silence and repeatedly unmet assurances that an update would be provided soon. The production deadlines and enforcement mechanisms of the 2016 amendments to the PRL were designed to eliminate exactly this kind of rampant deferral.

10. In response to three of the more recent records requests—namely, Plaintiffs' requests regarding the City Defendants' potential communications about and with federal law enforcement agencies and ACLUM's request regarding BPD teargas deployment since 2016—the City Defendants petitioned the Supervisor of Public Records ("the Supervisor") for an extension of time to produce documents. Here too, however, the City Defendants failed to comply with the amended PRL.

11. Rather than demonstrate the statutorily required "good cause" to justify its petitions, and without timely compliance with the requirements of G.L. c. 66, § 10(b), the City Defendants suggested they needed an undetermined number of extra days because "portions of any existing records responsive to [the] request may contain information that is exempt from

disclosure,” and “[u]ntil a review of the records is conducted it is not clear what if any exemptions may apply to require redaction or withholding.”

12. Such statements do not justify an extension of time under the plain language of the PRL and controlling regulations.

13. The Supervisor rejected the most recent of the City Defendants’ extension petitions. However, she granted extensions of the City’s deadline to respond to ACLUM’s request regarding potential City Hall communications about and with federal law enforcement agencies until August 5—a deadline the City has failed to meet—and the BPD’s deadline to respond to ACLUM’s request regarding its teargas deployment since 2016 until August 14.

14. The PRL contemplates conversations between requestors and municipalities regarding production deadlines, G.L. c. 66, § 10(b)(vi), and Plaintiffs were open to such dialogues.

15. But under the PRL, timely initial responses and production of records is not a suggestion; it is the law. The City Defendants’ failure to comply with that law has been consistent, and the delays have not been short-lived. Instead, they have repeatedly failed to produce records weeks and months past production deadlines without meaningfully engaging with Plaintiffs regarding the existence of the records, their efforts to obtain them, or alternative production schedules.

16. In the face of these systemic deficiencies, Plaintiffs need the requested records to contribute to real-time conversations and legislative decisions, as well as a clear declaration that the City Defendants, like other municipalities, must comport with statutory obligations to produce timely records in the future. Plaintiffs therefore file this action to obtain the records and to seek declaratory relief as to the City Defendants’ obligations to timely produce responsive records under the PRL. ACLUM also seeks to quash the Supervisor’s July 8 decision to grant the BPD an

extension to respond to ACLUM's request regarding teargas deployment since 2016, as well as declaratory relief clarifying the standards the Supervisor must apply to analyze time extension petitions.

### **PARTIES**

17. Plaintiff American Civil Liberties Union of Massachusetts, Inc. is a non-profit membership organization with a principal place of business in Boston dedicated to the protection of civil rights and civil liberties. To advance the interests of open government, ACLUM works to shed light on law enforcement practices in order to preserve and extend constitutional rights.

18. Plaintiff Taylor R. Campbell is a resident of Quincy, Massachusetts. He believes that timely access to government records is necessary to inform public conversation and legislative action.

19. Defendant the City of Boston is a municipal corporation that is subject to suit and the Massachusetts Public Records Law.

20. Defendant Boston Police Department is a department of the City of Boston that is subject to suit and the Massachusetts Public Records Law.

21. Defendant Rebecca S. Murray is the Supervisor of Records for the Public Records Division of the Commonwealth of Massachusetts. The Supervisor issues determinations on petitions for extensions of time to produce responsive records, which are appealable in the nature of a certiorari action under the Public Records Law. She is sued by ACLUM in her official capacity regarding an extension of time to produce responsive documents granted to the BPD on July 8, 2020, and for declaratory relief with regard to the appropriate standards for granting petitions for additional time to produce.

## JURISDICTION AND VENUE

22. Jurisdiction and venue are proper pursuant to G.L. c. 66, § 10A(c), G.L. c. 212, § 4, G.L. c. 214, § 1, G.L. c. 231A, § 1, and G.L. c. 249, § 4.

## FACTUAL BACKGROUND

### **I. The 2016 Public Records Law amendments were designed to eliminate lengthy delays in records production.**

23. Before 2016, Massachusetts agencies and municipalities were “notoriously weak in providing public records, since the laws governing them [we]re essentially toothless, and thus easily ignored.”<sup>1</sup> As a result, “[w]hen an ordinary citizen request[ed] basic government records in Massachusetts, he or she often face[d] frustrating delays and opacity.”<sup>2</sup>

24. These delays extended to institutional requestors. For example, in 2013, reporter Shawn Musgrave submitted testimony to the Joint Committee on State Administration and Regulatory Oversight explaining, “the average wait [time] for a response from state agencies is now 76 days.”<sup>3</sup> Two years later, Greater Boston Legal Services reported that it had been waiting seven months for records from the Department of Transitional Assistance.<sup>4</sup>

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<sup>1</sup> The Editorial Board, *With Mass. Public Records Law In Tatters, It's Time For Reform*, THE BOSTON GLOBE, March 13, 2015, <https://www.bostonglobe.com/opinion/editorials/2015/03/13/with-mass-public-records-law-tatters-time-for-reform/bxvKeY9koA6himuTqBUJ5O/story.html?hootPostID=a69d341d2cde65d47cfb250077180901>).

<sup>2</sup> *Id.*

<sup>3</sup> Shawn Musgrave, *Commonsense Updates Need for Massachusetts Public Records Law*, MUCKROCK.COM, Oct. 16, 2013, <https://www.muckrock.com/news/archives/2013/oct/16/muckrock-supports-commonsense-updates-massachusett/>.

<sup>4</sup> ACLU of Mass., *Updating The Public Records Law*, May 26, 2015, <https://www.aclum.org/sites/default/files/wp-content/uploads/2015/06/legislative-public-records-testimony.pdf>.

25. Reflecting the ubiquity of these kinds of delays, in 2015 the Center for Public Integrity’s review of state governments’ accountability and transparency gave the Commonwealth an “F” for public access to information.<sup>5</sup> This failing grade was largely due to the Center’s findings that “[r]equesters in Massachusetts regularly face multiple month or year delays in obtaining information through public records requests.”<sup>6</sup>

26. In the wake of a groundswell of public pressure to increase timely access to government records, the Legislature ultimately passed the 2016 amendments to the PRL. The Governor described the unanimously adopted amendments as a “new way of doing business.”<sup>7</sup>

27. The “intended purpose” of these amendments include “improv[ing] communications between requestors and records custodians,” and “establish[ing] enforceable timeframes for producing public records.”<sup>8</sup>

28. Specifically, the 2016 amendments generally require municipalities to produce responsive records within 10 business days of a request. G.L. c. 66, § 10(a).

29. Under G.L. c. 66, § 10(b), if a municipality cannot provide responsive records in this timeframe, within 10 business days of a request they must provide the requestor with a written response that, among other things:

- confirms receipt of the request;
- identifies the records that the municipality intends to produce;

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<sup>5</sup> The Center for Public Integrity, *Massachusetts Gets D+ Grade in 2015 State Integrity Investigation*, Dec. 1, 2015, <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/massachusetts-gets-d-grade-in-2015-state-integrity-investigation/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Gov. Baker Signs Law Overhauling State’s Public Records System*, WBUR NEWS & WIRE SERVICE, June 3, 2016, <https://www.wbur.org/news/2016/06/03/baker-public-records>.

<sup>8</sup> Jonathan M. Albano, Emma D. Hall, *A “New Way of Doing Business” Under the Public Records Law*, Boston B.J., Fall 2016, at 15, 19.

- identifies the records that the municipality intends to withhold and the specific reasons for such withholding;
- identifies a reasonable timeframe for production that shall not exceed 25 business days from the receipt of the request;
- suggests any reasonable modifications that would enable the municipality to more efficiently produce the records; and
- provides an itemized good faith estimate of any fees for production that may be charged.

30. Producing this information is no mere ministerial task. Instead, statutorily requiring the municipality to provide this information serves at least two important functions. First, it helps ensure that the municipality does not request an additional 15 business days without first conducting a records search and analyzing whether this additional time is actually necessary. And second, it helps foster communication between the requestor and the municipality, providing the opportunity for them to discuss alternative production schedules or explore potential ways to narrow the scope of the search.

31. If a municipality is unable to provide records within the extended timeframe of 25 business days, they can request an extension of up to an additional 30 business days to produce the documents. G.L. c. 66, § 10(c). But the municipality must first comply with G.L. c. 66, § 10(b), including the obligation to set a reasonable time frame for production under § 10(b)(vi). Indeed, a petition for extra time does not eliminate the obligation to provide the information required under G.L. c. 66, § 10(b) within ten business days of receipt. 950 C.M.R. 32.06(2)(b) & (4)(b). And the Supervisor can grant the petition only upon an additional showing of good cause, which requires

consideration of several statutorily delineated factors including the municipality's efforts to produce the documents and their ability to do so without an extension. G.L. c. 66, §10(c).

32. The Legislature intended these timeframes to have real meaning, as demonstrated by the enforcement mechanisms undergirding the deadlines.

33. For one thing, a municipality is barred from charging fees for the production of documents if they do not comply with their obligation to either produce the documents or a written response that comports with G.L. c. 66, § 10(b) within ten days. G.L. c. 66, § 10(e). For another, there is generally a presumption in favor of awarding attorney's fees if a requestor must bring a civil action to obtain public documents. G.L. c. 66, § 10A(d)(2). Finally, punitive damages are available if a requestor demonstrates that the municipality's failure to timely produce the requested records was not in good faith. G.L. c. 66, §10 A(d)(4).

**II. Timely access to public records is especially critical in this moment to inform the current legislative, municipal, and public conversations about police practices.**

34. The public's need to have timely access to public records about policing practices and local communications with federal law enforcement agencies is especially potent right now given the fast-moving statewide conversations and pending legislative actions on these two matters.

**A. The demand to reform police officers' use of force.**

35. Since the police killings of Breonna Taylor and George Floyd, waves of protests have spread across American cities. According The New York Times, in the past few months, an estimated 15 to 26 million people in the United States participated in demonstrations demanding police reform and racial justice.<sup>9</sup>

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<sup>9</sup> See Larry Buchanan, et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

36. Notably, these protests have both *pushed for* police reform, and become an example of the *need for* police reform themselves, as numerous police departments have responded with widespread use of teargas, rubber bullets and bean bags.<sup>10</sup>

37. In Massachusetts, demonstrators in Boston added their voices to the call for police reform throughout May and June.<sup>11</sup> Newspapers reported that BPD officers responded by launching chemical agents, including teargas and pepper spray, into crowds of demonstrators.<sup>12</sup> BPD officers also reportedly shot “pepper ball projectiles” at protesters.<sup>13</sup>

38. In the wake of these protests, in mid-June, Boston City Councilors Ricardo Arroyo and Andrea Campbell introduced a proposed ordinance to restrict police deployment of teargas and other chemical agents.<sup>14</sup> That ordinance is still pending, and an initial hearing was held on

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<sup>10</sup> See Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES, July 10, 2020, <https://www.nytimes.com/article/george-floyd-protests-timeline.html>; Aliyya Swaby, et al., *Texas Police Using Tear Gas and Rubber Bullets on Protesters Incites More Violence, Experts Say*, TEX. TRIBUNE, June 3, 2020, <https://www.texastribune.org/2020/06/03/texas-police-force-protests-george-floyd/>; Larry Neumeister & Tom Hays, *Injuries at George Floys Protests Draw Scrutiny to Use of ‘Nonlethal’ Police Weaponry*, STARTRIBUNE, June 21, 2020, <https://www.startribune.com/injuries-at-protests-draw-scrutiny-to-use-of-police-weaponry/571407242/>.

<sup>11</sup> See, e.g., Quincy Walters, *‘I’m In A Perpetual State Of Anger’: Hundreds In Boston Protest George Floyd’s Death*, WBUR, May 30, 2020; *Peaceful Protesters Hold ‘Die-In’ on Boston Common, March City Streets*, NBC BOSTON, June 3, 2020; Douglas Hook, et al., *How Massachusetts’ three largest cities have responded to calls for police reforms*, MASSLIVE.COM, July 19, 2020.

<sup>12</sup> See Ally Jarmanning, *How A Day of Peaceful Protest Turned to Hours of Unrest in Boston*, WBUR NEWS, June 4, 2020, <https://www.wbur.org/news/2020/06/04/boston-protests-sunday-peaceful-police>.

<sup>13</sup> *Id.*

<sup>14</sup> Isaiah Thompson, *Boston City Council Members Propose Restricting Police Use of Tear Gas, Pepper Spray, Rubber Bullets*, WBUR NEWS, June 17, 2020, <https://www.wgbh.org/news/local-news/2020/06/17/boston-city-council-members-propose-restricting-police-use-of-tear-gas-pepper-spray-rubber-bullets>.

August 10, 2020.<sup>15</sup> In July 2020, the Massachusetts Senate and House of Representatives each adopted separate police reform bills that include proposed limits on use of force as a means of crowd control.<sup>16</sup> Negotiations to determine the final parameters of the bill continue with sessions that have spilled into late nights and weekends.<sup>17</sup> Any compromise version of these bills will likely be only the beginning of an ongoing discussion, as each version proposes ongoing study commissions and analyses to inform additional actions over the course of the next several months.

39. Access to public data is necessary to inform these critical decisions. As Boston City Councilor Michelle Wu has emphasized, conversations and legislative actions regarding policing reform require accurate records “to have a baseline of what we are talking about when it comes to equipment and weapons and vehicles as well as tactics and how all of the above has been deployed over the years.”<sup>18</sup>

**B. The need for transparency regarding communications about and with federal law enforcement officers.**

40. While demonstrations for police reform have increased, so too has the need for greater transparency regarding local communications about and with federal law enforcement

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<sup>15</sup> *Ordinance Restricting The Use of Chemical Crowd Control Agents and Kinetic Impact Projectiles*, City of Boston, July 27, 2020 (last updated), <https://www.boston.gov/public-notices/13659996>.

<sup>16</sup> Matt Murphy, *Mass. Senate Approves Policing Reform After Overnight Session*, WBUR NEWS, July 14, 2020, <https://www.wbur.org/news/2020/07/14/massachusetts-senate-police-reform-bill-passes-qualified-immunity>; Chris Van Buskirk, *Mass. House of Representatives Approves Policing Reform Bill*, WBUR NEWS, JULY 25, 2020, <https://www.wbur.org/news/2020/07/25/mass-house-of-representatives-approves-policing-reform-bill>.

<sup>17</sup> Steph Solis, *Massachusetts Policing Bill Differences Remain Unresolved as Negotiations Stretch Into August*, MASSLIVE.COM, Aug. 1, 2020, <https://www.masslive.com/politics/2020/08/massachusetts-policing-bill-differences-remain-unresolved-as-negotiations-stretch-into-august.html>.

<sup>18</sup> Kevin Andrade, *City Council Orders Examination Of Boston Police's 'Militarized' Equipment, Tactics*, WGBH, June 10, 2020, <https://www.wgbh.org/news/local-news/2020/06/10/city-council-orders-examination-of-boston-polices-militarized-equipment-tactics>.

officers as the President threatens to send—and in some instances has already deployed—federal law enforcement agents into cities across the country.

41. On June 2, 2020, the federal government deployed officers from numerous agencies within the Department of Homeland Security and the Department of Justice to Washington D.C. demonstrations.<sup>19</sup>

42. Federal agents first deployed in Portland, Oregon, at the start of July remained in the city for weeks, and the President has sent or threatened to send more federal agents to Albuquerque, Chicago, Kansas City, Detroit, and other cities led by “liberal Democrats.”<sup>20</sup>

43. In Massachusetts, the National Guard remained in the streets of Boston for more than a week in June after being deployed during the demonstrations.<sup>21</sup>

44. Shortly after the President threatened to “dominate” demonstrators,<sup>22</sup> Attorney General William Barr met with BPD Commissioner William Gross on June 18, 2020.<sup>23</sup> According

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<sup>19</sup> See Zolan Kanno-Youngs and Katie Benner, *Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests*, N.Y. TIMES, June 2, 2020, <http://nytimes.com/2020/06/02/us/politics/trump-lawenforcement-protests.html>.

<sup>20</sup> Peter Baker, et al., *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 24, 2020 (updated), <https://www.nytimes.com/2020/07/20/us/politics/trump-chicago-portland-federal-agents.html>; Charles Davis, *People in Albuquerque are Protesting Trump’s Deployment of Federal Agents to The City as Local Leaders Condemn The Show of Force*, BUSINESS INSIDER, Aug. 1, 2020, <https://www.businessinsider.com/albuquerque-protests-trump-federal-agent-depoyment-2020-7>; Jeremy Gerner, *Chicago’s FBI Boss Seeks to Calm City Over Operation Legend*, CHICAGO TRIBUNE, Aug. 7, 2020, <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-fbi-boss-presser-20200807-gi54fekvs5g7jmzmncd5va3npi-story.html>.

<sup>21</sup> See, e.g., Zoe Greenberg, *Continued military presence in Boston is troubling, activists and scholars say*, THE BOSTON GLOBE, June 9, 2020, <https://www.bostonglobe.com/2020/06/09/metro/continued-military-presence-boston-is-troubling-activists-scholars-say/>.

<sup>22</sup> See Kanno-Youngs, *supra* note 22.

<sup>23</sup> WBUR News & Wire Service, *Attorney General Barr Meets With Boston Police Commissioner as Protest Against Police Brutality Continue*, WBUR NEWS, June 19, 2020, <https://www.wbur.org/news/2020/06/18/ag-barr-boston-police-commissioner-meet>.

to reports, they talked about “police reform, the feelings of Black people across the country,[] the death of George Floyd” and “the protests in Boston following Floyd’s death.”<sup>24</sup>

45. One month later, in response to the federal incursion in Portland, Mayor Walsh explained, “[t]hat behavior and that kind of so-called help is not welcome here in the city of Boston.”<sup>25</sup>

46. Yet on August 4, 2020, Deputy Secretary Ken Cuccinelli submitted written testimony to the Senate Judiciary Subcommittee on the Constitution declaring, “DHS does not need permission from governors or mayors to do our duty,” and “the Department will continue our mission with or without th[e] support” of state and local officials.<sup>26</sup>

47. Against this backdrop, the public has significant interest in the existence or non-existence of local communications about and with federal law enforcement agencies over the last two months.

### **III. The City and the BPD have failed to timely respond to ACLUM and Mr. Campbell’s 2020 public records requests regarding police use of force during recent demonstrations and potential communications with federal law enforcement agencies.**

48. Plaintiffs have each sought records to inform these conversations. To date, the City Defendants have not produced any responsive records.

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<sup>24</sup> Arianna MacNeill, *‘I’m Not a Black Man That is Going to be Silent’: Boston Police Commissioner William Gross Defends Meeting With U.S. AG Barr*, BOSTON.COM, June 21, 2020, <https://www.boston.com/news/local-news/2020/06/21/william-gross-speaks-meeting-william-barr-roxbury-community-college>.

<sup>25</sup> Danny McDonald & Travis Anderson, *Walsh rips Trump Administration for Sending Federal Agents to Respond to Protest in Portland, Ore.*, July 21, 2020, [https://www.bostonglobe.com/2020/07/21/metro/walsh-rips-trump-administration-sending-federal-agents-respond-protests-portland-ore/?p1=Article\\_Inline\\_Text\\_Link](https://www.bostonglobe.com/2020/07/21/metro/walsh-rips-trump-administration-sending-federal-agents-respond-protests-portland-ore/?p1=Article_Inline_Text_Link).

<sup>26</sup> Homeland Security, *Submitted Written Testimony of Sr. Official Performing The Duties of The Deputy Secretary Ken Cuccinelli Before the U.S. Senate Committee on The Judiciary Subcommittee on the Constitution on Aug, 4th, Aug. 4, 2020*, <https://www.dhs.gov/news/2020/08/04/submitted-written-testimony-senior-official-performing-duties-deputy-secretary-ken>.

**A. May/June Demonstrations Requests.**

49. On June 8, 2020, Mr. Campbell submitted a public records request seeking records from the BPD related to its response to the racial justice demonstrations in May and June (“Campbell Demonstrations Request”) (attached hereto as Exhibit A). The Campbell Demonstrations Request generally sought documents about the BPD’s operational responses to, and reporting during, the May 25, 2020 through June 8, 2020 demonstrations, as well as communications between the BPD and other governmental agencies during that same period.

50. Shawn Williams, the Director of Public Records and Records Access Officer (RAO) for the City of Boston, which includes the BPD, acknowledged receipt of the request that same day.<sup>27</sup>

51. More than two months since Mr. Campbell submitted the request, and more than 30 business days past the deadline to produce the requested documents or provide a statutorily adequate written response, the BPD has not produced a single responsive record or provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt. Nor have they reached out to Mr. Campbell to discuss a production schedule for the documents.

52. On June 9, 2020, ACLUM submitted a public records request seeking records from the BPD related to its response to the racial justice demonstrations in May and June (“ACLUM Demonstrations Request”) (attached hereto as Exhibit B). Much like the Campbell Demonstrations Request, the ACLUM Demonstrations Request generally sought documents related to the Department’s use of force during the demonstrations and its communications with other agencies. The ACLUM Demonstrations Request also sought the BPD’s use of force policies

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<sup>27</sup> The BPD also has a Public Information Officer, Martha DeMaio, but Mr. Williams routinely responds to requests for BPD records and files time extension petitions for the BPD with the Supervisor.

(both generally and with respect to the specific demonstrations), and its use of surveillance technologies and long-range acoustic devices during the demonstrations.

53. The BPD acknowledged receipt of the request on June 9, 2020 via automated response, but has provided no substantive responses to the request. After the statutory deadline for production or submission of the information required under G.L. c. 66, § 10(b) had passed without any further information from the BPD, ACLUM twice emailed Mr. Williams, offering to discuss the scope of the request and asking when the documents would be produced.

54. Mr. Williams did not accept ACLUM's offer to discuss the scope of the request or a production schedule.

55. More than two months after ACLUM submitted the request, and more than 30 business days past the deadline to produce the requested documents or provide a statutorily adequate written response, the BPD has not produced a single responsive record or provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt.

**B. Teargas Request.**

56. To gain a contextual understanding of the BPD's reported use of teargas during the May and June demonstrations, ACLUM submitted a public records request on June 18, 2020, seeking documents regarding the BPD's use of chemical agents, including pepper spray and teargas, since 2016 ("Teargas Request") (attached hereto as Exhibit C).

57. The BPD acknowledged receipt that same day through an automated response.

58. On July 2, 2020, Mr. Williams sent ACLUM the BPD's petition for an extension of time to produce responsive records and for permission to charge fees which it had submitted to the Supervisor. This was the first communication ACLUM had received from the BPD regarding this request since its automated acknowledgement of receipt. The BPD had not contacted ACLUM to discuss the content or the scope of the request, or to offer an alternative production schedule.

Nor had ACLUM received a written response providing the information required under G.L. c. 66, § 10(b).

59. In response to the petition, ACLUM emailed Mr. Williams and offered to discuss the scope of the request, but he did not respond. On July 8, 2020, ACLUM submitted an opposition to the BPD's petition.

60. That same day, the Supervisor granted an extension of time to produce the records until August 14, 2020, but stated that she could not opine on the BPD's petition to charge fees because it had not demonstrated that the petition was timely.

61. Under the applicable regulations, "a records access officer shall provide a written response under M.G.L. c. 66, § 10(b) to a request for public records no later than the tenth business day following the receipt of a request *notwithstanding the applicability of any petition [for extension of time].*" 950 C.M.R. 32.06(2)(b) (emphasis added). Nevertheless, more than 30 business days after ACLUM submitted this request, the BPD still has not satisfied its obligations under G.L. c. 66, § 10(b). The BPD also has not yet produced any responsive records.

### **C. Federal Agencies Requests.**

62. On June 9, 2020, ACLUM submitted a public records request seeking documents from the City regarding potential or past deployment of federal agents to Massachusetts since May 24, 2020, including any communications within the Mayor's Office and between the Mayor's Office and any other state, or local entity or various federal agencies regarding such deployment ("ACLUM Federal Agencies Request") (attached hereto as Exhibit D).

63. The City acknowledged receipt that same day via automated response.

64. On June 24, 2020, Mr. Williams sent ACLUM the City's petition for an extension of time to produce responsive records and for permission to charge fees which it had submitted to the Supervisor. This was the first communication ACLUM had received from the City regarding

this request since its automated acknowledgement of receipt. The City had not contacted ACLUM to discuss the content or the scope of the request, or to offer an alternative production schedule. Nor had the City provided ACLUM with a written response containing the information required under G.L. c. 66, § 10(b).

65. The Supervisor granted a production extension until August 5, 2020, but stated that she could not opine on the City's petition to charge fees because the City had not demonstrated that the petition was timely.

66. Although the extended deadline has passed, the City has neither produced a single responsive record in response to this request nor stated that none exist. In addition, the City has not provided ACLUM or the Supervisor the information required under G.L. c. 66, § 10(b).

67. On the night of June 18, 2020, Mr. Campbell submitted a public records request seeking all records from the BPD related to the Department's communications with the United States Department of Justice between June 8 and June 18, 2020, and any communications outside of that timeframe relating to the June 18 meeting between Attorney General Barr and BPD Commissioner Gross, as well as records from and in preparation for the meeting itself ("Campbell Federal Agencies Request") (attached hereto as Exhibit E).<sup>28</sup>

68. The BPD acknowledged receipt that same day.

69. On July 6, 2020, Mr. Williams sent Mr. Campbell the BPD's petition for an extension of time to produce responsive records and for permission to charge fees which it had

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<sup>28</sup> The timestamp on the request, which states "Friday, June 19, 2020 1:19:18 +0000[,]" was based on Coordinate Universal Time, or UTC, which is four hours ahead of eastern daylight savings time in the summer. As a result, the request was submitted at 9:19 pm eastern time on June 18, 2020. In her determination on the BPD's request to extend the time to respond to this request, the Supervisor stated, "it appears that Mr. Campbell's request was submitted on June 18, 2020."

submitted to the Supervisor. The BPD had not previously contacted Mr. Campbell to offer an alternative production schedule. Nor had BPD provided Mr. Campbell with a written response containing the information required under G.L. c. 66, § 10(b).

70. On July 9, the Supervisor denied the extension petition based on her determination that the BPD had not demonstrated good cause. She further stated that she could not opine on the BPD's petition to charge fees because the BPD had not demonstrated that the petition was timely.

71. A month and a half after Mr. Campbell submitted the request, and despite the ruling from the Supervisor, the BPD has not produced any responsive records or provided the information required under G.L. c. 66, § 10(b).

**IV. The City's and the BPD's continued failure to respond to ACLUM and Mr. Campbell's 2019 public records requests regarding police use of force and potential communications with federal agencies demonstrates a longstanding pattern and practice of delay.**

72. The City Defendants' delays in production did not start during the pandemic. To the contrary, the City Defendants have a long-standing practice of failing to comply with the PRL's production deadlines for months on end which began far before COVID-19.

73. Indeed, both Plaintiffs have unfulfilled 2019 public records requests for documents that would both be informative in their own right, and critical to understanding the current conversations regarding police practices and local communications about and with federal law enforcement agencies. For this reason, they are included in this Complaint. These include requests regarding police use of force during the August 2019 "Straight Pride Parade"—where BPD reportedly deployed pepper spray—as well as the locations of surveillance cameras linked into the City's Critical Infrastructure Monitoring Systems (CIMS) network. It also includes requests regarding potential communications about and with ICE regarding potential collaboration between that federal agency and the BPD.

74. Each of these requests has been pending for seven months or more, yet the City Defendants have failed to produce responsive documents or state that they do not exist.

**A. Straight Pride Parade Requests.**

75. On August 31, 2019, a group called “Super Happy Fun America” organized the so-called “Straight Pride Parade.” About 200 hundred people marched from Copley Square to a rally at City Hall Plaza in Boston,<sup>29</sup> while an estimated 600 individuals counter-protested both the parade and the rally.<sup>30</sup>

76. BPD Commissioner Gross stated that “appropriate staffing and security measures” were put in place to ensure the safety of both parade participants and protestors.<sup>31</sup> However, the BPD reportedly used riot gear and pepper spray to break up the crowds of counter-demonstrators, which drew criticism from the public and at least one member of the Boston City Council.<sup>32</sup> In particular, BPD Captain John Danilecki was accused by witnesses of instigating aggressive altercations between law enforcement and counter-protesters.<sup>33</sup>

77. On September 1, 2019, Mr. Campbell submitted a public records request seeking records regarding the BPD’s response to the Straight Pride Parade (“Campbell Straight Pride

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<sup>29</sup> John Hilliard, *36 Arrested During “Straight Pride” Protests Due in Court This Week*, THE BOSTON GLOBE, Sept. 1, 2019, <https://www.bostonglobe.com/metro/2019/09/01/three-dozen-arrested-during-straight-pride-protests-due-court-this-week/MQwa87MXhgiNWnwUzl2iHL/story.html>; John Hilliard, *Protesters jeer Straight Pride Parade marchers along route to City Hall*, THE BOSTON GLOBE, Aug. 31, 2019 John Hilliard, et al. *Protesters Jeer Straight Pride Parade Marchers Along Route to City Hall*, THE BOSTON GLOBE, Aug. 31, 2019, <https://www.bostonglobe.com/metro/2019/08/31/counterprotesters-rally-across-city-from-straight-pride-parade-starting-point/qFStqXFPcWoOWAaxkDyDfI/story.html>.

<sup>30</sup> Hilliard, et al., *supra* note 29.

<sup>31</sup> See Nik DeCosta-Klipa, *Boston Police Commissioner Defends Officers’ Actions At “Straight Pride Parade,”* BOSTON.COM, Sept. 9, 2019, <https://www.boston.com/news/local-news/2019/09/09/boston-police-commissioner-straight-pride-parade>.

<sup>32</sup> See DeCosta-Klipa, *supra* note 31.

<sup>33</sup> See Alyssa Vaughn, *Rachael Rollins Locks in Her Next Target: The Straight Pride Police*, BOSTON MAGAZINE, Sept. 10, 2019, <https://www.bostonmagazine.com/news/2019/09/10/rollins-straight-pride-police/>.

Parade Request”) (attached hereto as Exhibit F). The Campbell Straight Pride Parade Request generally sought documents about the BPD’s operational plans, responses to, and reporting of, events related to the parade as well as communications between and among the BPD, Massachusetts State Police, and/or Massachusetts Bay Transit Authority about the parade.

78. The BPD acknowledged the request via automated response on September 10, 2019.

79. After the 10 business days permitted by the PRL had elapsed without the production of records or provision of the information required under G.L. c. 66, § 10(b), Mr. Campbell followed-up with Mr. Williams via email. Over a period of nine months, Mr. Campbell repeatedly followed up with Mr. Williams only to be met with vague promises to provide a status update as soon as possible, which was never provided.

80. More than eleven months after Mr. Campbell submitted the request, and long past the deadline to produce the requested documents or provide a statutorily adequate written response, the BPD still has not produced any responsive records or provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt. Nor have they suggested a production schedule.

81. On September 8, 2019, ACLUM submitted a public records request seeking records from the City and the BPD related to the BPD’s use of force during the Straight Pride Parade (“ACLUM Straight Pride Request”) (attached hereto as Exhibit G). The ACLUM Straight Pride Parade Request generally sought documents related to the BPD’s operational plans and interactions with private individuals during the parade, and complaints against Captain Danilecki. It also sought, among other things, records related to the BPD’s use of chemical agents, force, and

other crowd-control methods, as well as agreements with other law enforcement agencies governing their cooperation with the BPD during the parade.

82. After more than the 10 business days permitted by the PRL had elapsed without any substantive response or production of records, ACLUM followed-up with Mr. Williams via email to inquire into the status of the production. In a series of emails throughout the fall of 2019, Mr. Williams stated that the BPD was actively working on the request, at one point indicating that he hoped to provide an update that could include a partial or complete production by the end of October 2019. When by December 5, 2019 the BPD still had not produced the documents, ACLUM again followed-up via email. During a phone call the next day, Mr. Williams suggested that the request was almost done, and that he was conducting a final review of the video and audio files, which would then require final approval before production. After further email follow-up from ACLUM in December and January, Mr. Williams stated via email on January 10, 2020 that his goal was to send a letter to ACLUM by the following week.

83. To date, ACLUM has not received any such letter and has not received the requested records. Thus, eleven months after ACLUM submitted the request, and long past the deadline to produce the requested documents the BPD still has not produced any responsive records.<sup>34</sup>

#### **B. Surveillance Camera Request.**

84. To inform public conversations about police practices, ACLUM has also sought information regarding the City's use of surveillance cameras to monitor individuals in Boston. The

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<sup>34</sup> The BPD's public records portal erroneously states that this request is "complete." The portal's simultaneous description of the status of this request as merely "assigned" is more accurate, as ACLUM still has not received any responsive records, nor are any posted on the portal.

CIMS network houses footage from surveillance cameras throughout the metropolitan Boston area. Pursuant to a 2019 public records request, ACLUM received spreadsheets identifying and locating surveillance cameras linked into the CIMS network from eight out of the nine cities in the Metropolitan Boston Homeland Security Region. Boston was the only missing city.

85. On September 30, 2019, ACLUM submitted a public records request to the City for documents reflecting the identification and location of the surveillance cameras in Boston that are connected to the CIMS network (“Camera Locations Request”) (attached hereto as Exhibit H).

86. Mr. Williams acknowledged receipt of the request that same day. On October 15, 2019, Mr. Williams sent records associated with an RFP that was not responsive to the request. After ACLUM clarified that the request sought records that listed the surveillance cameras to which the BPD had access, Mr. Williams stated that he would work with the BPD to determine whether any responsive records existed.

87. ACLUM followed-up with Mr. Williams via email and by telephone at least nine times between December 2019 and July 2020, but received either vague promises to provide a status update as soon as possible or no response at all.

88. More than ten months after ACLUM submitted the request, and long past the deadline to produce the requested documents or provide a statutorily adequate written response, the City has not produced any responsive records, nor stated that none exist, nor provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt.

**C. ICE Request.**

89. Finally, ACLUM also has an outstanding 2019 public records request regarding local communications about and with federal law enforcement agents.

90. In a 2019 federal district court complaint, the U.S. Department of Labor alleged that a Boston employer unlawfully retaliated against an injured worker by causing the worker to

be arrested by ICE, and that this arrest was orchestrated with the help of BPD Sergeant Detective Gregory Gallagher, a member of a BPD-ICE “task force.”

91. On March 7, 2019, ACLUM submitted a public records request to the City and the BPD seeking records regarding potential cooperation between the City, the BPD and ICE (“ICE Request”) (attached hereto as Exhibit I). The ICE Request generally sought documents from the BPD and the City related to the potential collaboration between ICE and BPD.

92. Mr. Williams confirmed receipt that same day, stating that he had received the request for BPD records. On March 9, 2019, ACLUM responded via email clarifying that the request sought records in the possession of both the BPD and the City.

93. After seven months of follow-up by ACLUM, on October 6, 2019 the City produced some responsive records that were in the *BPD's* possession. However, the City failed to search for or produce any records held by *the City*, even though ACLUM explicitly sought records from both the City and BPD, including communications within and between Boston City Hall and BPD regarding potential cooperation with ICE, and any requests for information or action between ICE and the City of Boston.

94. On November 6, 2019, ACLUM sent a letter to the City identifying that the City had failed to produce, or even search for, any records in City Hall’s possession, and noting other deficiencies in the City Defendants’ production (attached hereto as Exhibit J).

95. On November 14, 2019, the City acknowledged receipt of the November 6 letter, stated that it would treat this letter as a new public records request, and proposed an extension of 30 business days from the date of receipt to produce responsive records. ACLUM agreed to the requested extension, which pushed the deadline back to December 23, 2019.

96. That deadline passed without the production of any records. ACLUM has since followed-up with the City several times to discuss the production of records; each time the City has asserted that it would give a status update in the coming days or weeks, and then failed to do so.

97. Seventeen months after ACLUM submitted the original ICE Request, and long past both the deadline to produce the requested documents specified in the PRL and the extended deadline agreed-upon by ACLUM and the City in November 2019, the City has still not produced any responsive records in the possession of City Hall or stated that none exist. Nor has it provided any additional documents in response to the November 2019 deficiency letter.

**V. The BPD's and the City of Boston's petitions for extensions of time did not demonstrate the statutorily mandated good cause required to grant such requests.**

98. As noted above, in some instances, the City Defendants petitioned the Supervisor for an extension of time to produce responsive records. Yet these petitions did not meet the statutory standards for such requests.

**A. Standards for extension of time petitions.**

99. Demonstrating a commitment to ensure that extensions to the general production deadlines are limited to situations in which they are truly necessary, the 2016 PRL amendments authorizes the Supervisor to grant petitions for such extensions only if the municipality has timely set an initial reasonable period of compliance pursuant to G.L. c. 66, §10 (b)(vi), and upon an additional showing of good cause, G.L. c. 66, § 10(c).

100. Under G.L. c. 66, § 10(c), the Supervisor's determination of whether a municipality has satisfied the prerequisites for an extension of time must consider:

- the need to search for, collect, segregate or examine records;
- the scope of redaction required to prevent unlawful disclosure;

- the capacity of the municipality to produce the documents without an extension;
  - the municipality’s efforts to fulfill the current and previous requests;
  - whether the request is frivolous or intended to harass or intimidate the municipality;
- and
- the public interest served by expeditious disclosure.

101. To consider these factors, the Supervisor must be able to review information with respect to these factors. As the only entity with access to such information, municipalities are responsible for providing it to the Supervisor to inform her determination. As the Supervisor explained in an SPR bulletin that was distributed to all records access officers, municipalities “should include as much detail as possible” regarding the requested extension and “in particular, the petition should address the applicability of the factors described in G.L. c. 66, § 10(c).”<sup>35</sup> *See also* 950 C.M.R. 32.06(4)(e) (noting petitions “shall include a brief narrative detailing why an extension of time is necessary”).

102. What is more, a petition for an extension of time to produce does not remove the municipality’s statutory responsibility to provide a written response to the requestor that includes the information required in G.L. c. 66, § 10(b) within 10 business days of receipt of the request. 950 C.M.R. 32.06(4)(b). Indeed, under G.L. c. 66, § 10(c), a municipality may petition for an extension of time to produce when they are “unable to complete the request in the time provided in clause (vi) of subsection (b),” indicating that the municipality must *first* fulfill its duty to identify

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<sup>35</sup> Public Records Division, Massachusetts, SPR Bulletin 03-17, <https://www.sec.state.ma.us/pre/prepra/significant-interest/SPR-Bulletin-03-17-Petitions-Bulletin.htm>.

such a timeframe for production in a written response under G.L. c. 66, § 10(b) within 10 business days of the request *before* any time extension petition may be granted.

**B. The City Defendants’ petitions for extension.**

103. The City Defendants’ petitions to extend their time to produce records responsive to the Teargas Request, the ACLUM Federal Agencies Request, and the Campbell Federal Agencies Request did not satisfy these statutory requirements.

104. On June 24, 2020, the City submitted a petition to extend its time to produce records responsive to ACLUM’s Federal Agencies Request (“June 24 petition”) (attached hereto as Exhibit K). This was the first communication regarding this request that ACLUM had received since the City confirmed receipt on June 9, 2020. The City did not reach out to ACLUM to discuss an alternative production deadline. Nor did it provide a written response under G.L. c. 66, § 10(b) identifying the records it would produce and withhold, or suggesting a modification to narrow the scope of the request.

105. The June 24 petition did not include this information, nor did it meaningfully address any of the statutory factors for good cause. For example, it did not provide any specifics regarding the need to search for the documents or the scope of the redactions, and was likewise silent about the City’s capacity to produce the documents without an extension, or the efforts it had undertaken to fulfill the request thus far.

106. Instead, the June 24 petition twice stated, “if responsive records exist,” suggesting that no such efforts had yet begun. The June 24 petition was similarly non-committal regarding the potential application of exemptions. It began by stating, “[u]ntil a review of the records is conducted it is not clear what if any exemptions may apply to permit or require redaction or withholding.” The June 24 petition went on to hypothesize that any potentially responsive records “are likely” to contain attorney-client communications or “information related to ongoing matters

currently under deliberation,” and “may contain” information regarding “ongoing investigatory matters.”

107. Far from demonstrating the statutorily required “good cause” for additional time, the June 24 petition did not even estimate how much additional time it was requesting, suggesting instead the “number of hours will be provided” if the extension was granted.

108. The BPD’s July 2, 2020 petition to extend its time to produce documents responsive to ACLUM’s Teargas Request (“July 2 Petition”) (attached hereto as Exhibit L), and its July 6 petition to extend its time to produce documents responsive to the Campbell Federal Agencies Request (“July 6 Petition”) (attached hereto as Exhibit M), adopted a nearly identical approach.

109. In both instances, the BPD did not offer an alternative production deadline. Nor did it provide the other information required under G.L. c. 66, § 10(b) other than confirmation of receipt, either via written response to the requestor or in the petition itself, which similarly failed to meaningfully address any of the statutory factors for good cause. The petitions were silent regarding capacity to fulfill the requests in a timely manner, efforts to search for the records, or proposed production timeframe.

110. Instead, they echoed almost all of the language of the June 24 petition. Both began by stating, “[u]ntil a review of the records is conducted it is not clear what if any exemptions may apply to permit or require redaction or withholding.” Both went on to suggest that any responsive records “are likely” to contain attorney-client privileged communication, while the July 2 Petition added that responsive records “may” contain information regarding ongoing investigations, and that “it is possible” that they could contain information that would result in an “unwarranted invasion of privacy.” Finally, both offered that the numbers of hours would be provided only after an extension was granted.

111. Although she did not have the information necessary to consider the statutory requirements for good cause, the Supervisor granted the City Defendants' first two petitions (attached hereto as Exhibits N, O).

112. With respect to the June 24 Petition, the Supervisor determined "that in light of the need to collect and segregate the request, the City has established good cause to permit an extension of time." She extended the production deadline until August 5, 2020. To date, the City still has not provided any responsive records.

113. On July 8, 2020, ACLUM submitted an opposition to the July 2 Petition, arguing that the BPD did not satisfy the statutory standards for an extension (attached hereto as Exhibit P). That same day, the Supervisor nevertheless granted the petition, determining "that in light of the need to collect and segregate the request, as well as the potential scope of redaction required to prevent unlawful disclosure, the City has established good cause to permit an extension of time." She extended the production deadline until August 14, 2020.

114. Most recently, however, the Supervisor denied the BPD's July 6 Petition because of its failure to satisfy the statutory requirements (attached hereto as Exhibit Q). Quoting the same language that had appeared in both the June 24 and July 2 Petitions, the Supervisor concluded, "it is unclear why this request requires the additional time beyond the statutory allotment." The Supervisor therefore determined "that in light of the lack of explanation in the City's petition, the City has not established good cause to warrant an extension of additional time to respond to this request." To date, the BPD still has not provided any responsive records.

## CLAIMS FOR RELIEF

### **Count I – Violation of the Massachusetts Public Records Law – G.L. c. 66, § 10 (Plaintiffs Against the City and the BPD)**

115. Plaintiffs incorporate by reference and re-allege all of the allegations in the preceding paragraphs.

116. The Public Records Law strongly favors disclosure by creating a presumption that all government records are public records. G.L. c. 66, § 10A(d)(1)(iv).

117. The Public Records Law requires municipalities to respond to requests for public records within ten business days, to conduct an adequate search for responsive documents, and to demonstrate application of any exemptions. G.L. c. 66, § 10(a)-(b).

118. On information and belief, the City Defendants have custody of public records requested by Plaintiffs.

119. The City Defendants failed to provide a written response with the information required under G.L. c. 66, § 10(b) to any of Plaintiffs' requests within 10 business days. At the time of filing of this Complaint, they still have not provided such information, which is months after their receipt of these requests.

120. On information and belief, the City Defendants have failed to conduct an adequate search for records responsive to Plaintiffs' requests.

121. The City Defendants have failed to provide responsive records to the Campbell Demonstrations Request, the ACLUM Demonstrations Request, the Teargas Request, the ACLUM Federal Agencies Request, the Campbell Federal Agencies Request, the Campbell Straight Pride Parade Request, the ACLUM Straight Pride Parade Request, the Camera Locations Request, and the ICE Request within the timeframe mandated by the Public Records Law. At the time of filing, the delay is already numerous weeks or months past the statutory deadline.

122. Defendants have violated the Public Records Law by failing to provide timely access to public records.

123. Plaintiffs are entitled to injunctive relief requiring the City Defendants to produce the requested records. G.L. c. 66, § 10A(c)-(d).

124. Plaintiffs are entitled to injunctive relief prohibiting the City Defendants from charging any fee for the production of the records sought. G.L. c. 66, §§ 10(e), 10A(c)-(d).

125. Plaintiffs are entitled to an award of reasonable attorney fees and costs. G.L. c. 66, § 10A(d)(2).

126. To the extent that the evidence shows that the City Defendants did not act in good faith, Plaintiffs are entitled to an award of punitive damages to be deposited into the Public Records Assistance Fund established in G.L. c. 10, § 35DDD. G.L. c. 66, § 10A(d)(4).

**COUNT II – Certiorari Action– G.L. c. 249, § 4  
(ACLUM Against the Supervisor)**

127. Plaintiff incorporates by reference and re-alleges all of the allegations in the preceding paragraphs.

128. The Public Records Law authorizes the Supervisor to approve a petition for extension of time only upon a demonstration of good cause as to why the municipality cannot produce the records within the time initially indicated pursuant to G.L. c. 66, §10(b)(vi). And it requires the Supervisor’s good cause analysis to consider, at a minimum, six enumerated factors in this analysis. G.L. c. 66, § 10(c).

129. The filing of a petition does not affect the requirement that a municipality must provide a written response that comports with the requirements of G.L. c. 66, § 10(b). 950 C.M.R. 32.06(4)(b). Indeed, the right to obtain an extension of time pursuant to G.L. c. 66, § 10(c) presupposes the municipality has previously, and within 10 business days, fulfilled its obligation

to provide a reasonable timeframe, not to exceed 25 business days, for producing the documents pursuant to G.L. c. 66, § 10(b)(vi).

130. The BPD's July 2 Petition to the supervisor of records, which requested additional time to produce records responsive to ACLUM's Teargas Request, did not provide information regarding the enumerated statutory factors for good cause. G.L. c. 66, § 10(c). The BPD also did not provide a written response that comports with the requirement of G.L. c. 66, § 10(b), either within the statutorily required 10 business days or at any point afterwards.

131. Due to this lack of information, the Supervisor could not have analyzed the statutory factors necessary to determine good cause.

132. Under the PRL, the Supervisor was therefore required to deny the BPD's July 2 Petition. G.L. c. 66, § 10(c).

133. The PRL authorizes a requestor to seek review of the Supervisor's determination in the nature of certiorari under G.L. c. 249 § 4. G.L. c. 66, § 10A(a).

134. ACLUM is entitled to relief quashing the Supervisor's July 8 order granting the BPD's July 2 Petition. G.L. c. 249, § 4.

**Count III – Declaratory Judgment – G.L. c. 231A  
(Plaintiffs Against the City and the BPD)**

135. Plaintiffs incorporate by reference and re-allege all of the allegations in the preceding paragraphs.

136. There is an actual controversy between Plaintiffs and the City Defendants regarding their failure to produce the requested records.

137. Pursuant to G.L. c. 231A and the PRL, Plaintiffs are entitled to declarations that the records they requested are public records within the meaning of G. L. c. 66, § 10; that the City Defendants did not have legal justification for not providing written responses which comport with

the requirements of G.L. c. 66, § 10(b) within 10 business days; and that the City Defendants have violated the Public Records Law by their failure to timely produce responsive records to numerous requests.

**Count IV – Declaratory Judgment – G.L. c. 231A  
(ACLUM Against the Supervisor)**

138. ACLUM incorporates by reference and re-alleges all of the allegations in the preceding paragraphs.

139. There is an actual controversy between ACLUM and the Supervisor regarding the Supervisor’s July 8 order granting the BPD’s July 2 Petition for an extension of time to produce records responsive to ACLUM’s Teargas Request.

140. Pursuant to G.L. c. 231A and the PRL, ACLUM is entitled to declarations that the Supervisor cannot grant a petition to extend the time to produce records unless the municipality has fulfilled its obligation under G.L. c. 66, § 10(b)(vi); that the Supervisor cannot grant an extension of time to produce the actual records when the municipality’s petition does not provide specific information regarding the good cause factors enumerated in G.L. c. 66, § 10(c); and that the Supervisor’s July 8 order granting the BPD’s July 2 Petition violated the Public Records Law.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs ACLUM and Mr. Campbell ask this Court to grant the following relief:

- Issue a declaratory judgment pursuant to G. L. c. 231A that the BPD and the City have violated the law by refusing to timely produce responsive records;
- Issue a declaratory judgment pursuant to M.G.L. c. 231A that the Supervisor cannot grant an extension petition either when the municipality has not provided the requestor with the information required under G.L. c. 66 § 10(b)(vi) within 10 business days or when the municipality’s petition does not provide specific information regarding the good cause factors enumerated in G.L. c. 66, § 10(c), and that the Supervisor’s July 8 order granting the BPD’s July 2 Petition violated the Public Records Law;

- Enter a judgment pursuant to G.L. c. 249, § 4 quashing the Supervisor’s July 8 order granting the BPD’s July 2 Petition to extend the time to produce documents responsive to the ACLUM’s Tergas Request;
- Enter permanent injunctions pursuant to G. L. c. 66, § 10A(c) & (d) ordering the BPD and the City to produce the requested records to ACLUM and Mr. Campbell in a timely fashion;
- Enjoin the BPD and the City from charging ACLUM and Mr. Campbell search, review, or duplication fees for processing the requests;
- To the extent that the evidence shows that the BPD and the City acted in bad faith in failing to timely furnish the requested records, award punitive damages against the BPD and the City to be deposited into the Public Records Assistance Fund established in G.L. c. 10, § 35DDD;
- Award ACLUM and Mr. Campbell costs and reasonable attorney fees in the action; and
- Grant such other and further relief as the Court may deem just and proper.

Dated: August 12, 2020

*/s/ Jessie J. Rossman*

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