

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2181CV01458

MALDEN PUBLIC SCHOOLS,

Plaintiff,

v.

MANZA ARTHUR, SUPERVISOR of
RECORDS, of the PUBLIC RECORDS
DIVISION of the OFFICE of
WILLIAM FRANCIS GALVIN,
SECRETARY of the COMMONWEALTH,
and WILLIAM FRANCIS GALVIN,
SECRETARY of the COMMONWEALTH,
and BRUCE FRIEDMAN,

Defendants.

**CORRECTED
ADMINISTRATIVE RECORD**

**VOLUME 1 OF 2
PAGES 1 - 346**

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December 2022

Notice of Redactions

In this document a blacked outline denotes a redaction defendant made under the Supreme Judicial Court Guidelines for the Protection of Personal Identifying Data or under G.L. c. 6, § 172(a)(33).

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
C.A. NO. 2181CV01458

Malden Public Schools,)
)
)
 Plaintiff,)
)
 v.)
)
 Rebecca S. Murray, Supervisor of Records)
 of the Public Records Division of the)
 Office of William Francis Galvin, Secretary)
 of the Commonwealth, and William Francis)
 Galvin, Secretary of the Commonwealth,)
 and Bruce Friedman,)
)
 Defendants.)

CERTIFICATION OF RECORD AND INDEX

I hereby certify that, to the best of my knowledge, the attached is a complete and true index of the administrative record of the Public Records Division pertaining to Malden's response to a public records request submitted by Bruce Friedman.

Further, I certify that, to the best of my knowledge, the Public Records Administrative Record consists of the documents listed in the attached Detailed Index.



October 7, 2021
Date:

Rebecca S. Murray
Supervisor of Public Records

Category	Document	Author	Date	Notes/Summary
1. Acknowledgement	Email: SPR20-1941,42,43 Appeal Acknowledgement	Vinayak Kapoor	10/9/2020	
2. Attachments	Attachments to Email SPR20-1941,42,43 Appeal Acknowledgement		10/9/2020	
3. Communications	Email: SPR20-1941,42,43 Follow Up		10/20/2020	
4. Attachments	Attachments to Email: SPR20-1941,42,43 Follow Up		10/20/2020	Same as, though saved seperately as, "Attachments to Email SPR20-1941,42,43 Appeal Acknowledgement"
5. Determination	SPR20/1941; SPR20/1942; SPR20/1943 Determination of the Supervisor of Records	Rebecca Murray	10/21/2020	
6. Communications	Email: SPR20-1941,42,43 Determination		10/21/2020	
7. Attachments	Attachments to Email: SPR20/1941; SPR20/1942; SPR20/1943 Determination of the Supervisor of Records		10/21/2020	Also listed seperately as, though not saved seperately as, "SPR20/1941; SPR20/1942; SPR20/1943 Determination of the Supervisor of Records"

8. Communications	Response to Email: SPR20-1941,42,43 Determination	Bruce Friedman	10/21/2020	
9. Attachments	Attachments to Response to Email: SPR20-1941,42,43 Determination	Bruce Friedman	10/21/2020	
10. Communications	Email: APPEAL - SPR20/1941 (Malden 2020-0212)	Bruce Friedman	10/21/2020	
11. Attachments	Attachments to Email: APPEAL - SPR20/1941 (Malden 2020-0212)	Bruce Friedman	10/21/2020	
12. Communications	Email: APPEAL - SPR20/1942 (Malden 2020-0213)	Bruce Friedman	10/21/2020	
13. Attachments	Attachments to Email: APPEAL - SPR20/1942 (Malden 2020-0213)	Bruce Friedman	10/21/2020	
14. Communications	Email: APPEAL - SPR20/1943 (Malden 2020-0214)	Bruce Friedman	10/21/2020	
15. Attachments	Attachments to Email: APPEAL - SPR20/1943 (Malden 2020-0214)	Bruce Friedman	10/21/2020	
16. Communications	Email: SPR20/1941, SPR20/1942, SPR20/1943	Felicia S. Vasudevan	10/22/2020	

17. Attachments	Attachment to Email: SPR20/1941, SPR20/1942, SPR20/1943	Felicia S. Vasudevan	10/22/2020	
18. Acknowledgement	Email: SPR20/2044 Appeal Acknowledgement	Christopher Crocker	10/23/2020	
19. Communications	Email: Re: SPR20/2044 Appeal Acknowledgement	Bruce Friedman	10/24/2020	
20. Attachments	Attachments to Email: SPR20/2044 Appeal Acknowledgement	Bruce Friedman	10/24/2020	
21. Communications	Email: SPR20/1941, SPR20/1942, SPR20/1943 (2)	Felicia S. Vasudevan	10/30/2020	
22. Communications	Response to Email: SPR20/1941, SPR20/1942, SPR20/1943 (2)	Bruce Friedman	10/30/2020	
23. Attachments	Attachment to Response to Email: SPR20/1941, SPR20/1942, SPR20/1943 (2)	Bruce Friedman	10/30/2020	
24. Determination	SPR20/2044 Determination of the Supervisor of Records	Rebecca Murray	11/5/2020	

25. Communications	Email: SPR20/2044 Determination	Jack Robertson	11/5/2020	
26. Attachments	Attachment to Email: SPR20/2044 Determination		11/5/2020	Also listed seperately as, though not saved seperately as, "SPR20/2044 Determination of the Supervisor of Records"
27. Communications	Second Response to Email: SPR20/1941, 42, 43 Follow Up	Felicia S. Vasudevan	11/20/2020	
28. Communications	Email: Compliance Inquiry for SPR20/2044	Joshua Stair	11/20/2020	
29. Attachments	Attachment to Email: Compliance Inquiry for SPR20/2044		11/20/2020	Also listed seperately as, though not saved seperately as, "SPR20/2044 Determination of the Supervisor of Records"
30. Communications	Email: Compliance Inquiry for SPR20/2044 Friedman/City of Malden	Joshua Stair	11/20/2020	
31. Attachments	Attachment to Email: Compliance Inquiry for SPR20/2044 Friedman/City of Malden		11/20/2020	Also listed seperately as, though not saved seperately as, "SPR20/2044 Determination of the Supervisor of Records"
32. Communications	Email: Re: Compliance Inquiry for SPR20/2044	Bruce Friedman	11/20/2020	

33. Communications	Email: SPR20/1941, 1942 and 1943	Shirley Dorai	11/30/2020	
34. Attachments	Attachment to Email: SPR20/1941, 1942 and 1943	Shirley Dorai	11/30/2020	
35. Communications	Response to Email: SPR20/1941, 42, 43 Follow Up	Bruce Friedman	11/30/2020	
36. Attachments	Attachment to Response to Email: SPR20/2941 ,42, 43 Follow Up	Bruce Friedman	11/30/2020	Also listed seperately as, though not saved seperately as, "SPR20/1941; SPR20/1942; SPR20/1943 Determination of the Supervisor of Records"
37. Communications	Email: RE-APPEAL SPR 20/1941, 42, 43 and SPR 20/2044	Bruce Friedman	11/30/2020	
38. Attachments	Attachments to Email: RE-APPEAL SPR 20/1941, 42, 43 and SPR 20/2044	Bruce Friedman	11/30/2020	
39. Communications	Email: Re: Compliance Inquiry for SPR20/2044 (2)	Bruce Friedman	11/30/2020	
40. Attachments	Attachments to Email: Re: Compliance Inquiry for SPR20/2044		11/30/2020	Also listed seperately as, though not saved seperately as, "SPR20/2044 Determination of the Supervisor of Records"

41. Communications	Email: SPR 20/2044	Shirley Dorai	11/30/2020	
42. Attachments	Attachments to Email: SPR 20/2044	Shirley Dorai	11/30/2020	
43. Communications	Response to Email: RE-APPEAL SPR 20/1941, 42, 43 and SPR 20/2044	Felicia S. Vasudevan	12/2/2020	
44. Communications	Second Response to Email: RE-APPEAL SPR 20/1941, 42, 43 and SPR 20/2044	Bruce Friedman	12/3/2020	
45. Attachments	Attachments to Second Response to Email: RE-APPEAL SPR 20/1941, 42, 43 and SPR 20/2044	Bruce Friedman	12/3/2020	
46. Communications	Email: SPR20/2044 (2)	Bruce Friedman	2/24/2021	
47. Attachments	Attachments to Email: SPR20/2044 (2)	Bruce Friedman	2/24/2021	
48. Communications	Email: SPR 20/2044 - Request for Appeal	Bruce Friedman	2/24/2021	
49. Attachments	Attachments to Email: SPR 20/2044 - Request for Appeal	Bruce Friedman	2/24/2021	
50. Communications	Email: FW: SPR 20/2044 - Request for Appeal	Angela Puccini	2/25/2021	

51. Attachments	Attachments to Email: FW: SPR 20/2044 - Request for Appeal	Angela Puccini	2/25/2021	Same as, though saved seperately as, "Attachments to Email: SPR 20/2044 - Request for Appeal"
52. Acknowledgement	Email: SPR21/0491 Appeal Acknowledgement	Fredson Sossavi	2/25/2021	
53. Attachments	Attachment to Email: SPR21/0491 Appeal Acknowledgment		2/25/2021	
54. Communications	Email: RE: SPR21/0491 Appeal Acknowledgement	Felicia S. Vasudevan	3/2/2021	
55. Communications	Email: RE:SPR21/0491 Appeal Acknowledgement (2)	Bruce Friedman	3/2/2021	
56. Attachments	Attachments to Email: RE: SPR21/0491 Appeal Acknowledgement (2)	Bruce Friedman	3/2/2021	
57. Communications	Email: FW: SPR21/0491 Appeal Acknowledgement	Angela Puccini	3/2/2021	
58. Attachments	Attachments to Email: FW: SPR21/0491 Appeal Acknowledgement	Angela Puccini	3/2/2021	Same as, though saved seperately as, "Attachments to Email: RE: SPR21/0491 Appeal Acknowledgement (2)"

59. Acknowledgement	Email: SPR21/0526 Appeal Acknowledgement	Fredson Sossavi	3/3/2021	
60. Attachments	Attachment to Email: SPR21/0526 Appeal Acknowledgement		3/3/2021	
61. Determination	SPR21/0491; SPR21/0526 Determination of the Supervisor of Records	Rebecca Murray	3/11/2021	
62. Communications	Email: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526	Kassandra Boylan	3/11/2021	
63. Attachments	Attachment to Email: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526		3/11/2021	Also listed seperately as, though not saved seperately as, "SPR21/0491; SPR21/0526 Determination of the Supervisor of Records"
64. Communications	Email: Re: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526 - Request for Reconsideration	Bruce Friedman	3/12/2021	

65. Attachments	Attachments to Email: Re: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526 - Request for Reconsideration	Bruce Friedman	3/12/2021	
66. Communications	Email: Re: Response to Request for Reconsideration - SPR21/0491; SPR21/0526	Bruce Friedman	3/15/2021	
67. Attachments	Attachments to Email: Re: Response to Request for Reconsideration - SPR21/0491; SPR21/0526	Bruce Friedman	3/15/2021	
68. Communications	Email: Response to Request for Reconsideration - SPR21/0491; SPR21/0526	Felicia Vasudevan	3/15/2021	
69. Communications	Email: Public Records Request dated September 24, 2020/SPR20-2044/SPR21/491/ SPR21/526	Shirley Dorai	3/16/2021	
70. Attachments	Attachment to Email: Public Records Request dated September 24, 2020/SPR20-2044/SPR21/491/ SPR21/526	Shirley Dorai	3/16/2021	

71. Determination	SPR21/0491 Reconsideration of Determination of the Supervisor of Records	Rebecca Murray	4/23/2021	
72. Acknowledgement	Email: SPR21/1043 Appeal Acknowledgement	Manza Arthur	4/23/2021	
73. Attachments	Attachment to Email: SPR21/1043 Appeal Acknowledgement		4/23/2021	
74. Communications	Email: Determination SPR21-0491	Augustine Bottorff	4/23/2021	
75. Attachments	Attachment to Email: Determination SPR21-0491		4/23/2021	Also listed separately as, though not saved separately as, "SPR21/0491 Reconsideration of Determination of the Supervisor of Records"
76. Communications	Email: Public Records Division - Reconsideration Determination SPR21/0491	Benjamin Chan	4/23/2021	
77. Attachments	Attachment to Email: Public Records Division - Reconsideration Determination SPR21/0491		4/23/2021	Also listed separately as, though not saved separately as, "SPR21/0491 Reconsideration of Determination of the Supervisor of Records"

78. Communicatio ns	Email: RE SPR21/1043 AND SPR21/1042	Felicia S. Vasudevan, Bruce Friedman	4/26/2021	
79. Communicatio ns	Email: New relevant evidence in re: SPR 21/1042 and SPR 21/1043	Bruce Friedman	5/5/2021	
80. Attachments	Attachment to Email: New relevant evidence in re: SPR 21/1042 and SPR 21/1043	Bruce Friedman	5/5/2021	
81. Determination	SPR21/1043 Determination of the Supervisor of Records	Rebecca Murray	5/7/2021	
82. Communicatio ns	Email: SPR21/1043 Determination	Jack Robertson	5/7/2021	
83. Attachments	Attachment to Email: SPR21/1043 Determination		5/7/2021	Also listed seperately as, though not saved seperately as, "SPR21/1043 Determination of the Supervisor of Records"
84. Communicatio ns	Email: Request for Reconsideration in SPR21-491 and Time Petition	Felicia Vasudevan	5/7/2021	
85. Attachments	Attachment to Email: Request for Reconsideration in SPR21-491 and Time Petition	Felicia Vasudevan	5/7/2021	
86. Communicatio ns	Email: FW SPR21/1043 Determination	Bruce Friedman	5/11/2021	

87. Attachments	Attachments to Email: FW SPR21/1043 Determination	Bruce Friedman	5/11/2021	
88. Communications	Email: Petition for Extension of Time to Respond	Shirley Dorai	5/12/2021	
89. Attachments	Attachment to Email: Petition for Extension of Time to Respond	Shirley Dorai	5/12/2021	
90. Communications	Email: In re: Request for reconsideration of Determination SPR21/0491	Bruce Friedman	5/13/2021	
91. Attachments	Attachments to Email: In re: Request for reconsideration of Determination SPR21/0491	Bruce Friedman	5/13/2021	
92. Determination	SPR21/0491 Second Reconsideration of the Determination of the Supervisor of Records	Rebecca Murray	6/1/2021	
93. Communications	Email: Determination SPR21-0491 Reconsideration	Augustine Bottorf	6/1/2021	

94. Attachments	Attachment to Email: Determination SPR21-0491 Reconsideration		6/1/2021	Also listed seperately as, though not saved seperately as, "SPR21/0491 Second Reconsideration of Determination of the Supervisor of Records"
95. Communicatio ns	Email: Public Records Request dated May 7, 2021/FOIA Request 2021-0221	Shirley Dorai	6/8/2021	
96. Attachments	Attachments to Email: Public Records Request dated May 7, 2021/FOIA Request 2021- 0221	Shirley Dorai	6/8/2021	
97. Communicatio ns	Email: Request For Appeal - City of Malden Request# 2021-0221 - Incomplete and Non-Responsive response	Bruce Friedman	6/9/2021	
98. Attachments	Attachments to Email: Request For Appeal - City of Malden Request# 2021-0221 - Incomplete and Non- Responsive response	Bruce Friedman	6/9/2021	

99. Communications	Email: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination	Bruce Friedman	6/21/2021	
100. Attachments	Attachments to Email: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination	Bruce Friedman	6/21/2021	
101. Communications	Email: Request for Appeal - City of Malden #2021-0107 A.K.A. SPR21/0742 and SPR 21/1043 and SPR21/1199 Determination	Bruce Friedman	6/21/2021	
102. Attachments	Attachments to Email: Request for Appeal - City of Malden #2021-0107 A.K.A. SPR21/0742 and SPR 21/1043 and SPR21/1199 Determination	Bruce Friedman	6/21/2021	

103. Communications	Email: FW: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination	Gregory Stewart	6/21/2021	
104. Attachments	Attachments to Email: FW: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination	Gregory Stewart	6/21/2021	
105. Attachments	Attachments to Email: RE: SPR21/0491 Appeal Acknowledgement	Felicia S. Vasudevan	3/2/2021	

**CORRECTED
TABLE OF CONTENTS**

Notice of Redactions

Certification of the Record

Volume 1

1.	Email: SPR20-1941,42,43 - Appeal Acknowledgement - Vinayak Kapoor, dated October 9, 2020	1
2.	Attachments to Email SPR20-1941,42,43 Appeal Acknowledgement, dated October 9, 2020	2
3.	Email: SPR20-1941,42,43 Follow Up, dated October 20, 2020	17
4.	Attachments to Email: SPR20-1941,42,43 Follow Up, dated October 20, 2020	19
5.	SPR20/1941; SPR20/1942; SPR20/1943 Determination of the Supervisor of Records - Rebecca Murry, dated October 21, 2010	34
6.	Email: SPR20-1941,42,43 Determination, dated October 21, 2020	36
7.	Attachments to Email: SPR20/1941; SPR20/1942; SPR20/1943 Determination of the Supervisor of Records, dated October 21, 2020 (Attachment is link to State Website)	37
8.	Response to Email: SPR20-1941,42,43 Determination - Bruce Friedman, dated October 21, 2020	38
9.	Attachments to Response to Email: SPR20-1941-, 42, 43, Determination - Bruce Friedman, dated October 21, 2020.....	40
10.	Email – Appeal - SPR20/1941 (Malden (2020-0212) - Bruce Friedman, dated October 21, 2120	62
11.	Attachments to email – Appeal – SPR20/1941 (Malden 2020-0212) - Bruce Friedman, dated October 21, 2020	65
12.	Email: Appeal – SPR20/1942 (Malden 2020-0213) - Bruce Friedman, dated October 21, 2020	71

13.	Attachments to Email from: Appeal – SPR20/1942 (Malden 2020-0213) - Bruce Friedman, dated October 21, 2020.....	74
14.	Email– Appeal – SPR20/1943 (Malden 2020-0213) - Bruce Friedman, dated October 21, 2020	80
15.	Attachments to Email: Appeal – SPR20/1943 (Malden 2020-0214), - Bruce Friedman, dated October 21, 2020.....	83
16.	Email: SPR20/1941, SPR20/1942, SPR20/1943 - F. Vasudevan, dated October 22, 2020	89
17.	Attachment to Email: SPR20/1941, SPR20/1942, SPR20/1943 - F. Vasudevan, dated October 22, 2020.....	90
18.	Email: SPR20/2044 Appeal Acknowledgement - C. Crocker, dated October 23, 2020	92
19.	Email: Re: SPR20/2044, Appeal Acknowledgment - B. Friedman, dated October 24, 2020	93
20.	Attachments to Email: SPR20/2044 Appeal Acknowledgement, - B. Friedman dated October 24, 2020.....	95
21.	Email: SPR20/1941, SPR20/1942, SPRO20/1943 (2) - F. Vasudevan, dated October 30, 2020	113
22.	Response to Email: SPR20/1941, SPR20/1942, SPR20/1943 (2), - B. Friedman, dated October 30, 2020.....	114
23.	Attachment to Response to Email: SPR20/1941, SPR20/1942, SPR20/1943 (2) - Bruce Friedman, dated October 30, 2020	116
24.	Determination of the Supervisor of Records – Rebecca Murray: SPR20/2044, dated November 5, 2020.....	120
25.	Email from: SPR20/2044 Determination - Jack Robertson, dated November 5, 2020	124
26.	Attachments to Email: SPR20/2044, Determination - Jack Robertson, dated November 5, 2020 (Attachment is link to State Website)	125

27.	Second Response to Email - Felicia Vasudevan: SPR20/1941, 42, 43 Follow Up, dated November 11, 2020.....	126
28.	Email: Compliance Inquiry for SPR20/2044 - Joshua Stair, dated November 20, 2020	128
29.	Attachment to Email: Compliance Inquiry for SPR20/2044 - Joshua Stair, dated November 20, 2020	129
30.	Email from Joshua Stair: Compliance Inquiry for SPR20/2044, Friedman/City of Malden, dated November 20, 2020	130
31.	Attachment to Email from Joshua Stair: Compliance Inquiry for SPR20/2044 Friedman/City of Malden, dated November 20, 2020 (Attachment is link to State Website).....	131
32.	Email from Bruce Friedman re: Compliance Inquiry for SPR202044, dated November 20, 2020	132
33.	Email from Shirley Dorai: SPR20/1941, 1942 and 1943, dated November 30, 2020	134
34.	Attachment to email from Shirley Dorai: SPR20/1941, 1942 and 1943, dated November 30, 2020	135
35.	Response to email from Bruce Friedman: SPR20/1941, 42, 43 Follow Up, dated November 30, 2020	140
36.	Attachment to Response to email from Bruce Friedman: SPR20/2941, 42, 43 Follow Up, dated November 30, 2020.....	141
37.	Email from Bruce Friedman re: Appeal: SPR20/1941, 42, 43 Follow Up, dated November 30, 2020	142
38.	Attachments to Email from Bruce Friedman re: Appeal: SPR20/1941, 42, 43 and SPR20/2044, dated November 30, 2020.....	146
39.	Email from Bruce Friedman re: Compliance Inquiry for SPR20/2044(2), dated November 30, 2020	210
40.	Attachments to email from Bruce Friedman re: Compliance Inquiry for SPR20/2044, dated November 30, 2020 (Attachment is link to State Website).....	212
41.	Email from Shirley Dorai: SPR20/2044, dated November 30, 2020	213

42.	Attachments to email - Shirley Dorai: SPR20/2044, dated November 30, 2020	214
43.	Response to Email: Re – Appeal SPR20/2041, 42, 43 and SPR20/2044 – Felicia Vasudevan, dated December 2, 2020	218
44.	Second Response to Email: Re-Appeal SPR20/1941, 42, 43 and SPR20/2044 – Bruce Friedman, dated December 3, 2020	222
45.	Attachments to Second Response to Email: Re – Appeal SPR20/1941, 42, 43 and SPR 20/2044 – Bruce Friedman, dated December 3, 2020	224
46.	Email: SPR20/2044(2) – Bruce Friedman, dated February 24, 2021	239
47.	Attachments to Email: SPR20/2044(2) – Bruce Friedman, dated February 24, 2021	241
48.	Email: SPR20/2044 – Request for Appeal – Bruce Friedman, dated February 24, 2021	251
49.	Attachments to Email: SPR20/2044 – Request for Appeal – Bruce Friedman, dated February 24, 2021	253
50.	Email: FW: SPR 20/2044 – Request for Appeal – Angela Puccini, dated February 25, 2021	267
51.	Attachments to Email: FW: SPR20/2044 – Request for Appeal – Angela Puccini, dated February 25, 2021	270
52.	Email: SPR21/0491 Appeal Acknowledgement – Fredson Sossavi, dated February 25, 2021	284
53.	Attachment to Email: SPR21/0491 Appeal Acknowledgment, dated February 25, 2021	285
	Note: The Following Pages Contain Materials Included Out of Sequence	286-346

Volume 2

54.	Email: Re: SPR21/0491 – Appeal Acknowledgement – Felicia Vasudevan, dated March 2, 2021	347
	Note: Item No. 105 from the Public Records Division’s Detailed Index, Referenced in the Certification by the Supervisor of Public Records, is Included in this Item No. 54 (Attachments to Email re: SPR21/0491 Appeal Acknowledgment – Felicia Vasudevan, dated March 2, 2021)	349-355
55.	Email: Re: SPR21/0491 Appeal Acknowledgement (2) – Bruce Friedman, dated March 2, 2021.....	356
56.	Attachments to Email: Re: SPR21/0491 Appeal Acknowledgement (2) – Bruce Friedman, dated March 2, 2021	359
57.	Email: FW: SPR21/0491 Appeal Acknowledgment – Angela Puccini, dated March 2, 2021	371
58.	Attachments to Email: FW SPR21/0491 Appeal Acknowledgement – Angela Puccini, dated March 2, 2021	374
59.	Email: SPR21/0526 Appeal Acknowledgement, dated March 3, 2021	386
60.	Attachment to Email: SPR21/0526 Appeal Acknowledgement – Fredson Sossavi, dated March 3, 2021	388
61.	SPR21/0491; SPR21/0526 Determination of the Supervisor of Records – Rebecca Murray, dated March 11, 2021	403
62.	Email: Public Records Division – Appeal Determination SPR21/0491; SPR21/0526, dated March 11, 2021	407
63.	Attachment to Email: Public Records Division – Appeal Determination SPR21/0491; SPR21/0526 – Kassandra Boylan, dated March 11, 2021 (Attachment is link to State Website)	408
64.	Email: Re: Public Records Division – Appeal Determination SPR21/0491; SPR21/0526 – Request for Reconsideration – Bruce Friedman, dated March 12, 2021.....	409
65.	Attachments to Email: Re: Public Records Division – Appeal Determination SPR21/0491; SPR21/0526 – Bruce Friedman, dated March 12, 2021	411

66.	Email Re: Response to Request for Reconsideration – SPR21/0491; SPR21/0526 – Bruce Friedman, dated March 15, 2021	418
67.	Attachments to Email: Re: Response to Request for Reconsideration – SPR21/0491; SPR21/0526 – Bruce Freidman, dated March 15, 2021	420
68.	Email: Response to Request for Reconsideration – SPR21/0491; SPR21/0526 – Felicia Vasudevan, dated March 15, 2021.....	425
69.	Email: Public Records Request dated September 24, 2020/SPR20 -2044/SPR21/4591/SPR21/526 – Shirley Dorai, dated March 16, 2021	426
70.	Attachment to Email: Public Records Request dated September 24, 2020/SPR20-2044/SPR21/491/SPR21/526 – Shirley Dorai, dated March 16, 2021	427
71.	SPR21/0491 Reconsideration of Determination of the Supervisor of Records – Rebecca Murray, dated April 23, 2021	431
72.	Email: SPR21/1043 Appeal Acknowledgement – Manza Arthur, dated April 23, 2021	434
73.	Attachment to Email: SPR21/1043 Appeal Acknowledgement, dated April 23, 2021	435
	Note: The Following Pages Contain Materials Included Out of Sequence.....	436-568
74.	Email: Determination SPR21-0491 – Augustine Bottorf, dated April 23, 2021	569
75.	Attachment to Email: Determination SPR21-0491, dated April 23, 2021 (Attachment is link to State Website)	570
76.	Email: Public Records Division – reconsideration Determination SPR21/0491 – Benjamin Chan, dated April 23, 2021	571
77.	Attachment to Email: Public Records Division – Reconsideration Determination SPR21/0491, dated April 23, 2021 (Attachment is link to State Website)	572
78.	Email: Re SPR21/1043 and SPR21/1042 – Felicia Vasudevan, Bruce Friedman, dated April 26, 2021.....	573

79.	Email: New Relevant Evidence in Re: SPR21/1042 and SPR21/1043 – Bruce Friedman, dated May 5, 2021	575
80.	Attachment to Email: New Relevant Evidence in re: SPR21/1042 and SPR21/1043 (2 copies) – Bruce Friedman, dated May 5, 2021	576
81.	SPR21/1043 Determination of the Supervisor of Records – Rebecca Murray, dated May 7, 2021	580
82.	Email: SPR21/1043 Determination – Jack Robertson, dated May 7, 2021	583
83.	Attachment to Email SPR21/1043 Determination, dated May 7, 2021 (Attachment is link to State Website)	584
84.	Email: Request for Reconsideration in SPR21-491 and Time Petition – Felicia Vasudevan, dated May 7, 2021	585
85.	Attachment to Email: Request for Reconsideration in SPR21-491 and Time Petition –Felicia Vasudevan, dated May 7, 2021	586
86.	Email: FW SPR21/1043 – Determination – Bruce Friedman, dated May 11, 2021	595
87.	Attachments to Email: FW SPR21/1043 Determination – Bruce Friedman, dated May 11, 2021	597
88.	Email: Petition for Extension of Time to Respond – Shirley Dorai, dated May 12, 2021	601
89.	Attachment to Email: Petition for Extension of Time to Respond – Shirley Dorai, dated May 12, 2021	602
90.	Email: In Re: Request for Reconsideration of Determination – Bruce Friedman, dated May 13, 2021	605
91.	Attachments to Email: In re: Request for Reconsideration of Determination SPR21/0491 – Bruce Friedman, dated May 13, 2021	609
92.	SPR21/0491 Second Reconsideration of Determination of the Supervisor of Records – Rebecca Murray, dated June 1, 2021	669
93.	Email: Determination SPR21-0491 Reconsideration – Augustine Bottorf, dated June 1, 2021	672

94.	Attachment to Email: Determination SPR21/0491 Reconsideration, dated June 1, 2021 (Attachment is link to State Website).....	673
95.	Email: Public Records Request dated May 7, 2021/FOIA Request 2021-0221, dated June 8, 2021	674
96.	Attachments to Email: Public Records Request dated May 7, 2021 /FOIA Request 2021-0221 – Shirley Dorai, dated June 8, 2021	675
97.	Email: Request for Appeal – City of Malden Request #2021-0221 – Incomplete and Non-Responsive Response – Bruce Friedman, dated June 9, 2021.....	740
98.	Attachments to Email: Request for Appeal – City of Malden Request #2021-0221 – Incomplete and Non-Responsive Response – Bruce Friedman, dated June 9, 2021	743
99.	Email: Request for Appeal – City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination – Bruce Friedman, dated June 21, 2021.....	828
100.	Attachments to Email: Request for Appeal – City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination – Bruce Friedman, dated June 21, 2021.....	830
101.	Email: Request for Appeal – City of Malden #2021-0107 A.K.A. SPR21/0742 and SPR 21/1043 and SPR21/1199 Determination – Bruce Friedman, dated June 21, 2021.....	844
102.	Attachments to Email: Request for Appeal – City of Malden #2021-0107 A.K.A. SPR21/0742 and SPR21/1043 and SPR21/1199 Determination – Bruce Friedman, dated June 21, 2021	846
103.	Email: FW: Request for Appeal – City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination – Gregory Steward, dated June 21, 2021	998
104.	Attachments to Email: FW: Request for Appeal – City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination – Gregory Stewart, dated June 21, 2021	1000
105.	Note: Attachments to Email: SPR21/0491 Appeal Acknowledgement are Included with Item No. 54, Starting at Page 349	

Mackenzie Nekton

From: Vinayak Kapoor
Sent: Friday, October 9, 2020 11:27 AM
To: glucey@cityofmaiden.org
Cc: SEC-DL-PREWEB; bruce@amyandbruce.com
Subject: SPR20/1941,42,43 Appeal Acknowledgment
Attachments: SPR20-1941.pdf; SPR20-1942.pdf; SPR29-1943.pdf

Dear Records Custodian:

Please be aware, this office has received appeals relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832. Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Sincerely,

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



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

October 9, 2020
SPR20/1941

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

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

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

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

This communication, along with any attachments, is covered by federal and state law

governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

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

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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

October 9, 2020
SPR20/1942

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

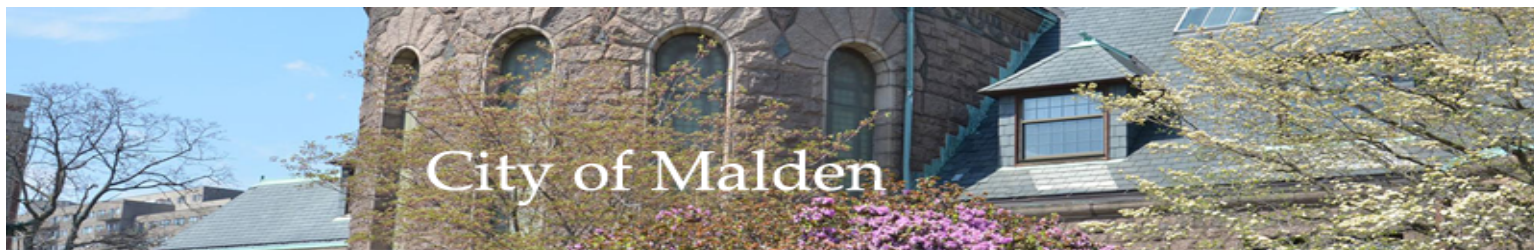
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

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

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

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governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.



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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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

October 9, 2020
SPR20/1943

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

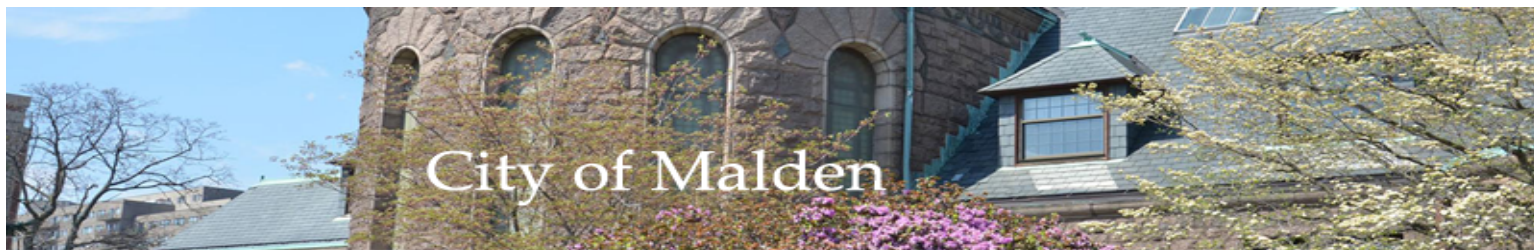
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

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

The original request and response are hereto attached.

Kindest Regards,
Bruce Friedman

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

Request Detail

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

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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Mackenzie Nekton

From: Vinayak Kapoor
Sent: Tuesday, October 20, 2020 3:39 PM
To: glucey@cityofmalden.org
Cc: SEC-DL-PREWEB; [REDACTED]
Subject: SPR20/1941,42,43 Follow Up
Attachments: SPR20-1941.pdf; SPR20-1942.pdf; SPR29-1943.pdf

Dear Mr. Lucey,

As this determination is coming up on its due date, I wanted to touch base with you. Has the Office provided a response? If so, kindly forward to this office. If not, does the Office intend on providing a response? Kindly advise.

Thank you,

Sincerely,

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

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Sent: Friday, October 9, 2020 11:27 AM
To: glucey@cityofmalden.org
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; [REDACTED]
Subject: SPR20/1941,42,43 Appeal Acknowledgment

Dear Records Custodian:

Please be aware, this office has received appeals relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832. Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Sincerely,

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



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

October 9, 2020
SPR20/1941

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

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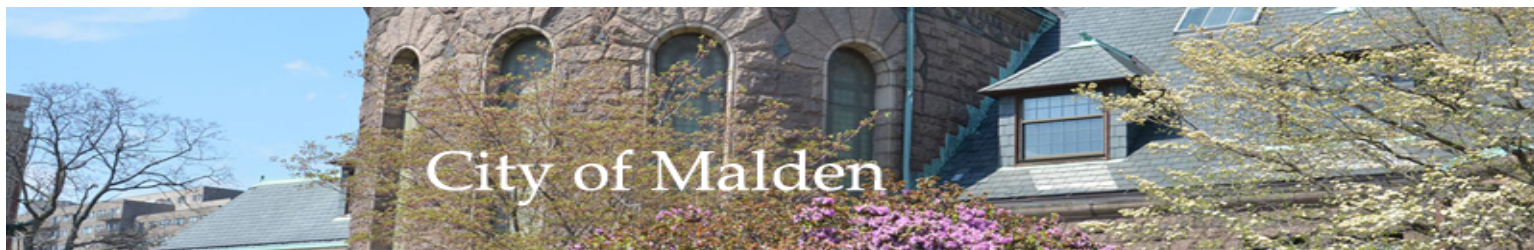
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

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

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

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governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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Welcome Bruce Friedman ! [\[Logout\]](#)
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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

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

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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

October 9, 2020
SPR20/1942

Bruce Friedman
[REDACTED] Street
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

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

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

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governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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Welcome Bruce Friedman ! [\[Logout\]](#)
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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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

October 9, 2020
SPR20/1943

Bruce Friedman
[REDACTED] Street
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

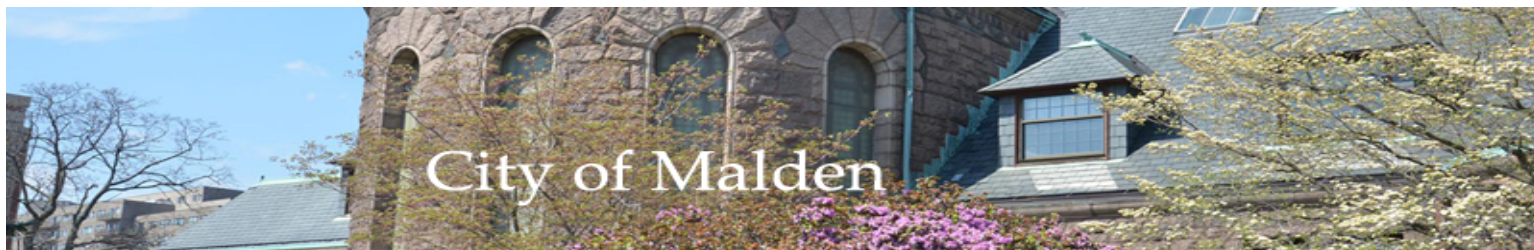
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

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

The original request and response are hereto attached.

Kindest Regards,
Bruce Friedman

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.



Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

Request Detail

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

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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

Rebecca S. Murray
Supervisor of Records

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

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

Dear Mr. Lucey:

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

The Public Records Law

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

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

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

Order

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

Greg Lucey
Page 2
October 21, 2020

SPR20/1941; SPR20/1942; SPR20/1943

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Vinayak Kapoor
Sent: Wednesday, October 21, 2020 4:45 PM
To: glucey@cityofmalden.org
Cc: SEC-DL-PREWEB; [REDACTED]
Subject: SPR20/1941,42,43 Determination
Attachments: spr201941 spr201942 spr201943.pdf

Hello,

Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

ATTACHMENT NO. 7

Attachments to Email:
SPR20/1941; SPR20/1942; SPR20/1943
Determination of the Supervisor of Records
October 21, 2020

[http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx.](http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx)

THIS PAGE REPRESENTS THE ABOVE STATE OF MASSACHUSETTS LICENSED
WEBSITE LINK THAT IS REFERRED TO IN THE PREVIOUS DOCUMENT (No. 6)

,

Mackenzie Nekton

From: Bruce Friedman [REDACTED]
Sent: Wednesday, October 21, 2020 5:37 PM
To: Vinayak Kapoor; glucey@cityofmalden.org
Cc: SEC-DL-PREWEB; Brian DeLacey
Subject: Re: SPR20/1941,42,43 Determination
Attachments: 2020-0212-.pdf; 2020-0213-.pdf; 2020-0214-.pdf; FOIA REQUESTS.pdf
Importance: High

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

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

Hello,

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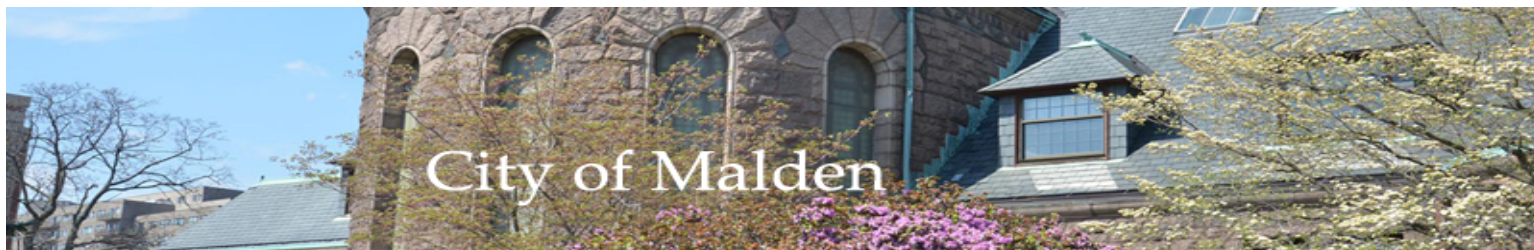
If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Vinayak Kapoor

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

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Requestor Dashboard

Communication

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Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

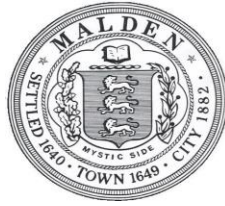
Response Details

Response Please refer to the attached document.

**Response Documents**

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

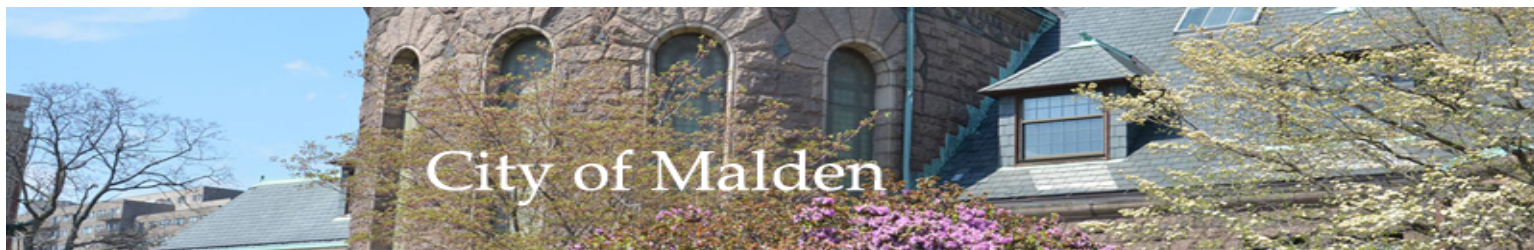
Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer


[Requestor Dashboard](#)
[Communication](#)
[Change Profile](#)
[Help](#)
Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

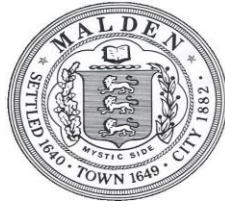
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

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

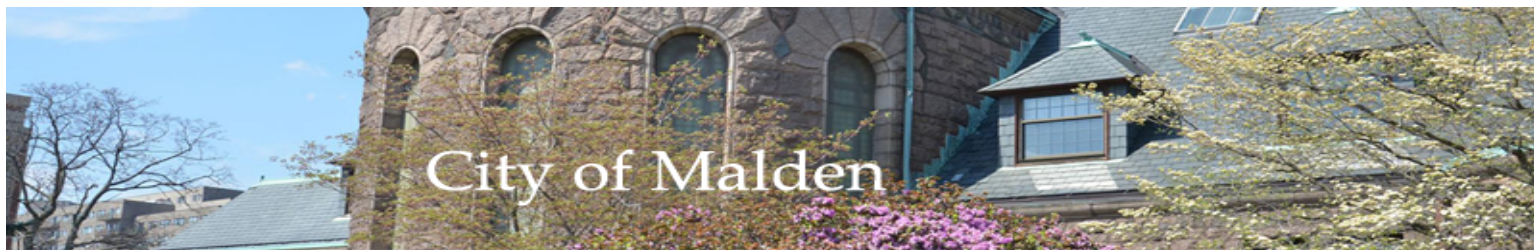
Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer


[Requestor Dashboard](#)
[Communication](#)
[Change Profile](#)
[Help](#)
Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	Marvin
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

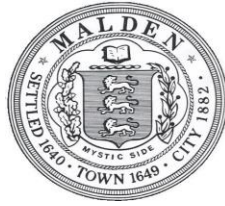
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer



Requestor Dashboard

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Requestor Dashboard

Following are all your FOIA requests you filed. Please select the "Request No." link to open the details. To submit a new FOIA request click the "Create New Request" button.

[Create New Request](#)

Total Records : 73

Request No.	Request Date	Department	Status	Response	Estimated Cost (\$)	Actual Cost (\$)	Paid Amount (\$)	Action
2020-0214	09/24/2020	School	Completed - Not Sent	0.00	0.00	0.00		
2020-0213	09/24/2020	IT Department	Completed - Not Sent	0.00	0.00	0.00		
2020-0212	09/24/2020	IT Department	Completed - Not Sent	Please refer to the attached document.	0.00	0.00	0.00	
2020-0195	09/03/2020	School	Completed - Not Sent	The special education audit of services delivered ...	0.00	0.00	0.00	
2020-0194	09/03/2020	School	Completed - Not Sent	Please see the attached documents.	0.00	0.00	0.00	
2020-0178	08/24/2020	Human Resources	Completed - Not Sent	This response fo...	0.00	0.00	0.00	
2020-0170	08/10/2020	School	Completed - Not Sent	Please see the attached documents.	0.00	0.00	0.00	
2020-0169	08/10/2020	School	Completed - Not Sent	All the video of Malden School Committee meetings...	0.00	0.00	0.00	
2020-0164	08/06/2020	School	Completed - Not Sent	Please see the attached documents.	0.00	0.00	0.00	
2020-0129	06/19/2020	School	Completed - Not Sent	Please see the attached documents.	0.00	0.00	0.00	
2020-0128	06/19/2020	School	Completed - Not Sent	Please see the attached documents.	0.00	0.00	0.00	
2020-0127	06/19/2020	Human Resources	Completed - Not Sent	Please see attached documents.	0.00	0.00	0.00	
2020-0112	06/05/2020	School	Completed - Not Sent	Please see attached email documents.	0.00	0.00	0.00	
2020-0110	06/03/2020	School	Completed - Not Sent	The total number of Special Education students for...	0.00	0.00	0.00	
2020-0108	05/28/2020	Clerk	Estimated	No response provided yet.	600.00	0.00	0.00	Pay Now

2020-0107	05/28/2020	Clerk	Estimated	There were 285 Public Record Requests in 2019.	1250.00	0.00	0.00	Pay Now
2020-0106	05/28/2020	School	Completed - Not Sent	The cost per student paid for out-of-district stude...	0.00	0.00	0.00	
2020-0105	05/28/2020	School	Completed - Not Sent	The actual total cost paid for out-of-district stu...	0.00	0.00	0.00	
2020-0092	05/18/2020	Legal	Completed - Not Sent	The permitting history including digital attachmen...	0.00	0.00	0.00	
2020-0090	05/14/2020	Legal	In Progress	No response provided yet.	0.00	0.00	0.00	
2020-0062	04/14/2020	School	Completed - Not Sent	Dear Mr. Friedman...	0.00	0.00	0.00	
2020-0061	04/14/2020	School	Completed - Not Sent	Dear Mr. Friedman...	0.00	0.00	0.00	
2020-0060	04/14/2020	School	Completed - Not Sent	Dear Mr. Friedman, Please see the a...	0.00	0.00	0.00	
2020-0059	04/14/2020	School	Completed - Not Sent	Dear Mr. Friedman, Please see the r...	0.00	0.00	0.00	
2020-0034	03/02/2020	Legal	In Progress	No response provided yet.	0.00	0.00	0.00	
2020-0033	03/02/2020	Engineering	Completed - Not Sent	Traffic study attached	0.00	0.00	0.00	
2019-0285	12/31/2019	Human Resources	Completed - Not Sent	Please see attached documents responding to PRR #2...	0.00	0.00	0.00	
2019-0284	12/30/2019	Human Resources	Completed - Not Sent	Please see attached documents. Thank you.	0.00	0.00	0.00	
2019-0283	12/30/2019	Human Resources	Completed - Not Sent	Please see attached documents and the link	0.00	0.00	0.00	
2019-0282	12/30/2019	Human Resources	Completed - Not Sent	Please find attached documents responding to your ...	0.00	0.00	0.00	
2019-0282	12/30/2019	Human Resources	Completed - Not Sent	Please find attached documents responding to your ...	0.00	0.00	0.00	
2019-0281	12/30/2019	Human Resources	Completed - Not Sent	Please find attache ddocuments responding to your ...	0.00	0.00	0.00	
2019-0280	12/30/2019	Human Resources	Completed - Not Sent	Please see the attached documents. Thank you...	0.00	0.00	0.00	
2019-0279	12/30/2019	Human Resources	Completed - Not Sent	See attached documents responding to your PRR #201...	0.00	0.00	0.00	
2019-0279	12/30/2019	Human Resources	Completed - Not Sent	See attached documents responding to your PRR #201...	0.00	0.00	0.00	
2019-0278	12/30/2019	Human Resources	Completed - Not Sent	Please see the attached documents. Thank you...	0.00	0.00	0.00	
2019-0277	12/30/2019	Human Resources	Completed - Not Sent	Please refer to the attached documents. Than...	0.00	0.00	0.00	
2019-0276	12/30/2019	Human Resources	Completed - Not Sent	Please see attached documents responding to your P...	0.00	0.00	0.00	
2019-0269	12/13/2019	School	Completed - Not Sent	There are no policies or schedules set regarding v...	0.00	0.00	0.00	
2019-0268	12/13/2019	School	Completed - Not Sent	Mr. Friedman, Malden Public Schools...	0.00	0.00	0.00	
2019-	11/12/2019	Legal	Completed - Not	The only policy which mentions	0.00	0.00	0.00	

0254			Sent	transportation is t...				
2019-0253	11/12/2019	Legal	Completed - Not Sent	Please see attached contract for NRT Bus Inc.	0.00	0.00	0.00	
2019-0252	11/12/2019	Legal	Completed - Not Sent	Malden Public Schools is unable to provide this da...	0.00	0.00	0.00	
2019-0241	10/23/2019	Legal	Completed - Not Sent	Mr. Firedman, There are no document...	0.00	0.00	0.00	
2019-0220	09/18/2019	Legal	Completed - Not Sent	Mr. Friedman, 0.00	0.00	0.00		
2019-0219	09/18/2019	Legal	Completed - Not Sent	Mr. Friedman, 0.00	0.00	0.00		
2019-0218	09/18/2019	Legal	Completed - Not Sent	Mr. Friedman, 0.00	0.00	0.00		
2019-0217	09/18/2019	Legal	Completed - Not Sent	Mr. Friedman, 0.00	0.00	0.00		
2019-0216	09/18/2019	Legal	Completed - Not Sent	Mr. Friedman, Please find attached ...	0.00	0.00	0.00	
2019-0215	09/17/2019	Legal	Completed - Not Sent	Re: #2019-0215 ...	0.00	0.00	0.00	
2019-0214	09/17/2019	Human Resources	Completed - Not Sent	0.00	0.00	0.00		
2019-0213	09/17/2019	Legal	Completed - Not Sent	As of the date of this request, there are no recor...	0.00	0.00	0.00	
2019-0212	09/17/2019	Legal	Completed - Not Sent	The School Departme...	0.00	0.00	0.00	
2019-0211	09/17/2019	Legal	In Progress	No response provided yet.	0.00	0.00	0.00	
2019-0210	09/17/2019	Legal	Completed - Not Sent	Mr. Friedman, Please find below the...	0.00	0.00	0.00	
2019-0209	09/17/2019	Legal	Completed - Not Sent	Mr. Friedman, Please find below the...	0.00	0.00	0.00	
2019-0208	09/17/2019	Legal	Completed - Not Sent	Mr. Friedman, See attached document...	0.00	0.00	0.00	
2019-0207	09/17/2019	Legal	Completed - Not Sent	Mr. Friedman, See attached response...	0.00	0.00	0.00	
2019-0206	09/17/2019	Legal	Completed - Not Sent	Mr. Friedman, Please find attached ...	0.00	0.00	0.00	
2019-0205	09/17/2019	Public Facilities	Completed - Not Sent	Mr. Friedman, See below the respons...	0.00	0.00	0.00	
2019-0196	09/12/2019	Parking	Completed - Not Sent	The 2019 Hawthorne Street data was uploaded twice ...	0.00	0.00	0.00	
2019-	09/11/2019	Parking	Completed - Not	Report attached with badges and violations.	0.00	0.00	0.00	

0195			Sent	...				
2019-0194	09/05/2019	Legal	Completed - Not Sent		0.00	0.00	0.00	
2019-0193	09/04/2019	Parking	Completed - Not Sent	There are no records responsive to this request in...	0.00	0.00	0.00	
2019-0192	09/04/2019	Legal	Completed - Not Sent	0.00	0.00	0.00		
2019-0191	09/04/2019	Legal	Completed - Not Sent	Mr. Friedman, Requested documents avail...	0.00	0.00	0.00	
2019-0190	09/04/2019	Legal	Completed - Not Sent	Response sent previously Gregory Lu...	0.00	0.00	0.00	
2019-0189	08/30/2019	IT Department	Completed - Not Sent	Mr. Friedman,	0.00	0.00	0.00	
2019-0188	08/30/2019	Legal	Completed - Not Sent	There have been several documents sent regardin...	0.00	0.00	0.00	
2019-0187	08/30/2019	IT Department	Estimated	Mr. Friedman,	10425.00	0.00	0.00	Pay Now
2019-0186	08/30/2019	Legal	Completed - Not Sent	Mr. Friedman, This is a duplicate respo...	0.00	0.00	0.00	
2019-0185	08/30/2019	Legal	Completed - Not Sent	Mr. Friedman, The City of Malden follow...	0.00	0.00	0.00	
2019-0184	08/29/2019	Parking	Completed - Not Sent	See attached all tickets written on requested stre...	0.00	0.00	0.00	

[Export To Excel](#)

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Mackenzie Nekton

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

Importance: High

Greetings:

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

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

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

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

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

The "answer" is deficient in many ways, including

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

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

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

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

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

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

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

Hello,

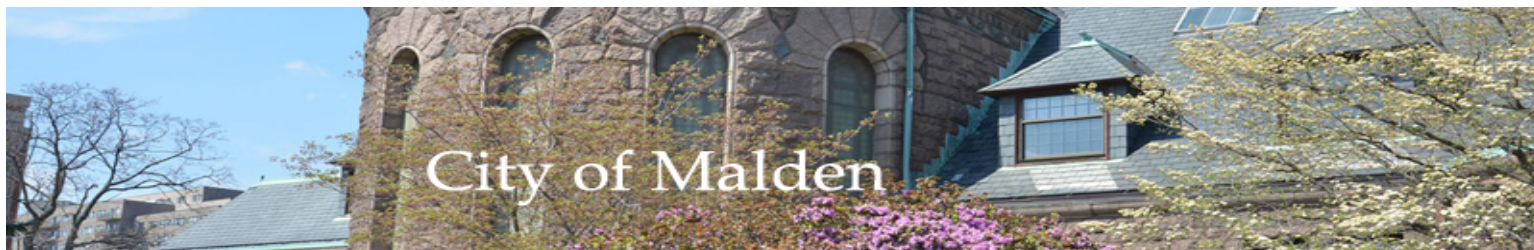
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

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Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

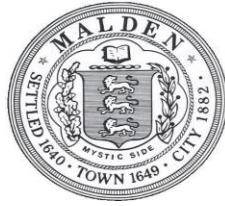
Response Details

Response Please refer to the attached document.

**Response Documents**

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer

Mackenzie Nekton

From: Bruce Friedman [REDACTED]
Sent: Wednesday, October 21, 2020 6:10 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1942 (Malden 2020-0213)
Attachments: 2020-0213-.pdf

Importance: High

Greetings:

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

On 09/24/2020 at 08:58 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information."

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1942 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

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

The "answer" is deficient in many ways, including

- not specifically addressing each request independently (The "answer" to each of the three requests is the identical co-mingled answer),
- they failed to specifically account for the individual requests in calculating the number of emails,

- they failed to specify the amount of time required for each request for each email to segmenting and redacting.
- They failed to provide the names and verification that the lowest paid employee capable of segmenting and redacting

This request was received by the City of Malden as #2020-0213 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of \$175,400.00. This estimate fails to comply with Public Records Law in a number of ways.

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

From: Bruce Friedman <Bruce@AmyAndBruce.com>

Date: Wednesday, October 21, 2020 at 5:36 PM

To: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>, glucey@cityofmalden.org
<glucey@cityofmalden.org>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Brian DeLacey <bdelacey@gmail.com>

Subject: Re: SPR20/1941,42,43 Determination

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

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

Hello,

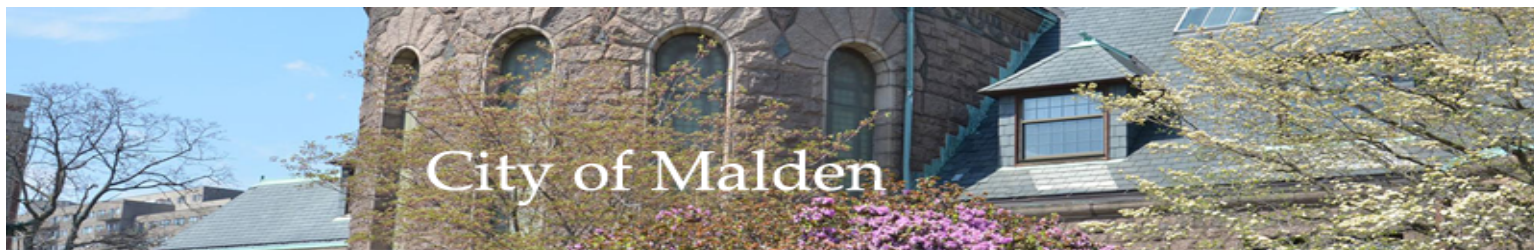
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

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[Requestor Dashboard](#)
[Communication](#)
[Change Profile](#)
[Help](#)

 Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM

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

Request Documents

No Document.

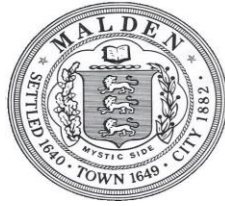
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer

Mackenzie Nekton

From: Bruce Friedman [REDACTED] >
Sent: Wednesday, October 21, 2020 6:14 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1943 (Malden 2020-0214)
Attachments: 2020-0214-.pdf

Importance: High

Greetings:

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

On 09/24/2020 at 09:08 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED] >, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1943 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

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

This "answer" does not anywhere specifically address the request contained in #2020-0214, no responsive documents were ever provided.

The "answer" is also deficient in many ways, including

- not specifically addressing each request independently (The “answer” to each of the three requests is the identical co-mingled answer),
- they failed to specifically account for the individual requests in calculating the number of emails,
- they failed to specify the amount of time required for each request for each email to segmenting and redacting.
- They failed to provide the names and verification that the lowest paid employee capable of segmenting and redacting

This request was received by the City of Malden as #2020-0214 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of \$175,400.00. This estimate fails to comply with Public Records Law in a number of ways.

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

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

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>

Date: Wednesday, October 21, 2020 at 4:45 PM

To: gluey@cityofmalden.org <gluey@cityofmalden.org>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman [REDACTED]

Subject: SPR20/1941,42,43 Determination

Hello,

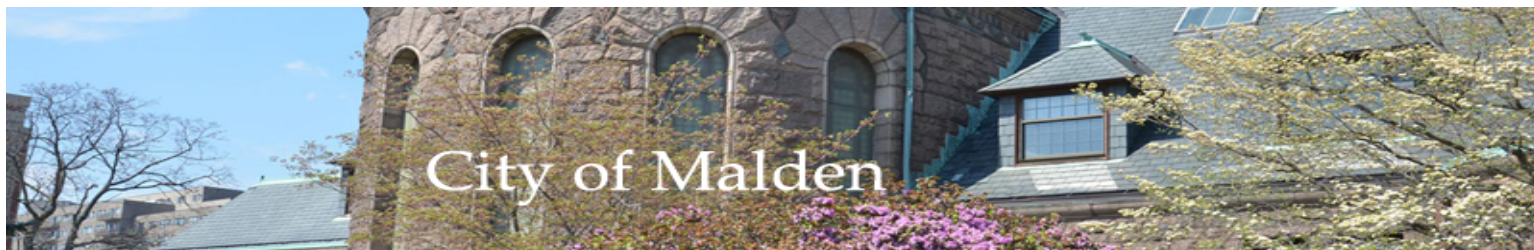
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

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Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

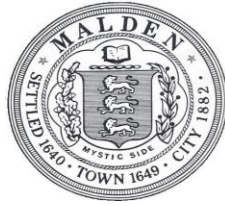
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer

Mackenzie Nekton

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Thursday, October 22, 2020 4:05 PM
To: SEC-DL-PREWEB
Cc: John Oteri; Kathryn M. Fallon
Subject: SPR20/1941, SPR20/1942, SPR20/1943
Attachments: SIGNED PRD Letter dated 10-22-20.PDF

Dear Attorney Kapoor:

Please find the enclosed letter in reference to the above matters. Thanks!

Felicia

Felicia Vasudevan, Esq.
fvasudevan@mhtl.com

October 22, 2020

VIA EMAIL AND FIRST-CLASS MAIL

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

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

Dear Attorney Kapoor:

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

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

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

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



300 Crown Colony Drive, Suite 410 | Quincy, Massachusetts 02169 | T 617.479.5000 | F 617.479.6469
Boston | Springfield | info@mhtl.com | www.mhtl.com

Attorney Kapoor
October 22, 2020
Page 2

Thank you for your consideration of this matter.

Very truly yours,



Felicia Vasudevan

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

1238986v1

Mackenzie Nekton

From: Crocker, Christopher (SEC)
Sent: Friday, October 23, 2020 3:10 PM
To: glucey@cityofmaiden.org; sdorai@maidenps.org
Cc: Bruce Friedman; SEC-DL-PREWEB
Subject: SPR20/2044 Appeal Acknowledgment
Attachments: SPR20-2044.pdf

Dear Records Custodian:

Please be aware, this office has received an appeal relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832. Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Sincerely,

Christopher Crocker, Esq.
Staff Attorney
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Tel: (617) 727-2832 ex. 3227
Email: Christopher.Crocker@sec.state.ma.us

Mackenzie Nekton

From: Bruce Friedman [REDACTED] >
Sent: Saturday, October 24, 2020 4:14 PM
To: Crocker, Christopher (SEC); glucey@cityofmalden.org; sdorai@maldenps.org
Cc: SEC-DL-PREWEB; Brian DeLacey; Puccini, Angela (SEC)
Subject: Re: SPR20/2044 Appeal Acknowledgment
Attachments: Letter 10-24-2020.pdf; Malden Public Schools District Calendar as of 10-24-2020.pdf; FOIA Request 2020-0214 Response_10142020154536.pdf; FOIA Request 2020-0213 Response_10142020154242.pdf; FOIA Request 2020-0212 Response_10142020153858.pdf; 10-08-2020 BChan Calculations.pdf

Importance: High

Greetings Attorney Crocker:

Today in the U.S. Mail, I received the attached letter from a law firm in Quincy, MA. This firm purports to represent the Malden School Department in connection with the appeals I raised, which you have now been assigned.

I am forwarding you this because it purports to be sent via e-mail and U.S. Mail, It was addressed to a non-attorney staff member in your office, I never received the email version and I wanted your office to have it, as her assertions are important to my case. In fact she says that she represents the Malden Public Schools. The Malden Public Schools (letterhead) were in fact the respondents to my FOIA inquiry, Shirley Dorai, RAO who is an employee of the Malden Public Schools.

Also attached you will find the District Calendar for September 2020 and October 2020, these were taken from their website today (10-24-2020). As you can plainly see, the school district is open on all of the Fridays represented in Ms. Vasudevan's letter, and of concern in this FOIA appeal. I can also represent to you that our sons, both attend school every Friday, one of them in person and one of them remotely.

Further:

- Mr. Benjamin Chan calculated the 10 Business Days for your office in the attached email on October 8, 2020 and his decision was copied to the City Clerk of Malden, the Super RAO for Malden.
- Business Day" in 950 C.M.R. 32 is defined as "Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly." The Malden Public School District has declared itself the custodian of these records in their attached "responses", they are open, they are functioning and there are NO unexpected closures declared, noted or taken by the Malden Public Schools from September 25, or October 2, 2020. The Schools were in fact open and operating on both of those days.
- The argument that the City Offices are "Unexpectedly" closed does not apply to the Malden Public Schools, regardless, as none of their offices or schools are closed.
- The argument that the City Offices are "Unexpectedly" closed could not be fulfilled by a planned closure, those would be "expected" closures by the very nature of notice.
- The argument that the City Offices are "Unexpectedly" closed does not account for the "extra" hours the Mayor has required workers to do their jobs, such as late Tuesday nights.
- The argument that the City Offices are "Unexpectedly" closed does not apply because there is no staff reduction or abeyance of payroll for the Friday closure of some offices.
- The argument that the City Offices are "Unexpectedly" closed does not apply to most if not all FOIA requests as they should all be able to be addressed by a remote workforce.

The regulations are clear:

- "...if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request, unless an extension of time is permitted in a manner consistent with 950 CMR 32.06(2)(i) and (4)."
- "...it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)".

Please feel free to contact me for anything you may require,

Kindest Regards,

- Bruce Friedman

From: Crocker, Christopher (SEC) <christopher.crocker@state.ma.us>

Date: Friday, October 23, 2020 at 3:10 PM

To: gluecey@cityofmalden.org <glucey@cityofmalden.org>, sdorai@maldenps.org <sdorai@maldenps.org>

Cc: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>

Subject: SPR20/2044 Appeal Acknowledgment

Dear Records Custodian:

Please be aware, this office has received an appeal relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832. Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Sincerely,

Christopher Crocker, Esq.
Staff Attorney
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Tel: (617) 727-2832 ex. 3227
Email: Christopher.Crocker@sec.state.ma.us

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Subject: Re: Request for Appeal - Timeliness
Date: Thursday, October 8, 2020 at 8:59:48 AM Eastern Daylight Time
From: Chan, Benjamin (SEC)
To: Bruce Friedman, SEC-DL-PREWEB
CC: ab, Greg Lucey, Brian DeLacey

Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

From: Bruce Friedman [REDACTED]
Sent: Wednesday, October 7, 2020 11:35:04 PM
To: SEC-DL-PREWEB
Cc: ab; Greg Lucey; Brian DeLacey
Subject: Request for Appeal - Timeliness

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

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

As of today, the request is overdue, the request was due on 10/7/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond withing the legally required 10 business days.

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **"Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request..."**

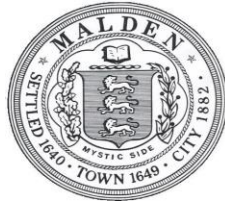
MGL Chapter 183B, Section 2: "'Business day", any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated."

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

The original request and response are hereto attached.

Kindest Regards,
Bruce Friedman

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.



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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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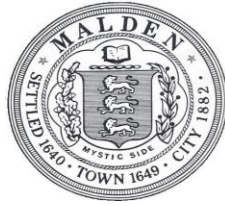
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Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
Records Access Officer



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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]t
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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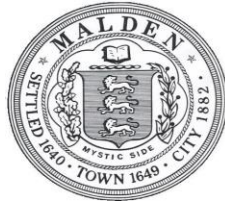
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October 14, 2020

BY E-MAIL

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[REDACTED]t
Malden, MA [REDACTED]

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Thank you,
Shirley Dorai
Records Access Officer

Felicia Vasudevan, Esq.
fvasudevan@mhtl.com

October 22, 2020

VIA EMAIL AND FIRST-CLASS MAIL

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

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

Dear Attorney Kapoor:

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

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

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

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



300 Crown Colony Drive, Suite 410 | Quincy, Massachusetts 02169 | T 617.479.5000 | F 617.479.6469
Boston | Springfield | info@mhtl.com | www.mhtl.com

Attorney Kapoor
October 22, 2020
Page 2

Thank you for your consideration of this matter.

Very truly yours,



Felicia Vasudevan

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

1238986v1

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SEPTEMBER 2020

Today
Month
Week
Day

	MON	TUE	WED	THU	FRI	SAT
District	31	1	2	3	4	5
High School	Teacher PD					
MHS Athletic Events						
Beebe						
Ferryway						
Forestdale	7	8	9	10	11	12
Linden STEAM		Teacher PD				
Salemwood				8a Gr 5-8 Chromebook Dist		
Early Learning Center						
Show All	14	15	16	17	18	19
	Teacher PD		First Day for Students in gr	K Orientation	K Orientation	
			First day of school for Grad			
20	21	22	23	24	25	26
	First day for Kindergarten			5p School Site Council Mee	8a K-3 Learning Packets &	
	K Students' First Day					
27	28	29	30	1	2	3
		3p Virtual Coffee with the P				



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OCTOBER 2020

Today

Month

Week

Day

✓ District

✓ High School

✓ MHS Athletic Events

✓ Beebe

✓ Ferryway

✓ Forestdale

✓ Linden STEAM

✓ Salemwood

✓ Early Learning Center

Show All

Reset All

MON	TUE	WED	THU	FRI	SAT
28	29 3p Virtual Coffee with the P	30	1	2	3
5 School Committee Meet	6	7 3p Coffee with the Principal	8	9 12:30p Early Release Dism	10
12 No School No School-Columbus Day	13	14	15	16	17
18	19	20	21	22	23
25	26	27 5:30p Virtual Back to Schor	28	29	30

Mackenzie Nekton

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Friday, October 30, 2020 4:52 PM
To: SEC-DL-PREWEB
Cc: John Oteri; Dorai, Shirley; Kenneth Rossetti; Greg Lucey; [REDACTED]
Subject: SPR20/1941, SPR20/1942, SPR20/1943

To Whom It May Concern:

I have received Mr. Friedman's email responding to my letter. The regulations at 950 CMR 32.04 state that "Each agency and municipality shall designate one or more employees as records access officer(s)." Thus, the municipality, in the case of the City of Malden is the custodian and entity of public records as a whole.

Greg Lucey as City Clerk is Records Access Officer for the City, per Chapter 66, Sec. 6A, although some individual departments have officers that assist Mr. Lucey. The City of Malden centralizes all public records requests through its City Clerk. The Clerk will decide which agency or agencies respond to public records requests. City departments often have to coordinate on responses. There is nothing in the regulations that would treat each department as its own distinct entity.

Here are the hours from the city website from the bottom of the home page, <https://www.cityofmalden.org/>:

City Hall Hours
(Temporary During COVID
By Appointment Only)
Monday: 8AM-5PM
Tuesday: 8AM-7PM
Wednesday: 8AM-5PM
Thursday: 8AM-5PM
Friday: CLOSED
Saturday: CLOSED
Sunday: CLOSED

Mr. Lucey is governed by the above hours; and closure impacts the date of receipt of a request, which is the event triggering the response deadline.

Thus, Mr. Friedman's argument ignores the realities of what occurs in the City of Malden. Given the emergency order closing all City buildings, it was appropriate not to count Fridays as a business day.

Please let me know if you have further questions!

Felicia

Mackenzie Nekton

From: Bruce Friedman [REDACTED]
Sent: Friday, October 30, 2020 9:38 PM
To: Crocker, Christopher (SEC)
Cc: John Oteri; Dorai, Shirley; SEC-DL-PREWEB; Brian DeLacey; ab
Subject: Re: SPR20/1941, SPR20/1942, SPR20/1943
Attachments: Highlighted Response.pdf

Importance: High

Greetings:

In her response, it appears that Ms. Vasudevan is conceding that the Malden Public Schools are in fact open and operational on Fridays.

The regulations do not speak about custodians, as Ms. Vasudevan argues, the regulations speak specifically about records access officers:

- **950 C.M.R. 32.02 Records Access Officer.** The employee designated within a governmental entity to perform duties described in 950 CMR 32.00 including coordinating a response to requests for access to public records, assisting individuals seeking public records in identifying the records requested, and preparing guidelines that enable requesters to make informed requests regarding the availability of such public records electronically or otherwise.
- **950 C.M.R. 32.06 (2)(d)** if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request, unless an extension of time is permitted in a manner consistent with 950 CMR 32.06(2)(i) and (4).
- **950 C.M.R. 32.06 (2)(c)** a records access officer shall not charge a fee for the provision of a public record unless the records access officer responded to the requester within ten business days under M.G.L. c. 66, § 10(b).
- **950 C.M.R. 32.02** Business Day. Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

The document sent in response to all three appeals (attached hereto) speaks for itself. The Response is from the Malden Public Schools designated RAO, Ms. Shirley Dorai, who self identifies as the Records Access Officer in the very response at issue.

Kindest Regards,

- Bruce Friedman

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Date: Friday, October 30, 2020 at 4:51 PM
To: pre@sec.state.ma.us <pre@sec.state.ma.us>
Cc: John Oteri <joteri@maldenps.org>, Dorai, Shirley <sdorai@maldenps.org>, Kenneth Rossetti <krossetti@cityofmalden.org>, Greg Lucey <glucey@cityofmalden.org>, Bruce Friedman [REDACTED]
Subject: SPR20/1941, SPR20/1942, SPR20/1943

To Whom It May Concern:

I have received Mr. Friedman's email responding to my letter. The regulations at 950 CMR 32.04 state that "Each agency and municipality shall designate one or more employees as records access officer(s)." Thus, the municipality, in the case of the City of Malden is the custodian and entity of public records as a whole.

Greg Lucey as City Clerk is Records Access Officer for the City, per Chapter 66, Sec. 6A, although some individual departments have officers that assist Mr. Lucey. The City of Malden centralizes all public records requests through its City Clerk. The Clerk will decide which agency or agencies respond to public records requests. City departments often have to coordinate on responses. There is nothing in the regulations that would treat each department as its own distinct entity.

Here are the hours from the city website from the bottom of the home page, <https://www.cityofmalden.org/>:

City Hall Hours
(Temporary During COVID
By Appointment Only)

Monday: 8AM-5PM

Tuesday: 8AM-7PM

Wednesday: 8AM-5PM

Thursday: 8AM-5PM

Friday: CLOSED

Saturday: CLOSED

Sunday: CLOSED

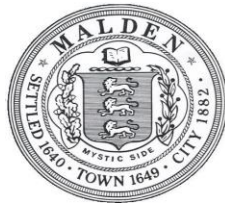
Mr. Lucey is governed by the above hours; and closure impacts the date of receipt of a request, which is the event triggering the response deadline.

Thus, Mr. Friedman's argument ignores the realities of what occurs in the City of Malden. Given the emergency order closing all City buildings, it was appropriate not to count Fridays as a business day.

Please let me know if you have further questions!

Felicia

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,

Shirley Dorai

Records Access Officer



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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

(2) ...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

Shirley Dorai
Page 4
November 5, 2020

SPR20/2044

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Robertson, Jack (SEC)
Sent: Thursday, November 5, 2020 4:14 PM
To: glucey@cityofmaiden.org
Cc: SEC-DL-PREWEB; Bruce Friedman
Subject: SPR20/2044 Determination
Attachments: spr202044.pdf

Good Afternoon,

Please be aware, the Supervisor of Records has issued a determination relating to a petition in which you were involved. This determination is attached, and available online at:

<http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

ATTACHMENT NO. 26

Attachment to Email
SPR20/2044 Determination
November 5, 2020

[http://www.sec.state.ma.us/AppealsWeb/
AppealsStatus.aspx.](http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx)

THIS PAGE REPRESENTS THE ABOVE STATE OF MASSACHUSETTS LICENSED
WEBSITE LINK THAT IS REFERRED TO IN THE PREVIOUS DOCUMENT (No. 25)

Mackenzie Nekton

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Monday, November 30, 2020 1:55 PM
To: Bruce Friedman; Puccini, Angela (SEC)
Cc: SEC-DL-PREWEB; glucey@cityofmalden.org; sdorai@maldenps.org; Vinayak Kapoor; John Oteri; Kenneth Rossetti
Subject: RE: SPR20/1941,42,43 Follow Up

To Whom It May Concern:

I am writing as again Mr. Friedman's email is inaccurate. Mr. Friedman received a response on October 14, 2020. There was one letter that responded to all three requests. The response was sent to the Supervisor on November 20, 2020.

Felicia

From: Bruce Friedman [REDACTED]
Sent: Monday, November 30, 2020 1:46 PM
To: Puccini, Angela M (SEC)
Cc: pre@sec.state.ma.us; glucey@cityofmalden.org; sdorai@maldenps.org; Felicia S. Vasudevan; Vinayak Kapoor
Subject: Re: SPR20/1941,42,43 Follow Up
Importance: High

Greetings:

This email servers as a reminder that the City of Malden has again failed to respond to the Orders of your office dated October 21, 2020 in Re: SPR 2020-1941, SPR 2020-1942, and SPR 2020-1943 dated October 21, 2020.

Kindest Regards,

- Bruce Friedman

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Date: Tuesday, October 20, 2020 at 3:38 PM
To: glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman [REDACTED] >
Subject: SPR20/1941,42,43 Follow Up

Dear Mr. Lucey,

As this determination is coming up on its due date, I wanted to touch base with you. Has the Office provided a response? If so, kindly forward to this office. If not, does the Office intend on providing a response? Kindly advise.

Thank you,

Sincerely,

Vinayak Kapoor
Office of the Secretary of the Commonwealth

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

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Sent: Friday, October 9, 2020 11:27 AM
To: glucey@cityofmalden.org
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; [REDACTED]
Subject: SPR20/1941,42,43 Appeal Acknowledgment

Dear Records Custodian:

Please be aware, this office has received appeals relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832. Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Sincerely,

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

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Mackenzie Nekton

From: Stair, Joshua (SEC)
Sent: Friday, November 20, 2020 4:54 PM
To: [REDACTED]
Cc: SEC-DL-PREWEB
Subject: Compliance Inquiry for SPR20/2044
Attachments: spr202044.pdf

Hello,

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

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

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

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

ATTACHMENT NO. 29

Email:

Compliance Inquiry for SPR20/2044

November 20, 2020

<http://www.sec.state.ma.us/pre/preidx.htm>

A Guide to Public Records Law: <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

THIS PAGE REPRESENTS THE ABOVE STATE OF MASSACHUSETTS LICENSED
WEBSITE LINKS THAT IS REFERRED TO IN THE PREVIOUS DOCUMENT (No. 28)

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Mackenzie Nekton

From: Stair, Joshua (SEC)
Sent: Friday, November 20, 2020 4:59 PM
To: glucey@cityofmaiden.org
Cc: SEC-DL-PREWEB
Subject: Compliance Inquiry for SPR20/2044 Friedman/City of Malden
Attachments: spr202044.pdf

Hello,

I am following up on this appeal as a response will be past due on Monday, November 23rd. I have attached the determination letter for this appeal for your convenience. Please review the subject matter and requirements of the order when responding. **Also, please advise this office and the requestor as to the status of the response regarding any expected date of issuance as well as any other pertinent information impacting your ability to respond. To the extent there are responsive records, are there any that you could provide now and on a rolling basis? If you have already responded to the requestor to this extent please provide a copy to this office with the appeal number noted above.**

Should you wish to review the determination letter please visit: Review appeal determinations online:
<http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

If you have already provided this response to the requestor, please be sure to also provide a copy to our office by emailing it to pre@sec.state.ma.us and note the appeal number as provided in the subject line above.

If you have yet to provide a response to the requestor due to Covid-19 please include any relevant information in the status update noted above (when you have an intended date of response or further information regarding a response). Please provide this office of a copy of any correspondence sent to the requestor.

Please be advised that failure to respond to the determination letter issued by the Supervisor of Public Records for an appeal may result in referral to the Office of the Attorney General for enforcement. Our goal is to resolve this matter so if we may be of assistance in any way please do not hesitate to contact our office.

Most sincerely,
Joshua Stair
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
(617) 727-2832 (office)
(617) 727-5914 (fax)
<http://www.sec.state.ma.us/pre/preidx.htm>

A Guide to Public Records Law: <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

ATTACHMENT NO. 31

Attachment to Email:
Compliance Inquiry for SPR20/2044 Friedman/City of Malden
November 20, 2020

[http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx.](http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx)

THIS PAGE REPRESENTS THE ABOVE STATE OF MASSACHUSETTS LICENSED
WEBSITE LINK THAT IS REFERRED TO IN THE PREVIOUS DOCUMENT (No. 30)

,

Mackenzie Nekton

From: Bruce Friedman [REDACTED] >
Sent: Friday, November 20, 2020 5:23 PM
To: Stair, Joshua (SEC)
Cc: SEC-DL-PREWEB
Subject: Re: Compliance Inquiry for SPR20/2044

Importance: High

Greetings!

I have NOT received any response from the City on SPR20/2044

Thank you for following up!

- Bruce Friedman

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

Hello,

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

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

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

Joshua Stair
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
(617) 727-2832 (office)
(617) 727-5914 (fax)

<http://www.sec.state.ma.us/pre/preidx.htm>

A Guide to Public Records Law: <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

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Mackenzie Nekton

From: Dorai, Shirley <sdorai@maldenps.org>
Sent: Friday, November 20, 2020 10:25 AM
To: Puccini, Angela (SEC); SEC-DL-PREWEB
Cc: Greg Lucey; Felicia S. Vasudevan
Subject: SPR20/1941, 1942 and 1943
Attachments: FOIA Request 2020-0212 0213 0214 spr201941 spr201942 spr201943 Response.pdf

Attorney Puccini,

In response to the decisions in SPR20/1941, 1942, 1943, please find the attached letter that was mailed to Mr. Friedman on October 14, 2020, before the Supervisor even ruled on the appeal. Please note that there was one letter that responded to all three requests. Also, please for future correspondence, please email copies of decisions involving the school department to Felicia Vasudevan at fvasudevan@mhtl.com.

Thank you.

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



Request# 2020-0212 : Response to your Request

1 message

foiadirect@townforms.com <foiadirect@townforms.com>

Wed, Oct 14, 2020 at 3:39 PM

To: [REDACTED]

Cc: sdorai@maldenps.org, GChristenson@cityofmalden.org, glucey@cityofmalden.org

Please DO NOT reply to this email !! Please use the email address of the sender at bottom of this email, in order to communicate with the request management team.

Malden, MA

Public Record Request Number:2020-0212

Requester: Bruce Friedman

Request Date: Thursday, September 24, 2020 8:57:00 AM

Response Due Date: Wednesday, October 14, 2020

Dear Bruce Friedman:

We have completed the work in reference to your request as referenced above. The response is given below.

Request Response

Please refer to the attached document.

Attachments

This response may or may not contain separate Response Documents to include specific response and data. In case such separate response documents exist, they are represented by attachments to this response email. Therefore, please look for any attachments if they exist. Between Request Response and attachments, we believe you are receiving a comprehensive response to your request.

If you have any questions or comments, please do not hesitate to contact us at the following email address.

Thank you.

Shirley Dorai, Department RAO

School Department

Malden

[110 Pleasant Street](#)

Malden, MA 02148

Tel: (781)-397-6100

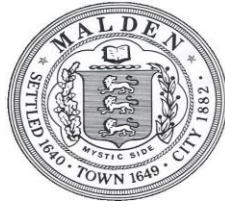
Email: sdorai@maldenps.org

Please [click here](#) to download your response document(s).



FOIA Request 2020-0212 Response_10142020153858.pdf

110K



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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer

Mackenzie Nekton

From: Bruce Friedman [REDACTED]
Sent: Monday, November 30, 2020 1:46 PM
To: Puccini, Angela (SEC)
Cc: SEC-DL-PREWEB; glucey@cityofmalden.org; sdorai@maldenps.org; Felicia S. Vasudevan; Vinayak Kapoor
Subject: Re: SPR20/1941,42,43 Follow Up
Attachments: spr201941 spr201942 spr201943.pdf
Importance: High

Greetings:

This email servers as a reminder that the City of Malden has again failed to respond to the Orders of your office dated October 21, 2020 in Re: SPR 2020-1941, SPR 2020-1942, and SPR 2020-1943 dated October 21, 2020.

Kindest Regards,

- Bruce Friedman

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Date: Tuesday, October 20, 2020 at 3:38 PM
To: glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman [REDACTED]
Subject: SPR20/1941,42,43 Follow Up

Dear Mr. Lucey,

As this determination is coming up on its due date, I wanted to touch base with you. Has the Office provided a response? If so, kindly forward to this office. If not, does the Office intend on providing a response? Kindly advise.

Thank you,

Sincerely,

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

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Sent: Friday, October 9, 2020 11:27 AM
To: glucey@cityofmalden.org
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; [REDACTED]
Subject: SPR20/1941,42,43 Appeal Acknowledgment

Dear Records Custodian:

Please be aware, this office has received appeals relating to your entity's response to a request for public records. Attached are further details concerning this appeal. If you have any questions or wish to provide further information relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832. Given that the Supervisor of Records must issue a determination within 10 business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Sincerely,

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

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

Mackenzie Nekton

From: Bruce Friedman [REDACTED]
Sent: Monday, November 30, 2020 5:31 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Felicia S. Vasudevan; Brian DeLacey
Subject: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044
Attachments: SPR20_2044 113020 Response.pdf; spr202044.pdf; APPEAL Causing SPR20-2044.pdf; APPEAL Causing SPR20-1941.pdf; spr201941.pdf; City Response 10-14-2020.pdf

Importance: High

Greetings:

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

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

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

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

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

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

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

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

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

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

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

From: Dorai, Shirley <sdorai@malDENps.org>

Date: Monday, November 30, 2020 at 4:14 PM

To: Bruce Friedman [REDACTED]

Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalDEN.org>

Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

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

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

October 9, 2020
SPR20/1941

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

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

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

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

This communication, along with any attachments, is covered by federal and state law

governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


[Requestor Dashboard](#)
[Communication](#)
[Change Profile](#)
[Help](#)

 Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

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

Request Documents

No Document.

Response Details

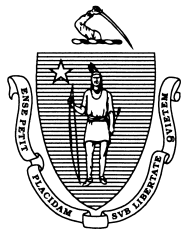
Response	
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Response Documents

No Document.

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

Rebecca S. Murray
Supervisor of Records

October 22, 2020
SPR20/2044

Mr. Bruce Friedman
[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Christopher Crocker, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Mr. Greg Lucey

Robertson, Jack (SEC)

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

Importance: High

Greetings:

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

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

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, [REDACTED]
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

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

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

The "answer" is deficient in many ways, including

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

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

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

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

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

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

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

Hello,

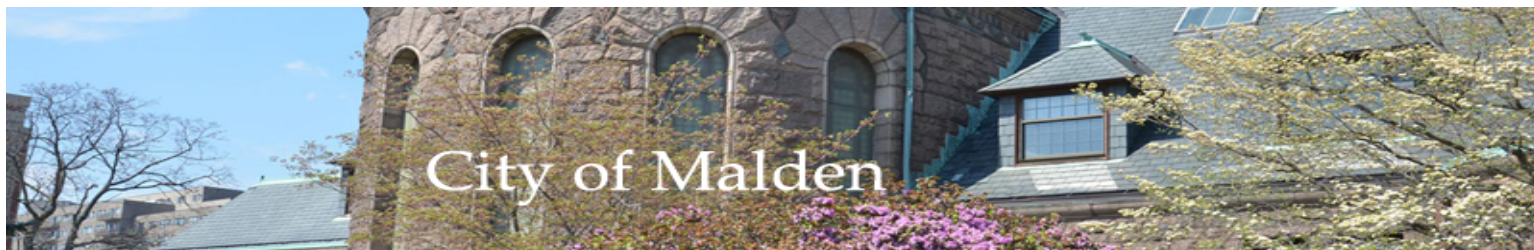
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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[Communication](#)
[Change Profile](#)
[Help](#)

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[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

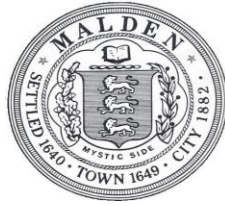
Response Details

Response Please refer to the attached document.

Response Documents

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer

Robertson, Jack (SEC)

From: Bruce Friedman [REDACTED]
Sent: Wednesday, October 21, 2020 6:10 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1942 (Malden 2020-0213)
Attachments: 2020-0213-.pdf

Importance: High

Greetings:

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

On 09/24/2020 at 08:58 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information."

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
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To: [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
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Very Respectfully,
Benjamin

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

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1942 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

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

The "answer" is deficient in many ways, including

- not specifically addressing each request independently (The "answer" to each of the three requests is the identical co-mingled answer),
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Please feel free to contact me for any reason.

- Bruce Friedman

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

Greetings:

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

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

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

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

Kindest Regards,

- Bruce Friedman

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

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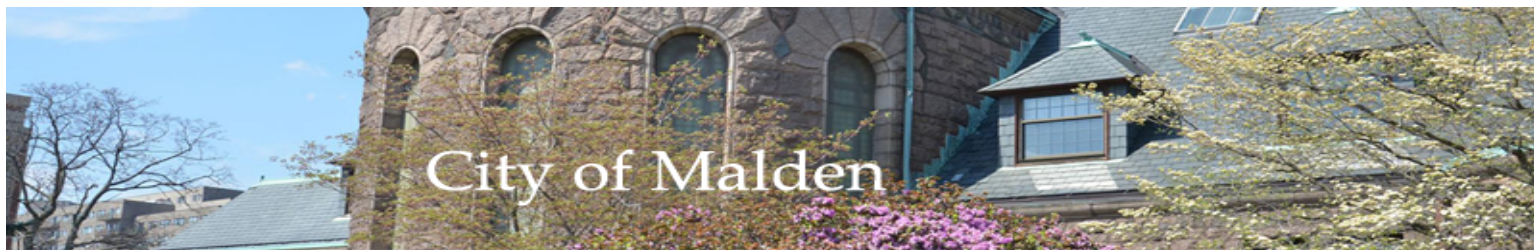
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If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


[Requestor Dashboard](#)
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Welcome Bruce Friedman ! [\[Logout\]](#)
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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

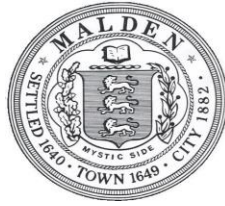
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

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personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer

Robertson, Jack (SEC)

From: Bruce Friedman [REDACTED]
Sent: Wednesday, October 21, 2020 6:14 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1943 (Malden 2020-0214)
Attachments: 2020-0214-.pdf

Importance: High

Greetings:

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

On 09/24/2020 at 09:08 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab [REDACTED], Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1943 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

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

This "answer" does not anywhere specifically address the request contained in #2020-0214, no responsive documents were ever provided.

The "answer" is also deficient in many ways, including

- not specifically addressing each request independently (The “answer” to each of the three requests is the identical co-mingled answer),
- they failed to specifically account for the individual requests in calculating the number of emails,
- they failed to specify the amount of time required for each request for each email to segmenting and redacting.
- They failed to provide the names and verification that the lowest paid employee capable of segmenting and redacting

This request was received by the City of Malden as #2020-0214 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of \$175,400.00. This estimate fails to comply with Public Records Law in a number of ways.

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

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

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

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

Hello,

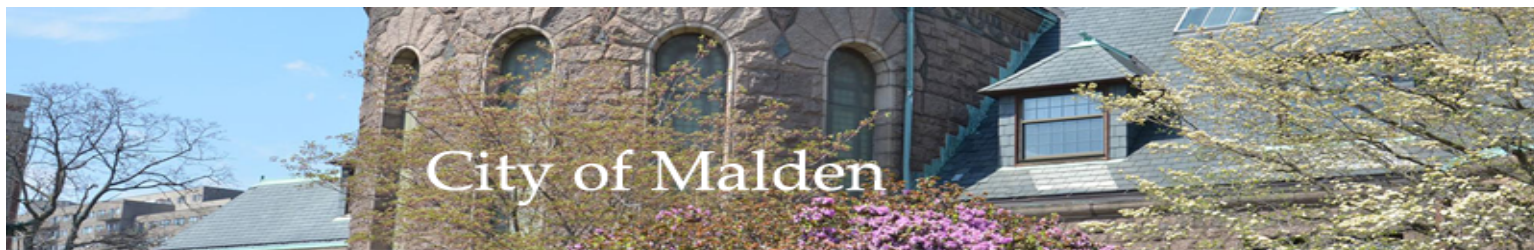
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.



Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

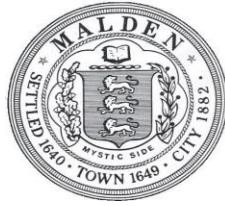
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer



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

Rebecca S. Murray
Supervisor of Records

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

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

Dear Mr. Lucey:

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

The Public Records Law

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

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

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

Order

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

Greg Lucey
Page 2
October 21, 2020

SPR20/1941; SPR20/1942; SPR20/1943

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman



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

October 9, 2020
SPR20/1941

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

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

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

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

This communication, along with any attachments, is covered by federal and state law

governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


[Requestor Dashboard](#)
[Communication](#)
[Change Profile](#)
[Help](#)

 Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

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

No Document.

Response Details

Response	
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Response Documents

No Document.

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

October 9, 2020
SPR20/1942

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

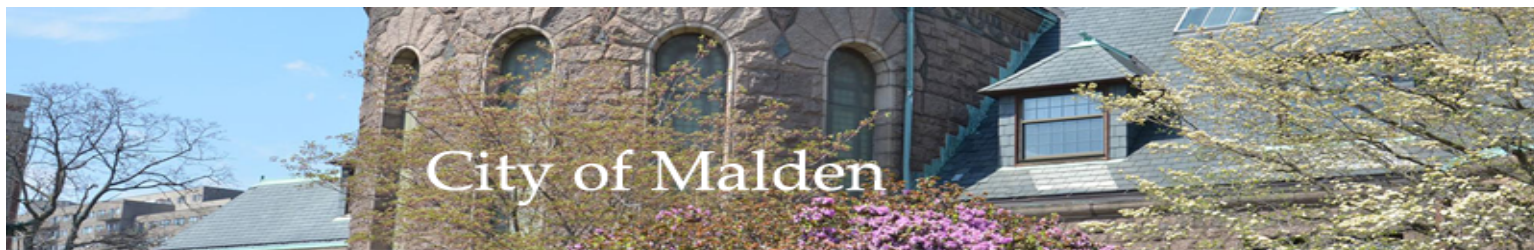
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

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

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

This communication, along with any attachments, is covered by federal and state law

governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


[Requestor Dashboard](#)
[Communication](#)
[Change Profile](#)
[Help](#)
Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	Marvin
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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

October 9, 2020
SPR20/1943

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

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

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

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

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

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

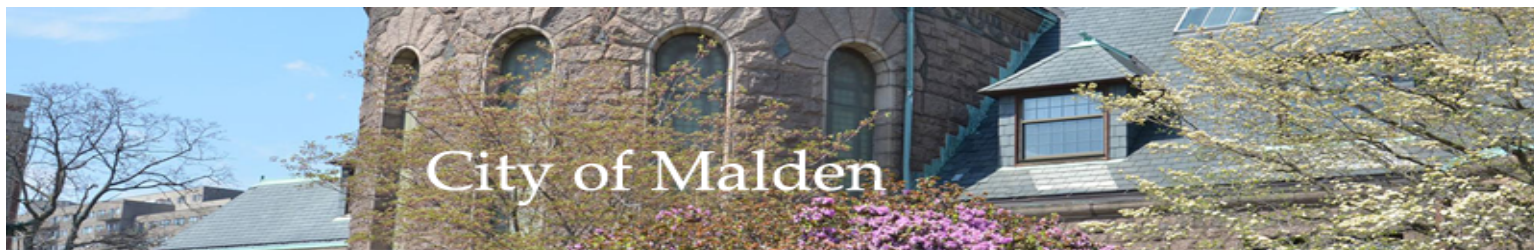
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

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

The original request and response are hereto attached.

Kindest Regards,
Bruce Friedman

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.



Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

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

Request Detail

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

Request Documents

No Document.

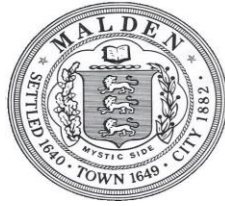
Response Details

Response	
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Response Documents

No Document.

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

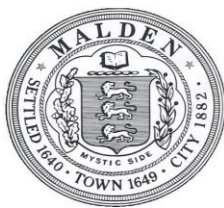
Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer



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

John Oteri, M.Ed.
Superintendent of Schools

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

November 30, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]

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

Dear Mr. Friedman:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

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

Thank you,
Shirley Dorai
School Department

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



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

Rebecca S. Murray
Supervisor of Records

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

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

Dear Mr. Lucey:

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

The Public Records Law

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

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

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

Order

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

Greg Lucey
Page 2
October 21, 2020

SPR20/1941; SPR20/1942; SPR20/1943

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman



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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

(2) ...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

Shirley Dorai
Page 4
November 5, 2020

SPR20/2044

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Bruce Friedman [REDACTED] >
Sent: Monday, November 30, 2020 1:50 PM
To: Puccini, Angela (SEC)
Cc: SEC-DL-PREWEB; Stair, Joshua (SEC); Greg Lucey; sdorai@maldenps.org; Felicia S. Vasudevan
Subject: Re: Compliance Inquiry for SPR20/2044
Attachments: spr202044.pdf

Importance: High

Greetings:

This email servers as a reminder that the City of Malden has again failed to respond to the Orders of your office dated November 5, 2020 in Re: SPR 2020-2044 (Attached).

Kindest Regards,

Bruce Friedman

From: Bruce Friedman [REDACTED]
Date: Friday, November 20, 2020 at 5:22 PM
To: Stair, Joshua (SEC) <joshua.stair@state.ma.us>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: Re: Compliance Inquiry for SPR20/2044

Greetings!

I have NOT received any response from the City on SPR20/2044

Thank you for following up!

- Bruce Friedman

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

Hello,

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

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

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

Joshua Stair
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
(617) 727-2832 (office)
(617) 727-5914 (fax)
<http://www.sec.state.ma.us/pre/preidx.htm>

A Guide to Public Records Law: <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

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ATTACHMENT NO. 40

Attachments to Email:
Re: Compliance Inquiry for SPR20/2044
November 30, 2020

[http://www.sec.state.ma.us/AppealsWeb/
AppealsStatus.aspx.](http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx)

THIS PAGE REPRESENTS THE ABOVE STATE OF MASSACHUSETTS LICENSED
WEBSITE LINK THAT IS REFERRED TO IN THE PREVIOUS DOCUMENT (No. 39)

,

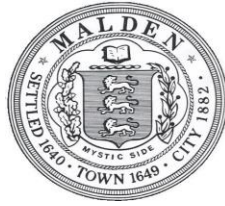
Mackenzie Nekton

From: Dorai, Shirley <sdorai@maldenps.org>
Sent: Monday, November 30, 2020 4:14 PM
To: Bruce Friedman
Cc: SEC-DL-PREWEB; Felicia S. Vasudevan; Greg Lucey
Subject: SPR 20/2044
Attachments: SPR20_2044 113020 Response.pdf

Dear Mr. Friedman,

Please see the attached response. Thank you.

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



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

John Oteri, M.Ed.
Superintendent of Schools

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

November 30, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]

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

Dear Mr. Friedman:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

Mackenzie Nekton

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Wednesday, December 2, 2020 1:58 PM
To: Bruce Friedman; SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Kenneth Rossetti; John Oteri
Subject: RE: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044

To Whom It May Concern:

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

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

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

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

Felicia

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

Greetings:

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

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

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

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
[REDACTED] Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

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

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

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

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

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

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

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

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

From: Dorai, Shirley <sdorai@maldenps.org>

Date: Monday, November 30, 2020 at 4:14 PM

To: Bruce Friedman [REDACTED]

Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalden.org>

Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,

Shirley Dorai

Executive Assistant to the Superintendent
and School Committee Clerk

Malden Public Schools

77 Salem Street, Room H104

Malden, MA 02148

Phone: 781-397-6100 Ext 2201

Fax: 781-397-7276

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Mackenzie Nekton

From: Bruce Friedman [REDACTED] >
Sent: Thursday, December 3, 2020 1:15 AM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Kenneth Rossetti; John Oteri; Puccini, Angela (SEC); Felicia S. Vasudevan; Brian DeLacey; ab; Foley, Lauren (SEC)
Subject: Re: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044
Attachments: FOIA Request 2020-0214 Response.pdf; SPR20_2044 113020 Response.pdf[4].pdf; 2020-2021-DISTRICT-Calendar-Revised-170-FINAL.pdf

Importance: High

Greetings:

I am responding to Ms. Vasudevan's email in Re: my request for the THIRD appeal regarding SPR's 20/1941, 20/1942, 20/1943 and most recently SPR 2020-2044.

1. Ms. Vasudevan is avoiding the obvious requirements that the Secretary's Order of November 5, 2020 has placed on the Malden Public Schools.
 - Ms. Vasudevan states "Finally, in terms of the timing of the response, the City responded about the ten days in emails on October 30th, which copied the Supervisor. ". SPR 2020-2044 was issued **November 5, 2020** and CLEARLY states:
"The District may not be permitted to charge fees associated with the records request if the District did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2)(c). Based on Mr. Friedman's petition, it is uncertain whether the District complied with G. L. c. 66, § 10(e) when responding to this request. Therefore, I find the District must demonstrate whether it responded to the records request within ten business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c)."
 - Neither the Malden Public Schools RAO's responses nor Ms. Vasudevan's emails address the Order above.
 - The City of Malden received the FOIA request on 9/24/2020 at 8:57 AM. The Malden Public Schools RAO responded for the Malden Public Schools on October 14, 2020 at 3:39 PM per their official FOIA website and their attached response.
 - The 10th and last business day to respond was Thursday, October 8, 2020. This was calculated and confirmed by Mr. Benjamin Chan from the Secretary's Office.
 - Malden Public Schools responded on the 13th business day after they received the request
 - Business Day in 950 C.M.R. 32 is defined as "Monday through Friday. Business day does not include Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.."
 - There were no legal holidays between September 24, 2020 and October 8, 2020.
 - The Malden Public Schools were open and operating each and every workday during the pendency of this FOIA request including on September 25, 2020 and October 2, 2020 and October 9, 2020 as evidenced in the Malden Public Schools Calendar which can be found publicly at: <https://maldenps.org/calendar/> and is attached hereto.
 - The Fee Estimate provided in the Malden Public Schools Response was \$175,400.00 and 7020 hours.
 - A fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b).

- Malden is prohibited for charging any of the estimated \$175,400.00 unless they can prove how they complied with G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c), per your Orders.
 - They have not attempted to demonstrate how they complied with G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c).
2. The Malden Public Schools responses have failed to properly claim any attorney-client privilege: A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived. See *Suffolk Constr. Co. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 450 n.9 (2017); see also *Hanover Ins. Co. v. Rapa & Jepsen Ins. Servs.*, 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies).
 3. If Malden Public Schools is assessing a fee for segregating or redaction, under the Public Records Law, a fee may not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(ii); 950 C.M.R. 32.06(4).
 4. 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). 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 records.
 5. The Malden Public Schools responses have failed to detail with specificity how it accurately estimated 7020 hours "to search, segregate and redact" the emails. The Malden Public Schools RAO's response of November 30th gave the only details as "The estimate is based on five minutes per email, with additional time required for calendar entries..." and "review the emails" they must provide additional information explaining why the estimated amount of time is required. Also Malden Public Schools RAO's estimates do not make clear how many hours are being allocated to each of these specified tasks. The District must clarify this estimate. The Secretary specifically Ordered on November 5, 2020 "The District must clarify how much time it expects to spend searching for and segregating responsive records, reviewing for redactions, and producing copies, and how it arrived at this estimate."
 6. The Malden Public Schools have failed to provide ANY responsive emails that do not require redaction.
 7. Mr. Michael Wood worked for Malden public Schools for 18 months (February 2019 to August 2020). *If* he worked every day 8 hours a day without vacation or holidays that is 376 days and 3008 hours. The Malden Public Schools RAO's response of November 30, 2020 (attached) claims that it will take 5.166905182 minutes per email for 60,094 emails or 5175 hours to "review the emails" or almost TWO TIMES the number of hours Mr. Michael Wood actually worked for the Malden Public Schools in his entire career. The District's estimate is truly obscene, and completely without substantiation and merit. This number was created out of thin air (5.166905182 minutes per email) with the only purpose of delaying and deterring this very important and legitimate public records request enabling public oversight of a troubled public entity.
 8. Ms. Elizabeth Cushinsky worked for Malden public Schools for 10 months (July 2019 to June 2020). *If* she worked every day 8 hours a day without vacation or holidays that is 231 days and 1848 hours. The Malden Public Schools RAO's response of November 30, 2020 (attached) claims that it will take 3.83841886 minutes per email for 28,840 emails or 1845 hours to "review the emails" or almost exactly the number of hours Ms. Elizabeth Cushinsky actually worked for the Malden Public Schools in her entire career. The District's estimate is truly obscene, and completely without substantiation and merit. This number was created out of thin air

(3.83841886 minutes per email) with the only purpose of delaying and deterring this very important and legitimate public records request enabling public oversight of a troubled public entity.

9. The Malden Public Schools RAO's response of November 30, 2020 (attached) states "The estimate is based on five minutes per email, with additional time required for calendar entries...". They haven't done the math nor have they come close to properly estimating. 5 Minutes per email for 88,934 total emails equals 444,674 minutes or 7411 hours. That would not include additional time for calendar entries as quoted. This is simply more proof that the District's only purpose is delay and deter this very important and legitimate public records request enabling public oversight of a troubled public entity.

Please feel free to contact me for any reason.

Kindest Regards,

- Bruce Friedman

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>

Date: Wednesday, December 2, 2020 at 1:58 PM

To: Bruce Friedman [REDACTED] pre@sec.state.ma.us <pre@sec.state.ma.us>, Puccini, Angela M (SEC) <angela.m.puccini@state.ma.us>

Cc: sdorai@maldenps.org <sdorai@maldenps.org>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Kenneth Rossetti <krossetti@cityofmalden.org>, John Oteri <joteri@maldenps.org>

Subject: RE: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044

To Whom It May Concern:

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

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

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

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

Felicia

From: Bruce Friedman [REDACTED]

Sent: Monday, November 30, 2020 5:31 PM

To: pre@sec.state.ma.us; Puccini, Angela M (SEC)

Cc: sdorai@maldenps.org; Greg Lucey; Felicia S. Vasudevan; Brian DeLacey

Subject: RE-APPEAL SPR 20/1941,42,43 and SPR 20/2044

Importance: High

Greetings:

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

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

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

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

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

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

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

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

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

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

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

1. This request was received by the City of Malden as #2020-0212, #2020-0213, and #2020-0212 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of \$175,400.00.
2. The Commonwealth defines a business day as M-F excluding state holidays. Further, "if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request ... in a manner consistent with 950 CMR 32.06(2)(i) and (4)."
3. Based on my calculation and that of Mr. Benjamin Chan of your office and the Order of your office, the city had a "tenth day" obligation to respond to my request by 10/08/20. I did not receive an acceptable response from the city according to the "tenth business day rule".
4. As the Secretary of State's office makes clear, "it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)".
5. The City's fee estimate has not explained with specificity why the indicated amount of time is necessary for producing the requested records. The City's fee estimate lacks confirmation that the provided rate of \$25 an hour is of the lowest paid employee who is capable of performing the task(s). The City must provide additional information explaining why it takes 7016 hours and if that 7016 hours includes time to search for, compile, segregate, redact, or reproduce records as described under G. L. c. 66, § 10(d)(ii).
6. The City Does not explain why it would be required to search, segregate or redact. If the City is assessing a fee for segregating or redaction, please note that under the Public Records Law, a fee may not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(ii); 950 C.M.R. 32.06(4). Please note that petitions seeking permission to assess fees must be made within ten business days after receipt of a request for public records. See 950 C.M.R. 32.06(4)(g). The City must provide information about whether the responsive records contain information that is required by law to be segregated or redacted, as well as the applicable statutes, if any. The simple statement that "Redactions are necessary under Exemption (c) privacy/employee record provision (MGL c. 4, Sec. 7, clause 26(c)). In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services."
7. The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26). It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.
8. ***A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during***

the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications were made in confidence; and (3) that the privilege as to these communications has not been waived. See Suffolk Constr. Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 450 n.9 (2017); see also Hanover Ins. Co. v. Rapa & Jepsen Ins. Servs., 449 Mass. 609, 619 (2007) (stating that the party seeking the attorney-client privilege has the burden to show the privilege applies).

9. ***Pursuant to the Public Records Law, in assessing whether a records custodian has properly withheld records based on the claim of attorney-client privilege the Supervisor of Records "shall require, as part of the decision making process, that the agency or municipality provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed." G. L. c. 66, § 10A(a).***

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

Please feel free to contact me for any reason.

- Bruce Friedman

From: Dorai, Shirley <sdorai@maldenps.org>

Date: Monday, November 30, 2020 at 4:14 PM

To: Bruce Friedman [REDACTED] >

Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalden.org>

Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,

Shirley Dorai

Executive Assistant to the Superintendent

and School Committee Clerk

Malden Public Schools

77 Salem Street, Room H104

Malden, MA 02148

Phone: 781-397-6100 Ext 2201

Fax: 781-397-7276

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**MALDEN PUBLIC SCHOOLS
2020-2021 SCHOOL CALENDAR**

AUGUST 2020				
(0 Day)				
M	T	W	T	F
31*				

8/31* First Day for Teachers

SEPTEMBER 2020				
(11 Days)				
M	T	W	T	F
	1*	2*	3*	X
X	8*	9*	10*	11*
14*	15*	16	17	18
21	22	23	24	25
28	29	30		

9/1-15* Prof Dev Days - All Grds
9/4 No School
9/7 Labor Day
9/16* First Day of School for
Grades PreK, 1-12
9/17-18 Kindergarten
Orientation/Screening
9/21 First Day of School for
Kindergarten

OCTOBER 2020				
(21 Days)				
M	T	W	T	F
			1	2
5	6	7	8	9
X	13	14	15	16
19	20	21	22	23
26	27	28	29	30

10/9 PD Early Dismissal PreK-12
10/12 Columbus Day
10/19 Late Entry Day MHS

NOVEMBER 2020				
(17 Days)				
M	T	W	T	F
2	3*	4	5	6
9	10	X	12	13
16	17	18	19	20
23	24	25	X	X
30				

11/2 Late Day Entry MHS
11/3* Prof Dev Day-All Grds
11/11 Veterans Day
11/25 11:00 Dismissal -
Thanksgiving
11/26-27 Thanksgiving

DECEMBER 2020				
(17 Days)				
M	T	W	T	F
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	X	X
X	X	X	X	

12/7 Late Entry MHS
12/23 11:00 Dismissal
12/24-1/1 Winter Vacation

JANUARY 2021				
(19 Days)				
M	T	W	T	F
				X
4	5	6	7	8
11	12	13	14	15
X	19	20	21	22
25	26	27	28	29

1/4 School Resumes
1/11 Late Entry MHS
1/15 PD Early Dismissal PreK-12
1/18 Martin Luther King Day

FEBRUARY 2021				
(14 Days)				
M	T	W	T	F
1	2	3	4	5
8	9	10	11	12*
X	X	X	X	X
22	23	24	25	26

2/5 PD Early Dismissal PreK-12
2/8 Late Entry MHS
2/12 * Prof Dev Day-All Grds
2/15-19 February Vacation

MARCH 2021				
(22 Days)				
M	T	W	T	F
1	2	3	4	5
8	9	10	11	12*
15	16	17	18	19
22	23	24	25	26
29	30	31		

3/8 Late Entry MHS
3/12 * Prof Dev Day-All Grds

APRIL 2021				
(17 Days)				
M	T	W	T	F
			1	2
5	6	7	8	9
12	13	14	15	16
X	X	X	X	X
26	27	28	29	30

4/2 11:00 Dismissal - Good
Friday
4/5 Late Entry MHS
4/19-23 Spring Vacation

MAY 2021				
(20 Days)				
M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
X				

5/7 PD Early Dismissal PreK-12
5/10 Late Entry MHS
5/31 Memorial Day

JUNE 2021				
(12 Days)				
M	T	W	T	F
	1	2	3	4
7	8	9	10	11
14	15	16	17*	X
21	22	23	24	25

6/4 PD Early Dismissal PreK-12
6/16 Last day w/o snow days
(170 Days) - 11:00 Dismissal
6/17 * Prof Dev Day-All Grds
6/18 Juneteenth (No School)
6/25 Last day w/five snow
days -11:00 Dismissal

First Day for Teachers – Monday, August 31, 2020

Please note that five (5) additional days are built into the calendar in case of inclement weather

○ Early Release PreK-12

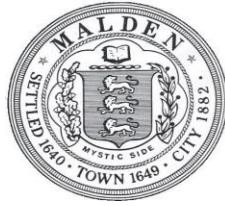
□ Late Entry Dates for High School

Malden Public Schools proudly serves a multi-cultural and religiously diverse community. Although the schools are not closed for observance of all religious holidays, Malden Public Schools respects the religious and cultural days that are significant to the students, families and staff. The following list includes many of these holidays celebrated during the 2020-2021 school year, that may require a student to be absent from school. Students who miss schoolwork because of an excused absence, including absence for religious observance, should not be expected to complete homework, study for tests or do other school work during their absence. They shall be given the opportunity to complete assignments and test within a reasonable time, based on the circumstances. These absences should be managed in the same manner as absences for other excused reasons, including informing the school of the absence, talking with teachers about the absence, missed work, etc.

Name of Holiday	Religion/Culture	Dates
Rosh Hashanah*	Jewish	September 19-20
Yom Kippur*	Jewish	September 28
Sukkot*	Jewish	October 3-9
Shemini Atzeret*	Jewish	October 10
Simchat Torah*	Jewish	October 11
Navaratri	Hindu	October 17-25
Birth of the Báb	Baha'i	October 18
Gur-Gaddi Guru Granth Sahib	Sikh	October 20
Dussehra	Hindu	October 25
Mawlid an-Nabi (Sunni)	Islamic	October 29
All Saints' Day	Western Christian	November 1
All Souls' Day	Christian	November 2
Mawlid an-Nabi (Shi'a)	Islamic	November 3
Diwali	Hindu	November 14
Guru Nanak Dev Ji's Birthday	Sikh	November 30
Bodhi Day	Buddhist	December 8
Chanukah*	Jewish	December 11-18
Kwanzaa	African American	December 26 to January 1
Christmas	Armenian Orthodox Christian	January 6
Christmas	Eastern Christian	January 7
Makar Sankranti	Hindu	January 14
World Religion Day	Baha'i	January 21
Lunar New Year	Confucian, Daoist and Buddhist	February 12
Nirvana Day	Buddhist	February 15
Beginning of Lent, Ash Wednesday	Christian	February 17
Purim*	Jewish	February 26
Maha Shivaratri	Hindu	March 11
St. Patrick's Day	Christian	March 17
Holi	Hindu	March 29
Palm Sunday	Christian	March 28
Passover*	Jewish	March 28 to April 3
Holy Thursday	Christian	April 1
Good Friday	Christian	April 2
Easter	Christian	April 4
Yom Hashoah "Holocaust Remembrance"	Jewish	April 9
Ramadan begins*	Islamic	April 13 to May 11
Vaisakhi	Sikh	April 14
Laila Al-Qadr*	Islamic	May 9
Ascension Day	Christian	May 13
Eid al-Fitr (End of Ramadan)*	Islamic	May 13
Shavuot*	Jewish	May 17-18
Pentecost	Christian	May 23
Ascension of Bahá'u'lláh	Baha'i	May 29
All Saints' Day	Eastern Christian	May 30
Juneteenth Celebration	African American	June 19

*All Jewish and Islamic holidays listed above begin at sundown on the previous day

Source: Anti-Defamation League Calendar of Observances



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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

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

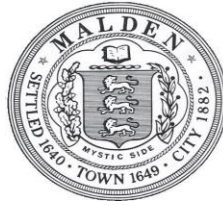
Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

Thank you,
Shirley Dorai
Records Access Officer



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

John Oteri, M.Ed.
Superintendent of Schools

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

November 30, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]

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

Dear Mr. Friedman:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

Mackenzie Nekton

From: Bruce Friedman [REDACTED]
Sent: Wednesday, February 24, 2021 9:19 PM
To: Puccini, Angela (SEC); SEC-DL-PREWEB
Cc: Stair, Joshua (SEC); Greg Lucey; sdorai@malDENps.org; Felicia S. Vasudevan
Subject: SPR20/2044
Attachments: spr202044.pdf; 2020-0214.pdf; 2020-0212.pdf; 2020-0213.pdf
Importance: High

Greetings:

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

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

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

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

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

Please contact me if you have any questions.

Kindest Regards,

- Bruce Friedman

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

Hello,

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

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

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

Joshua Stair

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

(617) 727-2832 (office)

(617) 727-5914 (fax)

<http://www.sec.state.ma.us/pre/preidx.htm>

A Guide to Public Records Law: <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Review appeal determinations online: <http://www.sec.state.ma.us/appealsweb/appealsstatus.aspx>

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Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

Response Details

Response Please refer to the attached document.

Response Documents

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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Requestor Dashboard

Communication

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Welcome Bruce Friedman ! [Logout]

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

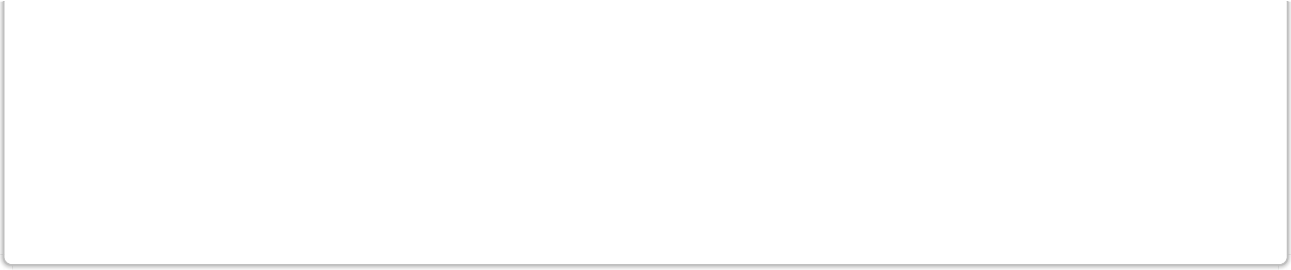
Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response



Response Documents

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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[Communication](#)
[Change Profile](#)
[Help](#)
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[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

Response Details

Response



Response Documents

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

(2) "...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

Shirley Dorai
Page 4
November 5, 2020

SPR20/2044

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Bruce Friedman [REDACTED] >
Sent: Wednesday, February 24, 2021 9:42 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Brian DeLacey; sdorai@malDENps.org; Felicia S. Vasudevan; Greg Lucey
Subject: SPR 20/2044 - Request for Appeal
Attachments: SPR20_2044 113020 Response.pdf; spr202044.pdf; 2020-0214.pdf; 2020-0212.pdf; 2020-0213.pdf

Importance: High

Greetings:

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

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

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

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

"Compliance with G.L. c. 66, § 10(e)

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

The District may not be permitted to charge fees associated with the records request if the District did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2)(c).

Based on Mr. Friedman's petition, it is uncertain whether the District complied with G. L. c. 66, § 10(e) when responding to this request. Therefore, I find the District must demonstrate whether it responded to the records request within ten business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).

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

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

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

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

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

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

Please contact me if you have any questions.

Kindest Regards,

- Bruce Friedman

From: Dorai, Shirley <sdorai@malDENps.org>

Date: Monday, November 30, 2020 at 4:14 PM

To: Bruce Friedman [REDACTED] m>

Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalDEN.org>

Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,

Shirley Dorai

Executive Assistant to the Superintendent

and School Committee Clerk

Malden Public Schools

77 Salem Street, Room H104

Malden, MA 02148

Phone: 781-397-6100 Ext 2201

Fax: 781-397-7276

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

Response Details

Response Please refer to the attached document.



Response Documents

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

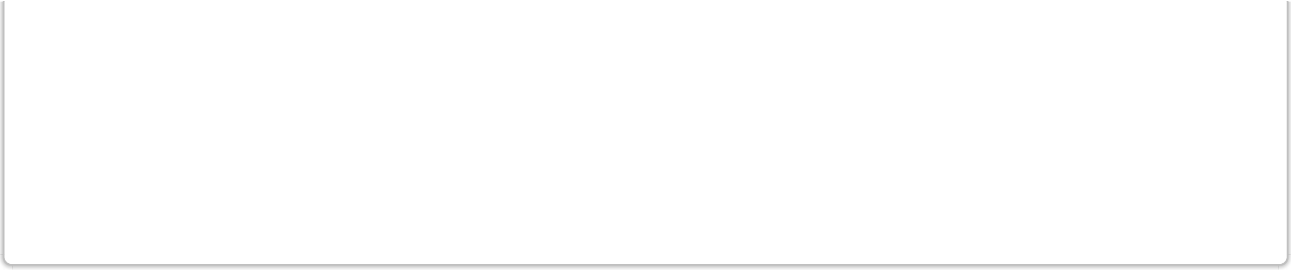
Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response



Response Documents

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.	█	Street	█
City	Malden	State	MA
Zip	█	Email	█
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

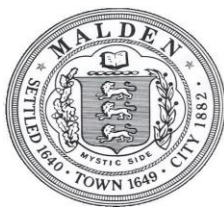
Response Details

Response

Response Documents

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

November 30, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]

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

Dear Mr. Friedman:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

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

Thank you,
Shirley Dorai
School Department

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



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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

(2) ...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

Shirley Dorai
Page 4
November 5, 2020

SPR20/2044

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Puccini, Angela (SEC)
Sent: Thursday, February 25, 2021 11:20 AM
To: SEC-DL-PREWEB
Subject: FW: SPR 20/2044 - Request for Appeal
Attachments: SPR20_2044 113020 Response.pdf; spr202044.pdf; 2020-0214.pdf; 2020-0212.pdf; 2020-0213.pdf

Importance: High

Requestor confirmed by phone that he is appealing timeliness of 10 day response as related to ability to charge a few.

From: Bruce Friedman [REDACTED] >
Sent: Wednesday, February 24, 2021 9:42 PM
To: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; Puccini, Angela (SEC) <Angela.Puccini@sec.state.ma.us>
Cc: Brian DeLacey <bdelacey@gmail.com>; sdorai@malDENps.org; Felicia S. Vasudevan <fvasudevan@mhtl.com>; Greg Lucey <glucey@CITYOFMALDEN.ORG>
Subject: SPR 20/2044 - Request for Appeal
Importance: High

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Greetings:

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

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

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

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

"Compliance with G.L. c. 66, § 10(e)

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

The District may not be permitted to charge fees associated with the records request if the District did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2)(c).

Based on Mr. Friedman's petition, it is uncertain whether the District complied with G. L. c. 66, § 10(e) when responding to this request. Therefore, I find the District must demonstrate whether

it responded to the records request within ten business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).

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

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

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

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

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

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

Please contact me if you have any questions.

Kindest Regards,

- Bruce Friedman

From: Dorai, Shirley <sdorai@malDENPS.org>

Date: Monday, November 30, 2020 at 4:14 PM

To: Bruce Friedman [REDACTED]

Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalDEN.org>

Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,

Shirley Dorai

Executive Assistant to the Superintendent
and School Committee Clerk

Malden Public Schools

77 Salem Street, Room H104

Malden, MA 02148

Phone: 781-397-6100 Ext 2201

Fax: 781-397-7276

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

Response Details

Response Please refer to the attached document.



Response Documents

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

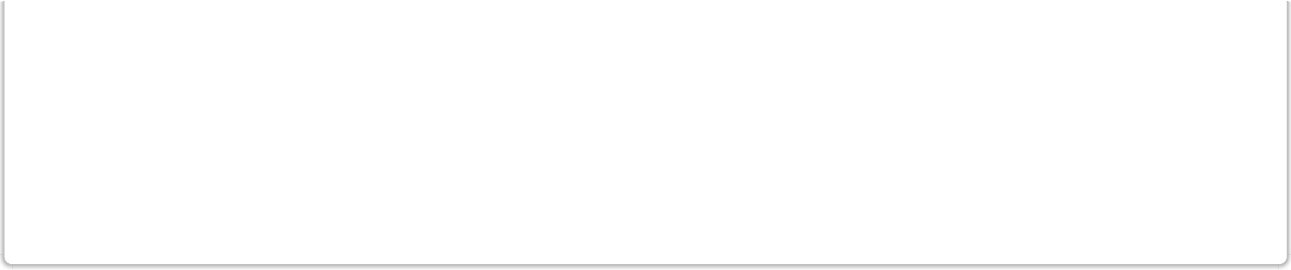
Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response



Response Documents

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

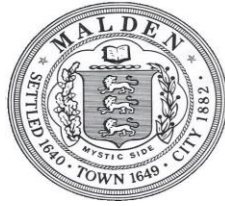
Response Details

Response

Response Documents

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

November 30, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]

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

Dear Mr. Friedman:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

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

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

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

Thank you,
Shirley Dorai
School Department

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



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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

(2) ...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

Shirley Dorai
Page 4
November 5, 2020

SPR20/2044

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

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Sossavi, Fredson (SEC)
Sent: Thursday, February 25, 2021 1:17 PM
To: sdorai@maldenps.org; fvasudevan@mhtl.com
Cc: SEC-DL-PREWEB; Sullivan, Lori (SEC); [REDACTED]
Subject: SPR21/0491 Appeal Acknowledgement
Attachments: SPR21-0491.pdf

Good Afternoon,

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

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

Thank you,

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



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

February 25, 2021
SPR21/0491

Mr. Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the City of Malden - Public Schools to your request for records.

I have directed a member of my staff, Lori Sullivan, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Ms. Shirley Dorai

Chan, Benjamin (SEC)

From: Bruce Friedman [REDACTED]
Sent: Wednesday, February 24, 2021 9:42 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Brian DeLacey; sdorai@maldenps.org; Felicia S. Vasudevan; Greg Lucey
Subject: SPR 20/2044 - Request for Appeal
Attachments: SPR20_2044 113020 Response.pdf; spr202044.pdf; 2020-0214.pdf; 2020-0212.pdf; 2020-0213.pdf

Importance: High

Greetings:

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

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

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

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

"Compliance with G.L. c. 66, § 10(e)

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

The District may not be permitted to charge fees associated with the records request if the District did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2)(c).

Based on Mr. Friedman's petition, it is uncertain whether the District complied with G. L. c. 66, § 10(e) when responding to this request. Therefore, I find the District must demonstrate whether it responded to the records request within ten business days following receipt of the request, in compliance with G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).

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

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

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

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

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

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

Please contact me if you have any questions.

Kindest Regards,

- Bruce Friedman

From: Dorai, Shirley <sdorai@maldenps.org>

Date: Monday, November 30, 2020 at 4:14 PM

To: Bruce Friedman [REDACTED] >

Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Greg Lucey <glucey@cityofmalden.org>

Subject: SPR 20/2044

Dear Mr. Friedman,

Please see the attached response. Thank you.

Best Regards,

Shirley Dorai

Executive Assistant to the Superintendent
and School Committee Clerk

Malden Public Schools

77 Salem Street, Room H104

Malden, MA 02148

Phone: 781-397-6100 Ext 2201

Fax: 781-397-7276

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

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

(1) "...any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

(2) ...any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries...

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

Shirley Dorai
Page 4
November 5, 2020

SPR20/2044

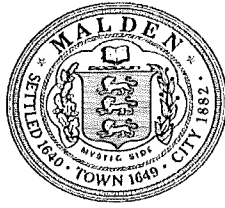
office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first name "Rebecca" and last name "Murray" clearly distinguishable.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman



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

John Oteri, M.Ed.
Superintendent of Schools

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

November 30, 2020

BY E-MAIL

Bruce Friedman
[REDACTED]

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

Dear Mr. Friedman:

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

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

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

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

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

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

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are ‘useful in making employment decisions regarding an employee.’” Wakefield Teachers Ass’n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston, 380 Mass. 623, 625 (1980).

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

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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

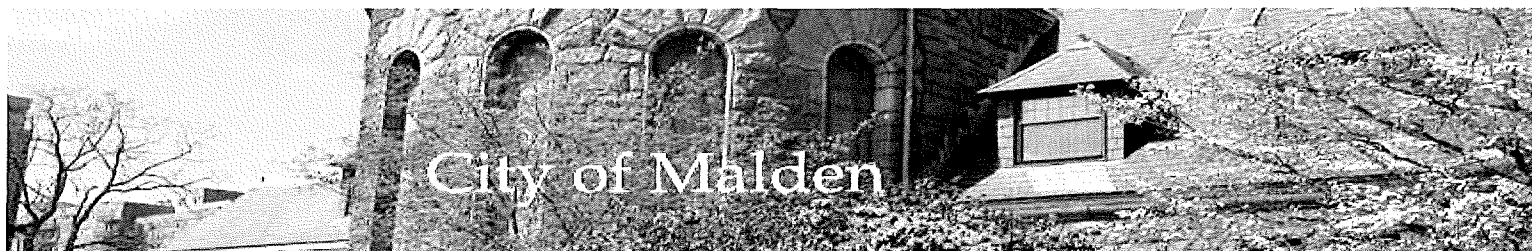
Seven Thousand Sixteen hours multiplied by \$25 per hour yields a fee estimate of \$175,400. Furthermore, please be advised that the actual fee to produce these records may vary based on

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

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

Thank you,
Shirley Dorai
School Department

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



Requestor Dashboard

Communication

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

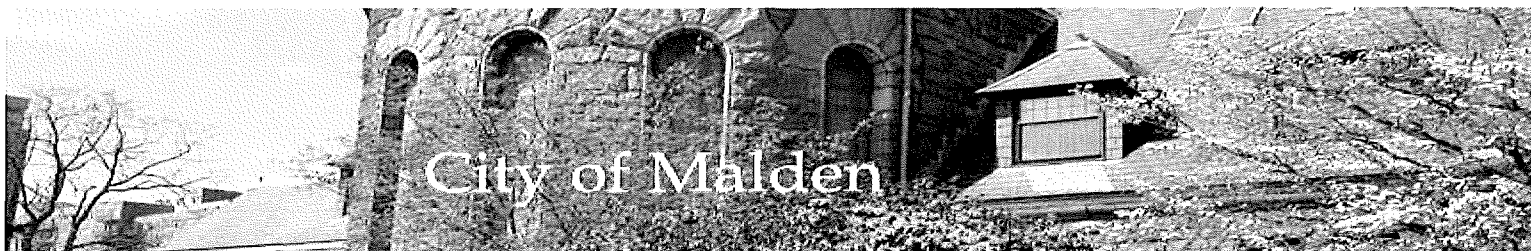
Response Details

Response

Response Documents

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

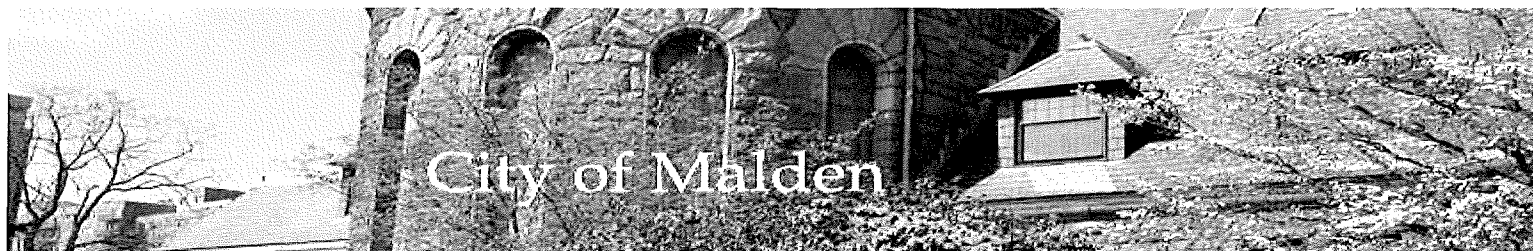
Response Details

Response

Response Documents

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

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

Request Documents

No Document.

Response Details

Response Please refer to the attached document.

Response Documents

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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

Rebecca S. Murray
Supervisor of Records

October 22, 2020
SPR20/2044

Mr. Bruce Friedman
[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Christopher Crocker, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Mr. Greg Lucey

Robertson, Jack (SEC)

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

Importance: High

Greetings:

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

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

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

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED] m>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab <ab@amyandbruce.com>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

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

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

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

The "answer" is deficient in many ways, including

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

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

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

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

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

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

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

Please feel free to contact me for any reason.

- Bruce Friedman

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

Greetings:

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

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

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

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

Obviously they failed to copy you as well.

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

Kindest Regards,

- Bruce Friedman

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

Hello,

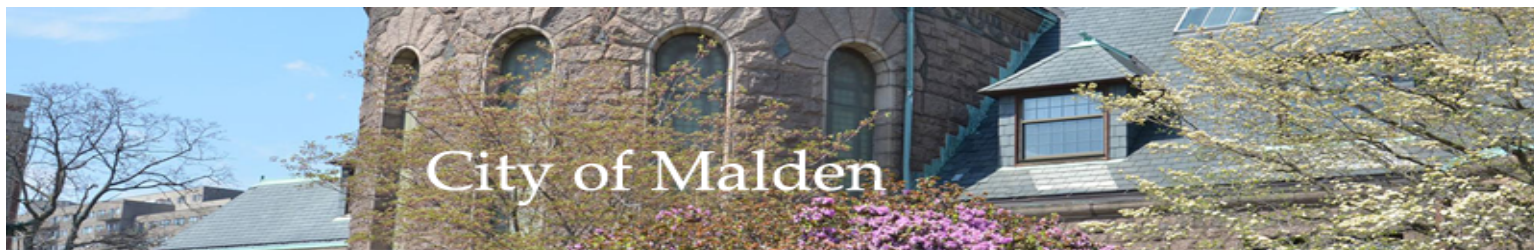
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

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

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:39 PM

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

Request Documents

No Document.

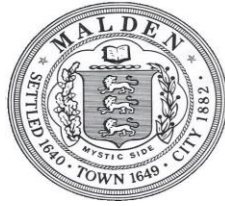
Response Details

Response Please refer to the attached document.

**Response Documents**

Document Name	
FOIA Request 2020-0212 Response_10142020153858.pdf	View

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

John Oteri, M.Ed.
Superintendent of Schools

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

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

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

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

To comply with your request, Malden will need to redact and segregate the records as they contain emails between Malden and its attorneys. The Supreme Judicial Court stated that a

governmental entity may assert attorney-client privilege to protect documents against disclosure where they contain communications between lawyer and client for purpose of obtaining legal advice. *Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt.*, 449 Mass. 444 (2007). Email communications between Malden and its attorneys were not shared with the public and were shared in confidence. There was no waiver of the privilege. They thus must be redacted or segregated in their entirety. “The privilege enable[s] clients to make full disclosure to legal counsel of all relevant facts, no matter how embarrassing or damaging these facts might be, so that counsel may render fully informed legal advice.” *Suffolk*, 449 Mass. At 449.

Beyond attorney-client privilege, the records are subject to other exemptions that would need to be reviewed and segregated. In *Champa v. Weston Public Schools*, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon two different disclosure Exemptions, Exemption (a) (which protects from disclosure records that are “... specifically or by necessary implication exempted from disclosure by statute,” MGL c. 4, § 7(26)(a)), and Exemption (c) (which protects from disclosure, among other things, “... materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy”).

The SJC in *Champa* relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district’s receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). Further, given the well-settled right to privacy enjoyed by public school students and the fact that the settlement agreement at issue contained information that would specifically identify the special education student who was the subject of the agreement, the *Champa* court held that the agreement was protected from disclosure under the Public Records Law based upon Exemption (c). While Exemptions (a) and (c) each independently exempted the agreement from the definition of a public record, the *Champa* court nonetheless ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court “... regarding the necessary and appropriate redactions of personally identifying information to be made ...” 473 Mass. at 98-99.

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

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that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

Like the agreement at issue in *Champa*, emails and the calendars of Mr. Wood and Ms. Cushinsky contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming or would reveal identity from personnel records, which warrants non-disclosure under Exemption (c). These emails and calendars relate to the educational services and programming that is provided to students, especially special education students, and thus should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by *Champa*, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure. Additionally, since Mr. Wood was an administrator, your request may implicate personnel information, which will need to be segregated. Personnel information is not subject to redaction, as records which fall into the above-referenced “core categories of personnel information” may be withheld in their entirety. *Wakefield*, 431 Mass. at 799 (“Information falling within the ‘personnel and medical files or information’ category is absolutely exempt from disclosure.”).

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

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Seven Thousand Sixteen hours multiplied by \$25 per hour yields a fee estimate of \$175,400. Furthermore, please be advised that the actual fee to produce these records may vary based on the actual time needed to review these records. We will not begin to review the records which we have initially been compiled until we receive a check in the amount of \$175,400.

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
Records Access Officer

Robertson, Jack (SEC)

From: Bruce Friedman [REDACTED]
Sent: Wednesday, October 21, 2020 6:10 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1942 (Malden 2020-0213)
Attachments: 2020-0213-.pdf

Importance: High

Greetings:

Please accept this email as a formal request for appeal of the City of Malden's "response" to the attached request.

On 09/24/2020 at 08:58 AM, I created the following verbatim request on the City of Malden's official FOIA website:
"Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information."

This request was due on or before the close of business October 8, 2020 as calculated by Mr. Benjamin Chan of your office:

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED] SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab [REDACTED], Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

Benjamin Chan
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2832

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1942 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

I was able to find the response on their website which is attached to the original request attached to this email.

The "answer" is deficient in many ways, including

- not specifically addressing each request independently (The "answer" to each of the three requests is the identical co-mingled answer),
- they failed to specifically account for the individual requests in calculating the number of emails,

- they failed to specify the amount of time required for each request for each email to segmenting and redacting.
- They failed to provide the names and verification that the lowest paid employee capable of segmenting and redacting

This request was received by the City of Malden as #2020-0213 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of \$175,400.00. This estimate fails to comply with Public Records Law in a number of ways.

It is my understanding that the Commonwealth defines a business day as M-F excluding state holidays. Further, it is my understanding "if a records access officer intends to provide records, access to such records must be provided no later than the tenth business day following the receipt of a request ... in a manner consistent with 950 CMR 32.06(2)(i) and (4)."

Based on my calculation and that of Mr. Benjamin Chan of your office and the Order of your office today, the city had a "tenth day" obligation to respond to my request by 10/08/20. I did not receive an acceptable response from the city according to the "tenth business day rule".

As the Secretary of State's office makes clear, "it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)".

I hereby submit this appeal to your office for appropriate Orders to compel the City of Malden to comply with FOIA and the Commonwealth's regulations.

Please feel free to contact me for any reason.

- Bruce Friedman

From: Bruce Friedman [REDACTED]
Date: Wednesday, October 21, 2020 at 5:36 PM
To: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>, gluecey@cityofmalden.org
 <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: SPR20/1941,42,43 Determination

Greetings:

Thank you for your responsiveness to this matter. Unfortunately The City has again failed to live up to it's responsibilities. Upon examining the requests on their website (Attached FOIA REQUESTS.PDF), the following "Answers" appear though their status shows as "completed, not sent".

SPR-20-1941 (Malden FOIA Number 2020-0212) – Attached

SPR-20-1942 (Malden FOIA Number 2020-0213) – Attached

SPR-20-1943 (Malden FOIA Number 2020-0214) – Attached

Obviously they failed to copy you as well.

I will have to appeal the nature of their "responses" immediately and those appeals will follow tonight.

Kindest Regards,

- Bruce Friedman

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>
Date: Wednesday, October 21, 2020 at 4:45 PM
To: glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman [REDACTED]
Subject: SPR20/1941,42,43 Determination

Hello,

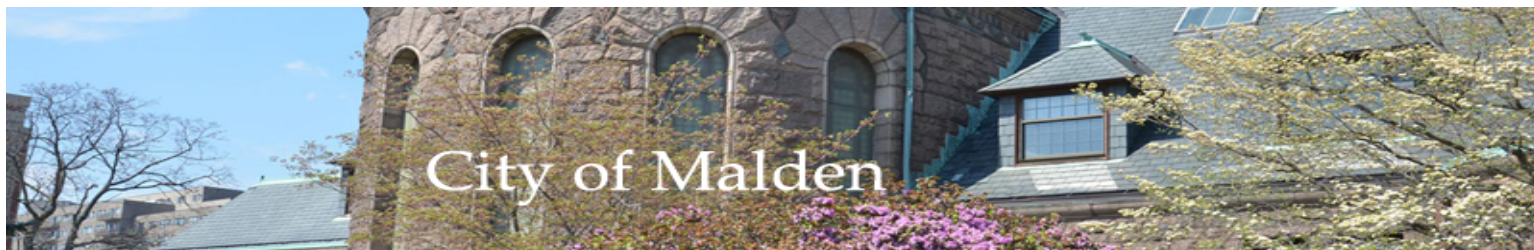
Please be aware, the Supervisor of Records has issued a determination relating to appeals in which you were involved. This determination is attached, and available online at: <http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Vinayak Kapoor
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Email: Vinayak.Kapoor@sec.state.ma.us

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


[Requestor Dashboard](#)
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[Help](#)

 Welcome Bruce Friedman ! [\[Logout\]](#)
[Back](#)

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:43 PM
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

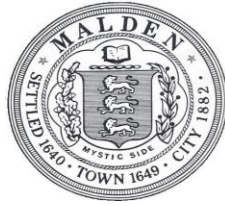
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0213 Response_10142020154242.pdf	View

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MALDEN PUBLIC SCHOOLS
77 Salem Street, Malden, MA 02148
Phone: 781-397-6100 Fax: 781-397-7276
www.maldenps.org

John Oteri, M.Ed.
Superintendent of Schools

Kelly Chase, Ed.D.
Pamela MacDonald, C.A.G.S.
Assistant Superintendents of Schools

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

- (1) Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.
- (2) Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.
- (3) Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

In terms of your first request, the Malden Public Schools ("Malden") has approximately sixty thousand ninety-four emails that are consistent with your request. For your second request, there are twenty thousand eight hundred forty emails that are consistent with your request. Malden does not have any documents responsive to your third request.

To comply with your request, Malden will need to redact and segregate the records as they contain emails between Malden and its attorneys. The Supreme Judicial Court stated that a

governmental entity may assert attorney-client privilege to protect documents against disclosure where they contain communications between lawyer and client for purpose of obtaining legal advice. *Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt.*, 449 Mass. 444 (2007). Email communications between Malden and its attorneys were not shared with the public and were shared in confidence. There was no waiver of the privilege. They thus must be redacted or segregated in their entirety. “The privilege enable[s] clients to make full disclosure to legal counsel of all relevant facts, no matter how embarrassing or damaging these facts might be, so that counsel may render fully informed legal advice.” *Suffolk*, 449 Mass. At 449.

Beyond attorney-client privilege, the records are subject to other exemptions that would need to be reviewed and segregated. In *Champa v. Weston Public Schools*, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon two different disclosure Exemptions, Exemption (a) (which protects from disclosure records that are “... specifically or by necessary implication exempted from disclosure by statute,” MGL c. 4, § 7(26)(a)), and Exemption (c) (which protects from disclosure, among other things, “... materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy”).

The SJC in *Champa* relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district’s receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). Further, given the well-settled right to privacy enjoyed by public school students and the fact that the settlement agreement at issue contained information that would specifically identify the special education student who was the subject of the agreement, the *Champa* court held that the agreement was protected from disclosure under the Public Records Law based upon Exemption (c). While Exemptions (a) and (c) each independently exempted the agreement from the definition of a public record, the *Champa* court nonetheless ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court “... regarding the necessary and appropriate redactions of personally identifying information to be made ...” 473 Mass. at 98-99.

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

In terms of the first clause of the privacy exemption, the Supreme Judicial Court has held that “[w]hile the precise contours of the legislative term “personnel [file] or information” may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

Like the agreement at issue in *Champa*, emails and the calendars of Mr. Wood and Ms. Cushinsky contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming or would reveal identity from personnel records, which warrants non-disclosure under Exemption (c). These emails and calendars relate to the educational services and programming that is provided to students, especially special education students, and thus should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by *Champa*, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure. Additionally, since Mr. Wood was an administrator, your request may implicate personnel information, which will need to be segregated. Personnel information is not subject to redaction, as records which fall into the above-referenced “core categories of personnel information” may be withheld in their entirety. *Wakefield*, 431 Mass. at 799 (“Information falling within the ‘personnel and medical files or information’ category is absolutely exempt from disclosure.”).

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

It will take approximately 7,020 hours to search, segregate and redact all of the records that you have requested. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

Seven Thousand Sixteen hours multiplied by \$25 per hour yields a fee estimate of \$175,400. Furthermore, please be advised that the actual fee to produce these records may vary based on the actual time needed to review these records. We will not begin to review the records which we have initially been compiled until we receive a check in the amount of \$175,400.

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
Records Access Officer

Robertson, Jack (SEC)

From: Bruce Friedman [REDACTED] >
Sent: Wednesday, October 21, 2020 6:14 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Gary J. Christenson; Brian DeLacey
Subject: APPEAL - SPR20/1943 (Malden 2020-0214)
Attachments: 2020-0214-.pdf

Importance: High

Greetings:

Please accept this email as a formal request for appeal of the City of Malden's "response" to the attached request.

On 09/24/2020 at 09:08 AM, I created the following verbatim request on the City of Malden's official FOIA website: "Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request."

This request was due on or before the close of business October 8, 2020 as calculated by Mr. Benjamin Chan of your office:

From: Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Date: Thursday, October 8, 2020 at 8:59 AM
To: Bruce Friedman [REDACTED], SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Cc: ab [REDACTED], Greg Lucey <glucey@CITYOFMALDEN.ORG>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: Request for Appeal - Timeliness
Good Morning Mr. Friedman,

In relation to the following three (3) requests #2020-0214, #2020-0213, and #2020-0212 of which were initially filed with the City on September 24th, 2020, the ten (10) business days in accordance with The Public Records Law are not due. Therefore, the ten (10) business days are due at the end of the business day today, October 8th, 2020.

If you do not receive a response after October 8th or are unsatisfied with the response provided, you may wish to file an appeal with this Office in regards to the current situation.

Very Respectfully,
Benjamin

Benjamin Chan
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2832

On October 9, 2020 I filed an appeal for this request which was minted SPR20/1943 by your office. Today, your office made an official determination that the City failed to provide their required response and Ordered them to do so.

I was able to find the response on their website which is attached to the original request attached to this email.

This "answer" does not anywhere specifically address the request contained in #2020-0214, no responsive documents were ever provided.

The "answer" is also deficient in many ways, including

- not specifically addressing each request independently (The “answer” to each of the three requests is the identical co-mingled answer),
- they failed to specifically account for the individual requests in calculating the number of emails,
- they failed to specify the amount of time required for each request for each email to segmenting and redacting.
- They failed to provide the names and verification that the lowest paid employee capable of segmenting and redacting

This request was received by the City of Malden as #2020-0214 on 09/24/20. The response on their website, including an estimate for personnel costs that is generally lacking in detail with an estimated costs of \$175,400.00. This estimate fails to comply with Public Records Law in a number of ways.

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Based on my calculation and that of Mr. Benjamin Chan of your office and the Order of your office today, the city had a "tenth day" obligation to respond to my request by 10/08/20. I did not receive an acceptable response from the city according to the “tenth business day rule”.

As the Secretary of State’s office makes clear, “it is important to note that a fee for a public record may not be charged unless the RAO responded to the requestor within 10 business days under G. L. c. 66, § 10(b)”.

I hereby submit this appeal to your office for appropriate Orders to compel the City of Malden to comply with FOIA and the Commonwealth’s regulations.

Please feel free to contact me for any reason.

- Bruce Friedman

From: Bruce Friedman [REDACTED] >
Date: Wednesday, October 21, 2020 at 5:36 PM
To: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>, glucey@cityofmalden.org
 <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Brian DeLacey <bdelacey@gmail.com>
Subject: Re: SPR20/1941,42,43 Determination

Greetings:

Thank you for your responsiveness to this matter. Unfortunately The City has again failed to live up to it’s responsibilities. Upon examining the requests on their website (Attached FOIA REQUESTS.PDF), the following “Answers” appear though their status shows as “completed, not sent”.

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SPR-20-1942 (Malden FOIA Number 2020-0213) – Attached

SPR-20-1943 (Malden FOIA Number 2020-0214) – Attached

Obviously they failed to copy you as well.

I will have to appeal the nature of their "responses" immediately and those appeals will follow tonight.

Kindest Regards,

- Bruce Friedman

From: Vinayak Kapoor <Vinayak.Kapoor@sec.state.ma.us>

Date: Wednesday, October 21, 2020 at 4:45 PM

To: gluecy@cityofmalden.org <glucey@cityofmalden.org>

Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman <[REDACTED]>

Subject: SPR20/1941,42,43 Determination

Hello,

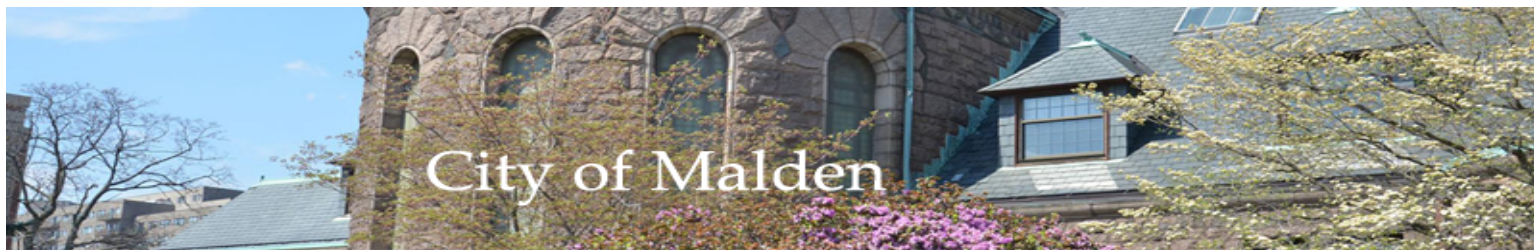
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If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Thank you,

Vinayak Kapoor
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Email: Vinayak.Kapoor@sec.state.ma.us

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Requestor Dashboard

Communication

Change Profile

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	10/14/2020 03:47 PM

Request Detail

Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

Request Documents

No Document.

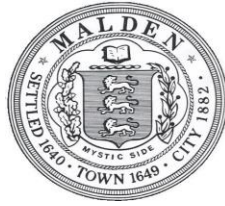
Response Details

Response

**Response Documents**

Document Name	
FOIA Request 2020-0214 Response_10142020154536.pdf	View

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MALDEN PUBLIC SCHOOLS
77 Salem Street, Malden, MA 02148
Phone: 781-397-6100 Fax: 781-397-7276
www.maldenps.org

John Oteri, M.Ed.
Superintendent of Schools

Kelly Chase, Ed.D.
Pamela MacDonald, C.A.G.S.
Assistant Superintendents of Schools

October 14, 2020

BY E-MAIL

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Re: Public Records Request dated September 24, 2020

Dear Mr. Friedman:

We have received the requests that you submitted on September 24, 2020 (the "Records Requests"). Specifically, you requested the following:

- (1) Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.
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Beyond attorney-client privilege, the records are subject to other exemptions that would need to be reviewed and segregated. In *Champa v. Weston Public Schools*, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon two different disclosure Exemptions, Exemption (a) (which protects from disclosure records that are “... specifically or by necessary implication exempted from disclosure by statute,” MGL c. 4, § 7(26)(a)), and Exemption (c) (which protects from disclosure, among other things, “... materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy”).

The SJC in *Champa* relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district’s receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). Further, given the well-settled right to privacy enjoyed by public school students and the fact that the settlement agreement at issue contained information that would specifically identify the special education student who was the subject of the agreement, the *Champa* court held that the agreement was protected from disclosure under the Public Records Law based upon Exemption (c). While Exemptions (a) and (c) each independently exempted the agreement from the definition of a public record, the *Champa* court nonetheless ruled that the agreement should be redacted to protect personally identifying information; and that once redacted, the agreement shall be disclosed. The SJC likewise remanded the case to the trial court “... regarding the necessary and appropriate redactions of personally identifying information to be made ...” 473 Mass. at 98-99.

Further explaining Exemption (c), commonly referred to as the privacy exemption applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy. G. L. c. 4, § 7(26)(c).

In terms of the first clause of the privacy exemption, the Supreme Judicial Court has held that “[w]hile the precise contours of the legislative term “personnel [file] or information” may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information

that are ‘useful in making employment decisions regarding an employee.’” *Wakefield Teachers Ass’n v. School Comm. of Wakefield*, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. *Torres v. Attorney Gen.*, 391 Mass. 1, 9 (1984); *Attorney Gen. v. Assistant Comm’r of the Real Property Dep’t of Boston*, 380 Mass. 623, 625 (1980).

Like the agreement at issue in *Champa*, emails and the calendars of Mr. Wood and Ms. Cushinsky contain personal identifying information of public school students and employees who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming or would reveal identity from personnel records, which warrants non-disclosure under Exemption (c). These emails and calendars relate to the educational services and programming that is provided to students, especially special education students, and thus should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by *Champa*, state and federal student records regulations, specifically, the Family Education Rights Privacy Act and 603 CMR 23.00, compel Malden to protect educational records from disclosure. Additionally, since Mr. Wood was an administrator, your request may implicate personnel information, which will need to be segregated. Personnel information is not subject to redaction, as records which fall into the above-referenced “core categories of personnel information” may be withheld in their entirety. *Wakefield*, 431 Mass. at 799 (“Information falling within the ‘personnel and medical files or information’ category is absolutely exempt from disclosure.”).

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested. G. L. c. 66, § 10(d)(iii). The records here must be segregated in accordance with the above enumerated exemptions. In this case, the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. Notwithstanding that rate, a rate of \$25 per hour will be used to calculate the following fee estimate.

It will take approximately 7,020 hours to search, segregate and redact all of the records that you have requested. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

Seven Thousand Sixteen hours multiplied by \$25 per hour yields a fee estimate of \$175,400. Furthermore, please be advised that the actual fee to produce these records may vary based on the actual time needed to review these records. We will not begin to review the records which we have initially been compiled until we receive a check in the amount of \$175,400.

Pursuant to G.L. c. 66, § 10(b)(ix), please note you have a right of appeal to the Supervisor of Records under G.L. c. 66, § 10A(a) and the right to seek judicial review by commencing a civil action in the Superior Court under G.L. c. 66, § 10A(c).

Thank you,
Shirley Dorai
Records Access Officer



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

October 21, 2020
SPR20/1941; SPR20/1942; SPR20/1943

Greg Lucey
Malden City Clerk's Office
166 Main Street, 1st Floor
Brockton, MA 02301

Dear Mr. Lucey:

I have received the petitions of Bruce Friedman appealing the nonresponse of the Malden City Clerk's Office (Office) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Friedman requested various documents in possession of the Office. Having received no response, the requestor petitioned this office.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4 § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Order

Despite being notified of the opening of these appeals from a member of the Public Records Division staff, no response has been provided. Accordingly, the Office is ordered to

Greg Lucey
Page 2
October 21, 2020

SPR20/1941; SPR20/1942; SPR20/1943

provide Bruce Friedman with a response to the requests, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

October 9, 2020
SPR20/1941

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

From: [Bruce Friedman](#)
To: [SEC-DL-PREWEB](#)
Cc: [ab](#); [Greg Lucey](#); [Brian DeLacey](#)
Subject: Re: Request for Appeal - Timeliness
Date: Thursday, October 8, 2020 6:07:44 PM
Attachments: [2020-0212.pdf](#)
Importance: High

On 9/24/2020, the City of Malden received the following request from on their official FOIA request submission portal, <https://www.townforms.com/FOIADirect-MaldenMACitizens/Public/Request/PublicRequest.aspx?ch=dabae301a899d4d745d5501b3f9ee5e1>

“Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.”

As of today, the request is overdue, the request was due on 10/8/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond within the legally required 10 business days.

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

209 CMR 32.02: "...all calendar days except Sundays and legal federal public holidays and any legal holiday under the laws of the Commonwealth."

The original request and response are hereto attached.
Kindest Regards,
Bruce Friedman

This communication, along with any attachments, is covered by federal and state law

governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	a
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0212	Department	IT Department
Request Sent Date	09/24/2020 08:57 AM	Request Received Date	09/24/2020 08:57 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]

Request Detail Please provide any and all electronic communications created in, sent to and sent from Mr. Michael Wood's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

October 9, 2020
SPR20/1942

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

From: [Bruce Friedman](#)
To: [SEC-DL-PREWEB](#)
Cc: [ab](#); [Greg Lucey](#); [Brian DeLacey](#)
Subject: Request for Appeal - Timeliness
Date: Thursday, October 8, 2020 6:08:26 PM
Attachments: [2020-0213.pdf](#)
Importance: High

On 9/24/2020, the City of Malden received the following request from on their official FOIA request submission portal, <https://www.townforms.com/FOIADirect-MaldenMACitizens/Public/Request/PublicRequest.aspx?ch=dabae301a899d4d745d5501b3f9ee5e1>

“Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.”

As of today, the request is overdue, the request was due on 10/8/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond within the legally required 10 business days.

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

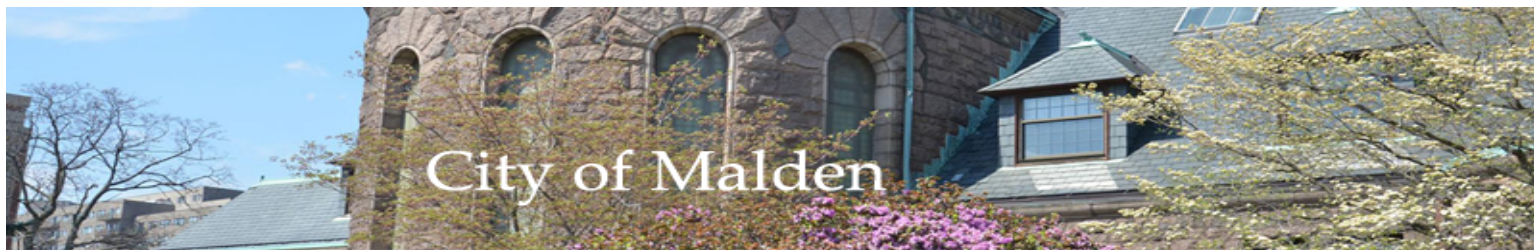
MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

209 CMR 32.02: "...all calendar days except Sundays and legal federal public holidays and any legal holiday under the laws of the Commonwealth."

The original request and response are hereto attached.
Kindest Regards,
Bruce Friedman

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governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.


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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0213	Department	IT Department
Request Sent Date	09/24/2020 08:58 AM	Request Received Date	09/24/2020 08:58 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]
Request Detail	Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic form it is maintained in and must include all electronic header information.		

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

October 9, 2020
SPR20/1943

Bruce Friedman

[REDACTED]
Malden, MA [REDACTED]

Dear Mr. Bruce Friedman:

I have received your letter appealing the response of the Malden City Clerk's Office to your request for records.

I have directed a member of my staff, Vinayak Kapoor, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Greg Lucey

From: [Bruce Friedman](#)
To: [SEC-DL-PREWEB](#)
Cc: [ab](#); [Greg Lucey](#); [Brian DeLacey](#)
Subject: Re: Request for Appeal - Timeliness
Date: Thursday, October 8, 2020 6:09:18 PM
Attachments: [2020-0214.pdf](#)
Importance: High

On 9/24/2020, the City of Malden received the following request from on their official FOIA request submission portal, <https://www.townforms.com/FOIADirect-MaldenMACitizens/Public/Request/PublicRequest.aspx?ch=dabae301a899d4d745d5501b3f9ee5e1>

“Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.”

As of today, the request is overdue, the request was due on 10/8/2020, 10 business days after the request was filed. As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request immediately and acknowledging that they are hereby time-barred from requesting any fees or redactions from said responses as they failed to respond within the legally required 10 business days.

I expect that the City of Malden will try and explain that they are making up their own definition of business days as they have altered their office hours and changed public access to City Hall, albeit without citizen approval. The Commonwealth has spoken about time and dates on a few occasions via the legislature and several opinions cited below, and I urge the Secretary to strictly enforce the requirements set forth by the legislature in Chapter 66 of Massachusetts General Laws: **“Section 10. (a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...”**

MGL Chapter 183B, Section 2: ““Business day”, any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.”

209 CMR 32.02: “...all calendar days except Sundays and legal federal public holidays and any legal holiday under the laws of the Commonwealth.”

The original request and response are hereto attached.

Kindest Regards,
Bruce Friedman

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Request Details

Requestor Details

First Name	Bruce	Last Name	Friedman
House No.		Street	
City	Malden	State	MA
Zip		Email	
Phone		Organization Name	
Mode of Delivery	Email		

Description of Request

Request Number	2020-0214	Department	School
Request Sent Date	09/24/2020 09:08 AM	Request Received Date	09/24/2020 09:08 AM
Response Due By	10/14/2020	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

Request Documents

No Document.

Response Details

Response	
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Response Documents

No Document.

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