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 2 OF 2
PAGES 347 - 1013

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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.

Rebecca Murray

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	
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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	
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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	Attachements 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	
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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	Attachements 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	Attachements to Email: FW: SPR 20/2044 - Request for Appeal	Angela Puccini	2/25/2021	Same as, though saved seperately as, "Attachements 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	
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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 Bottorf	4/23/2021	
75. Attachments	Attachment to Email: Determination SPR21-0491		4/23/2021	Also listed seperately as, though not saved seperately 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	
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78.	Communications	Email: RE SPR21/1043 AND SPR21/1042	Felicia S. Vasudevan, Bruce Friedman	4/26/2021	
79.	Communications	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.	Communications	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.	Communications	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.	Communications	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	
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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.	Communications	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.	Communications	Email: Request For Appeal - City of Malden Request# 2021-0221 - Incomplete and Non-Responsive response	Bruce Friedman	6/9/2021	
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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	
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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	
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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: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Tuesday, March 2, 2021 9:28 AM
To: Sossavi, Fredson (SEC); sdorai@maldenps.org
Cc: SEC-DL-PREWEB; Sullivan, Lori ([redacted]; John Oteri; Kathryn M. Fallon; Greg Lucey
Subject: RE: SPR21/0491 Appeal Acknowledgement
Attachments: december 2 2020 email.pdf; october 30 2020 email.pdf; SIGNED PRD Letter dated 10-22-20.PDF

Hi Attorney Sullivan:

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

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

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

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

Felicia

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

Good Afternoon,

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

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

Thank you,

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

Felicia S. Vasudevan

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

To Whom It May Concern:

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

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

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

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

Felicia

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

Greetings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Please feel free to contact me for any reason.

- **Bruce Friedman**

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

Dear Mr. Friedman,

Please see the attached response. Thank you.

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

Felicia S. Vasudevan

From: Felicia S. Vasudevan
Sent: Friday, October 30, 2020 4:51 PM
To: pre@sec.state.ma.us
Cc: John Oteri; 'Dorai, Shirley'; Kenneth Rossetti; Greg Lucey; 'Bruce@amyandbruce.com'
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

MURPHY HESSE
TOOMEY & LEHANE LLP
Attorneys at Law

Felicia Vasudevan, Esq.
fvasudevan@mhtl.com

October 22, 2020

VIA EMAIL AND FIRST-CLASS MAIL

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

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

Dear Attorney Kapoor:

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

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

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

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

Thank you for your consideration of this matter.

Very truly yours,

Felicia Vasudevan

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

1238986v1

Mackenzie Nekton

From: Bruce Friedman [redacted] >
Sent: Tuesday, March 2, 2021 12:18 PM
To: Puccini, Angela (SEC); Sullivan, Lori (SEC)
Cc: John Oteri; Kathryn M. Fallon; Greg Lucey; sdorai@maldenps.org; Felicia S. Vasudevan; Sossavi, Fredson (SEC); SEC-DL-PREWEB
Subject: Re: SPR21/0491 Appeal Acknowledgement
Attachments: spr202044.pdf; SPR20_2044 113020 Response.pdf; 2020-2021-DISTRICT-Calendar-FINAL.pdf; City-Facebook-Open.pdf; Municode-City-Open.pdf

Importance: High

Greetings:

Despite Ms. Vasudevan's claims; the response from the City (attached) I am appealing is from November 30, 2020, and as such is appealable to your Office through Sunday February 28, 2021. My appeal was officially accepted on February 25, 2021.

Further, the Order from your Office (attached) providing the context of Ms. Dorai's response was issued on November 5, 2020. That Order specifically stated "

> *"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 Gl. C. 66, § 10(d)."*

Ms. Dorai's response is silent to this specific finding and requirement.

Attached, please find the official school calendar, a Facebook post from the official City of Malden Facebook account, and a current posting on MuniCode, the City's Official Municipal Code and Charter public interface and repository.

> Looking at the district calendar you will see that the Malden Public Schools maintain their own separate calendar for their essential City functions, and that they are open and working on Fridays. Our children regularly attend school in Malden Public Schools on Fridays. The RAO, Ms. Dorai, who is responsible for the responses to this FOIA request, and whom has responded at every step of this request and appeal, works for the Malden Public Schools. The Malden Public Schools RAO should have to comply with the state law requiring a response in ten business days (*G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).)*. The school calendar, the public postings made by both the school system and the City and the posting on MuniCode are all evidence that directly contradict the City's claims. The issue at hand was decided by your office on November 5, 2020. The requirements set forth in that decision are the only issues before this body on this FOIA request.

Please feel free to contact me for any reason related to this matter.

- Bruce Friedman

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Date: Tuesday, March 2, 2021 at 9:27 AM
To: Sossavi, Fredson (SEC) <fredson.sossavi@state.ma.us>, sdorai@maldenps.org <sdorai@maldenps.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Sullivan, Lori (SEC) <lori.sullivan@state.ma.us>, Bruce Friedman [redacted]m>, John Oteri <joteri@maldenps.org>, Kathryn M. Fallon <kfallon@cityofmalden.org>, Greg Lucey <glucey@cityofmalden.org>
Subject: RE: SPR21/0491 Appeal Acknowledgement

Hi Attorney Sullivan:

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

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

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

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

Felicia

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

Good Afternoon,

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

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

Thank you,

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

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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

(oval) 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

Author

City of Malden (Official)

Damian O'Gara-Theory Hello, health professionals have advised that our best approach to combat COVID-19 is social distancing and as a result we are closed to the general public however we have still been operating during normal business hours and have been offering certain core services. If there is a specific City Service you are in need of please follow this link for contact information, how to schedule an appointment, or if your the service you are in need of can be done remotely. https://www.cityofmalden.org/.../City-Services-During...

CITYOFMALDEN.ORG

City Services During Coronavirus Response | Malden, MA

Author

City of Malden (Official)

Damian O'Gara-Theory We are still operating during normal business hours and offering certain core services. If you are looking for a specific City Service we are still working and able to assist you. If you are looking to schedule an appointment or if the service you are looking for can be done remotely we will help you remotely please reach out to any of our departments our list of contacts and services can be found here- https://www.cityofmalden.org/.../City-Services-During...

Author

City of Malden (Official)

Damian O'Gara Phoenix All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours all information for office hours, appointment scheduling, or remote assistance can be found on the City website- https://www.cityofmalden.org/.../City-Services-During...

Source: February 9, 2021, https://www.facebook.com/cityofmalden/posts/5208018329238900

"All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours"

municode

City of Malden

215 Pleasant Street, Malden, MA 02148 / 781-397-7000

Municipal Code

2.04.010 HOURS CERTAIN OFFICES TO BE OPEN

Except on holidays, city administrative offices shall be open to the public from 8:00 A.M. to 4:00 P.M. on Mondays, Wednesdays and Thursdays, from 8:00 A.M. to 7:00 P.M. on Tuesdays and from 8:00 A.M. to noon on Fridays.

Source: Malden Ordinances, as available on MuniCode and maintained by City of Malden - https://malden.municipalcodeonline.com

https://malden.municipalcodeonline.com/book?type=ordinances#name=2.04.010_HOURS_CERTAIN_OFFICES_TO_BE_OPEN

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

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

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

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

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

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

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

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980).

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

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

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Puccini, Angela (SEC)
Sent: Tuesday, March 2, 2021 3:42 PM
To: SEC-DL-PREWEB
Subject: FW: SPR21/0491 Appeal Acknowledgement
Attachments: spr202044.pdf; SPR20_2044 113020 Response.pdf; 2020-2021-DISTRICT-Calendar-FINAL.pdf; City-Facebook-Open.pdf; Municode-City-Open.pdf

Importance: High

Appeal

-------- Original message --------
From: Bruce Friedman [redacted]>
Date: 3/2/21 12:19 PM (GMT-05:00)
To: "Puccini, Angela (SEC)" <Angela.Puccini@sec.state.ma.us>, "Sullivan, Lori (SEC)" <Lori.Sullivan@sec.state.ma.us>
Cc: John Oteri <joteri@maldenps.org>, "Kathryn M. Fallon" <kfallon@cityofmalden.org>, Greg Lucey <glucey@cityofmalden.org>, sdorai@maldenps.org, "Felicia S. Vasudevan" <fvasudevan@mhtl.com>, "Sossavi, Fredson (SEC)" <Fredson.Sossavi@sec.state.ma.us>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: Re: SPR21/0491 Appeal Acknowledgement

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:

Despite Ms. Vasudevan's claims; the response from the City (attached) I am appealing is from November 30, 2020, and as such is appealable to your Office through Sunday February 28, 2021. My appeal was officially accepted on February 25, 2021.

Further, the Order from your Office (attached) providing the context of Ms. Dorai's response was issued on November 5, 2020. That Order specifically stated "

> *"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 Gl. C. 66, § 10(d)."

Ms. Dorai's response is silent to this specific finding and requirement.

Attached, please find the official school calendar, a Facebook post from the official City of Malden Facebook account, and a current posting on MuniCode, the City's Official Municipal Code and Charter public interface and repository.

> Looking at the district calendar you will see that the Malden Public Schools maintain their own separate calendar for their essential City functions, and that they are open and working on Fridays. Our children regularly attend school in Malden Public Schools on Fridays. The RAO, Ms. Dorai, who is responsible for the responses to this FOIA request, and whom has responded at every step of this request and appeal, works for the Malden Public Schools. The Malden Public Schools RAO should have to comply with the state law requiring a response in ten business days (*G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).)*. The school calendar, the public postings made by both the school system and the City and the posting on MuniCode are all evidence that directly contradict the City's claims. The issue at hand was decided by your office on November 5, 2020. The requirements set forth in that decision are the only issues before this body on this FOIA request.

Please feel free to contact me for any reason related to this matter.

- Bruce Friedman

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Date: Tuesday, March 2, 2021 at 9:27 AM
To: Sossavi, Fredson (SEC) <fredson.sossavi@state.ma.us>, sdorai@maldenps.org <sdorai@maldenps.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Sullivan, Lori (SEC) <lori.sullivan@state.ma.us>, Bruce Friedman <[redacted]>, John Oteri <joteri@maldenps.org>, Kathryn M. Fallon <kfallon@cityofmalden.org>, Greg Lucey <glucey@cityofmalden.org>
Subject: RE: SPR21/0491 Appeal Acknowledgement

Hi Attorney Sullivan:

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

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

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

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

Felicia

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

Good Afternoon,

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

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

Thank you,

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

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
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

(oval) 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

Author

City of Malden (Official)

Damian O'Gara-Theory Hello, health professionals have advised that our best approach to combat COVID-19 is social distancing and as a result we are closed to the general public however we have still been operating during normal business hours and have been offering certain core services. If there is a specific City Service you are in need of please follow this link for contact information, how to schedule an appointment, or if your the service you are in need of can be done remotely. https://www.cityofmalden.org/.../City-Services-During...

CITYOFMALDEN.ORG

City Services During Coronavirus Response | Malden, MA

Author

City of Malden (Official)

Damian O'Gara-Theory We are still operating during normal business hours and offering certain core services. If you are looking for a specific City Service we are still working and able to assist you. If you are looking to schedule an appointment or if the service you are looking for can be done remotely we will help you remotely please reach out to any of our departments our list of contacts and services can be found here- https://www.cityofmalden.org/.../City-Services-During...

Author

City of Malden (Official)

Damian O'Gara Phoenix All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours all information for office hours, appointment scheduling, or remote assistance can be found on the City website- https://www.cityofmalden.org/.../City-Services-During...

Source: February 9, 2021, https://www.facebook.com/cityofmalden/posts/5208018329238900

"All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours"

municode

City of Malden

215 Pleasant Street, Malden, MA 02148 / 781-397-7000

Municipal Code

2.04.010 HOURS CERTAIN OFFICES TO BE OPEN

Except on holidays, city administrative offices shall be open to the public from 8:00 A.M. to 4:00 P.M. on Mondays, Wednesdays and Thursdays, from 8:00 A.M. to 7:00 P.M. on Tuesdays and from 8:00 A.M. to noon on Fridays.

Source: Malden Ordinances, as available on MuniCode and maintained by City of Malden - https://malden.municipalcodeonline.com

https://malden.municipalcodeonline.com/book?type=ordinances#name=2.04.010_HOURS_CERTAIN_OFFICES_TO_BE_OPEN

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

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

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

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

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

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

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

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980).

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

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

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

Mackenzie Nekton

From: Sossavi, Fredson (SEC)
Sent: Wednesday, March 3, 2021 9:36 AM
To: glucey@cityofmalden.org
Cc: Sullivan, Lori (SEC); SEC-DL-PREWEB; [redacted]
Subject: SPR21/0526 Appeal Acknowledgement
Attachments: SPR21-0526.pdf

Good Morning,

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

March 2, 2021
SPR21/0526

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, 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,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Mr. Greg Lucey

From:	Bruce Friedman
To:	Puccini, Angela (SEC); Sullivan, Lori (SEC)
Cc:	John Oteri; Kathryn M. Fallon; Greg Lucey; sdorai@maldenps.org; Felicia S. Vasudevan; Sossavi, Fredson (SEC); SEC-DL-PREWEB
Subject:	Re: SPR21/0491 Appeal Acknowledgement
Date:	Tuesday, March 2, 2021 12:19:59 PM
Attachments:	spr202044.pdf SPR20_2044 113020 Response.pdf 2020-2021-DISTRICT-Calendar-FINAL.pdf City-Facebook-Open.pdf Municode-City-Open.pdf
Importance:	High

Greetings:

Despite Ms. Vasudevan's claims; the response from the City (attached) I am appealing is from November 30, 2020, and as such is appealable to your Office through Sunday February 28, 2021. My appeal was officially accepted on February 25, 2021.

Further, the Order from your Office (attached) providing the context of Ms. Dorai's response was issued on November 5, 2020. That Order specifically stated "

> *"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 Gl. C. 66, § 10(d)."*

Ms. Dorai's response is silent to this specific finding and requirement.

Attached, please find the official school calendar, a Facebook post from the official City of Malden Facebook account, and a current posting on MuniCode, the City's Official Municipal Code and Charter public interface and repository.

> Looking at the district calendar you will see that the Malden Public Schools maintain their own separate calendar for their essential City functions, and that they are open and working on Fridays. Our children regularly attend school in Malden Public Schools on Fridays. The RAO, Ms. Dorai, who is responsible for the responses to this FOIA request, and whom has responded at every step of this request and appeal, works for the Malden Public Schools. The Malden Public Schools RAO should have to comply with the state law requiring a response in ten business days (*G. L. c. 66, § 10(e) and 950 C.M.R. 32.06(2)(c).)*. The school

calendar, the public postings made by both the school system and the City and the posting on MuniCode are all evidence that directly contradict the City's claims. The issue at hand was decided by your office on November 5, 2020. The requirements set forth in that decision are the only issues before this body on this FOIA request.

Please feel free to contact me for any reason related to this matter.

- Bruce Friedman

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Date: Tuesday, March 2, 2021 at 9:27 AM
To: Sossavi, Fredson (SEC) <fredson.sossavi@state.ma.us>, sdorai@maldenps.org <sdorai@maldenps.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Sullivan, Lori (SEC) <lori.sullivan@state.ma.us>, Bruce Friedman [redacted]>, John Oteri <joteri@maldenps.org>, Kathryn M. Fallon <kfallon@cityofmalden.org>, Greg Lucey <glucey@cityofmalden.org>
Subject: RE: SPR21/0491 Appeal Acknowledgement

Hi Attorney Sullivan:

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

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

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

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

Felicia

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

Good Afternoon,

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

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

Thank you,

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

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.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

November 5, 2020
SPR20/2044

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

Dear Ms. Dorai:

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

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

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

Fee Estimates

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

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

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

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

The District's Fee Estimate

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

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

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

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

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

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

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

Compliance with G.L. c. 66, § 10(e)

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

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

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

Conclusion

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

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

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

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

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

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

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

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

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

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980).

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

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

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

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

Author

City of Malden (Official)

Damian O'Gara-Theory Hello, health professionals have advised that our best approach to combat COVID-19 is social distancing and as a result we are closed to the general public however we have still been operating during normal business hours and have been offering certain core services. If there is a specific City Service you are in need of please follow this link for contact information, how to schedule an appointment, or if your the service you are in need of can be done remotely. https://www.cityofmalden.org/.../City-Services-During...

CITYOFMALDEN.ORG

City Services During Coronavirus Response | Malden, MA

Author

City of Malden (Official)

Damian O'Gara-Theory We are still operating during normal business hours and offering certain core services. If you are looking for a specific City Service we are still working and able to assist you. If you are looking to schedule an appointment or if the service you are looking for can be done remotely we will help you remotely please reach out to any of our departments our list of contacts and services can be found here- https://www.cityofmalden.org/.../City-Services-During...

Author

City of Malden (Official)

Damian O'Gara Phoenix All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours all information for office hours, appointment scheduling, or remote assistance can be found on the City website- https://www.cityofmalden.org/.../City-Services-During...

Source: February 9, 2021, https://www.facebook.com/cityofmalden/posts/5208018329238900

"All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours"

municode

City of Malden

215 Pleasant Street, Malden, MA 02148 / 781-397-7000

Municipal Code

2.04.010 HOURS CERTAIN OFFICES TO BE OPEN

Except on holidays, city administrative offices shall be open to the public from 8:00 A.M. to 4:00 P.M. on Mondays, Wednesdays and Thursdays, from 8:00 A.M. to 7:00 P.M. on Tuesdays and from 8:00 A.M. to noon on Fridays.

Source: Malden Ordinances, as available on MuniCode and maintained by City of Malden - https://malden.municipalcodeonline.com

https://malden.municipalcodeonline.com/book?type=ordinances#name=2.04.010_HOURS_CERTAIN_OFFICES_TO_BE_OPEN

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

March 11, 2021
SPR21/0491; SPR21/0526

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

Dear Ms. Dorai:

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

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

Prior appeals

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

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

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

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

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No duty to create records

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

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

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

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

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

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

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

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

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

Mackenzie Nekton

From: Boylan, Kassandra (SEC)
Sent: Thursday, March 11, 2021 4:54 PM
To: sdorai@maldenps.org; glucey@cityofmalden.org
Cc: SEC-DL-PREWEB; [redacted]
Subject: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526
Attachments: spr210491 spr210526.pdf

Good Afternoon,

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

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

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

ATTACHMENT NO. 64

Attachment to Email:
Public Records Division – Appeal Determination SPR21/0491; SPR21/0526
March 11, 2021

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. 63)

,

Mackenzie Nekton

From: Bruce Friedman [redacted]
Sent: Friday, March 12, 2021 9:30 AM
To: Boylan, Kassandra (SEC); Puccini, Angela (SEC); SEC-DL-PREWEB
Cc: sdorai@maldenps.org; glucey@cityofmalden.org
Subject: Re: Public Records Division - Appeal Determination SPR21/0491; SPR21/0526 - Request for Reconsideration
Attachments: spr210491 spr210526.pdf; 2020-2021-DISTRICT-Calendar-FINAL.pdf; City-Facebook-Open.pdf

Importance: High

Greetings:

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

> "The School District, through its Legal Counsel, Felicia S. Vasudevan of Murphy, Hesse, Toomey & Lehane, P.C., provided a March 2, 2021 email response to the Public Records Division to address the School District's timeliness in responding to Mr. Friedman's September 24, 2020 request through the City's web-based request system.
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I am offering proof that Ms. Vasudevan's statements are not truthful, nor are they consistent with the Malden Public Schools schedule, that of all of its staff and the schools themselves. Malden Public Schools is the record keeper and Ms. Dorai, the RAO is a Malden Public Schools employee.

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

The logs demonstrate that administrative staff, school principals, teachers and students are regularly egressing all of the schools on Fridays. Saying that Ms. Dorai could not produce the responses to the FOIA request because the City Hall was allegedly closed on Fridays for deep cleaning is a preposterous notion, it is disingenuous and does not account for the

fact that all of these records are electronic, and that the City professes that it I functioning as normal, as the attachments from Facebook, the Official City of Malden Facebook account reports in the attachment.

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

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

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

Regards,

- Bruce Friedman

From: Boylan, Kassandra (SEC) <kassandra.boylan@state.ma.us>
Date: Thursday, March 11, 2021 at 4:53 PM
To: sdorai@maldenps.org <sdorai@maldenps.org>, glucey@cityofmalden.org <glucey@cityofmalden.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman[redacted]>
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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
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

(oval) 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

Author

City of Malden (Official)

Damian O'Gara-Theory Hello, health professionals have advised that our best approach to combat COVID-19 is social distancing and as a result we are closed to the general public however we have still been operating during normal business hours and have been offering certain core services. If there is a specific City Service you are in need of please follow this link for contact information, how to schedule an appointment, or if your the service you are in need of can be done remotely. https://www.cityofmalden.org/.../City-Services-During...

CITYOFMALDEN.ORG

City Services During Coronavirus Response | Malden, MA

Author

City of Malden (Official)

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Author

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Damian O'Gara Phoenix All Departments are working, as explained if you need a specific city service there are many ways to reach us during regular office hours all information for office hours, appointment scheduling, or remote assistance can be found on the City website- https://www.cityofmalden.org/.../City-Services-During...

Source: February 9, 2021, https://www.facebook.com/cityofmalden/posts/5208018329238900

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

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

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

Mackenzie Nekton

From: Bruce Friedman [redacted] >
Sent: Monday, March 15, 2021 3:55 PM
To: Felicia S. Vasudevan; Sullivan, Lori (SEC)
Cc: John Oteri; Dorai, Shirley; Greg Lucey; Kathryn M. Fallon; SEC-DL-PREWEB
Subject: Re: Response to Request for Reconsideration - SPR21/0491; SPR21/0526
Attachments: Dorai 11:30:2020 Email & Attachment.pdf

Importance: High

Greetings:

Please see the attached email and attachment from the Malden Public Schools RAO, dated and sent on 11/30/2020. This is the latest response and the one that I am appealing, my appeal is timely.

Kindest Regards,

- Bruce Friedman

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Date: Monday, March 15, 2021 at 2:37 PM
To: pre@sec.state.ma.us <pre@sec.state.ma.us>
Cc: John Oteri <joteri@maldenps.org>, Dorai, Shirley <sdorai@maldenps.org>, Greg Lucey <glucey@cityofmalden.org>, Kathryn M. Fallon <kfallon@cityofmalden.org>, Bruce Friedman [redacted]
Subject: Response to Request for Reconsideration - SPR21/0491; SPR21/0526

To Whom It May Concern:

I am writing in response to this request for reconsideration. Mr. Friedman is not stating anything new. He is recycling the same arguments that he has made since October and which we previously have explained are untimely and the Supervisor has ruled against.

Malden responded on December 2, 2020, November 30, 2020, October 30, 2020 and October 22, 2020. I had previously attached those emails and correspondence. As previously stated, a requestor who is denied access to any requested information may petition the Supervisor for an appeal of the response, or lack thereof, within 90 calendar days. Our response on this issue came on October 22, 2020. 90 days from October 22, 2020 is January 20, 2021. Mr. Friedman's appeal in February is thus not timely. Even if you take the October 30, 2020 response, it would be January 28, 2021. As a result, Mr. Friedman filing on February 25, 2021 is outside the window.

Malden stands by its statements about the offices being closed pursuant to an emergency order. There is nothing more to add given the lengthy prior correspondence on this topic. The Supervisor should uphold its finding.

Felicia

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.

Subject: SPR 20/2044
Date: Monday, November 30, 2020 at 3:14:53 PM Central Standard Time
From: Dorai, Shirley
To: Bruce Friedman
CC: pre@sec.state.ma.us, Felicia S. Vasudevan, Greg Lucey
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 from it is maintained in and must include all electronic header information.
(2) Please provide any and all electronic communications created in, sent to and sent from Ms. Elizabeth Cushinsky's Malden Public Schools electronic mail system including drafts, deleted items and calendar entries. This information must be presented in the exact electronic from it is maintained in and must include all electronic header information.
(3) Please provide all materials relating to the conduct of any investigation within the Malden Public Schools, such as witness interviews, reports, and conclusions, specifically excluding any disciplinary outcomes if they exist, which in any way include Mr. Michael Wood, Ms. Elizabeth Cushinsky, and/or the Malden Public Schools Special Education Department from the School year 2017-2018 through the date you respond to this request.

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

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

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

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

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

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

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

evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980).

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

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

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

Mackenzie Nekton

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Monday, March 15, 2021 3:37 PM
To: SEC-DL-PREWEB
Cc: John Oteri; Dorai, Shirley; Greg Lucey; Kathryn M. Fallon; [redacted]
Subject: Response to Request for Reconsideration - SPR21/0491; SPR21/0526

To Whom It May Concern:

I am writing in response to this request for reconsideration. Mr. Friedman is not stating anything new. He is recycling the same arguments that he has made since October and which we previously have explained are untimely and the Supervisor has ruled against.

Malden responded on December 2, 2020, November 30, 2020, October 30, 2020 and October 22, 2020. I had previously attached those emails and correspondence. As previously stated, a requestor who is denied access to any requested information may petition the Supervisor for an appeal of the response, or lack thereof, within 90 calendar days. Our response on this issue came on October 22, 2020. 90 days from October 22, 2020 is January 20, 2021. Mr. Friedman's appeal in February is thus not timely. Even if you take the October 30, 2020 response, it would be January 28, 2021. As a result, Mr. Friedman filing on February 25, 2021 is outside the window.

Malden stands by its statements about the offices being closed pursuant to an emergency order. There is nothing more to add given the lengthy prior correspondence on this topic. The Supervisor should uphold its finding.

Felicia

Mackenzie Nekton

From: Dorai, Shirley <sdorai@maldenps.org>
Sent: Tuesday, March 16, 2021 11:07 AM
Cc: SEC-DL-PREWEB; Greg Lucey
Subject: Public Records Request dated September 24, 2020/SPR20-2044/SPR21/491/ SPR21/526
Attachments: Appeal Determination SPR21_0491; SPR21_0526 Response.pdf

Dear Mr. Friedman,

Please see the attached response document. 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
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Phone: 781-397-6100 Fax: 781-397-7276
www.maldenps.org

John Oteri, M.Ed.
Superintendent of Schools

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

March 16, 2021

BY E-MAIL
Bruce Friedman
[redacted]

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

Dear Mr. Friedman:

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

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

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

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

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

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

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

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

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

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

In terms of the first clause of the privacy exemption, the Supreme Judicial Court has held that "[w]hile the precise contours of the legislative term "personnel [file] or information" may require case-by-case articulation, it includes, at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee. These constitute the core categories of personnel information that are 'useful in making employment decisions regarding an employee.'" Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980).

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

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

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

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

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

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

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

Thank you,
Shirley Dorai
School Department

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

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 23, 2021
SPR21/0491

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

Dear Ms. Dorai:

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

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

Prior determinations

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

Fees – Requirement of Timeliness in Responding

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

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

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

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

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

Conclusion

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

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

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

Mackenzie Nekton

From: Arthur, Manza (SEC)
Sent: Friday, April 23, 2021 4:49 PM
To: 'sdorai@maldenps.org'
Cc: [redacted]'; SEC-DL-PREWEB
Subject: SPR21/1043 Appeal Acknowledgment
Attachments: SPR21-1043.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,

Manza Arthur, Esq.
Senior Attorney
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
Tel: (617) 727 2832
Email: Manza.Arthur@sec.state.ma.us

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 23, 2021
SPR21/1043

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, Manza Arthur, 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,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Ms. Shirley Dorai
Ms. Felicia S. Vasudevan, Esq.

Chan, Benjamin (SEC)

From: Bruce Friedman[redacted] >
Sent: Thursday, April 22, 2021 9:32 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Greg Lucey; sdorai@maldenps.org; Kathryn M. Fallon
Subject: Request for Additional Appeal City of Malden Request # 2021-0107 A.K.A SPR 21/0838
Attachments: FOIA Request 2021-0107 Response Revised.pdf; 2021-0107 Request.pdf; spr210838.pdf

Importance: High

Greetings:

On March 11, 2021, the attached verbatim Public Records request was served upon the Malden Public Schools/City of Malden via their official portal: "Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

SPR 21/0838 was opened as a result, the decision rendered on April 15, 2021 is attached.

On April 20, 2021, the RAO responded with the attached response and email below:

In an effort to solve the immediate problem, I the requestor propose the following solutions:

I will receive all 602 identified emails and sort through them myself.
I will receive all emails from the accounts of all the School Committee members (the only persons listed in the request) for the time period in the original request and sort through them myself.

If neither of the above solutions are acceptable, the RAO should be ordered by your office to release all 602 responsive records to this request, without delay, and without fees or charges for the following reasons:

The City/School District and RAO have specific and heavy burdens to meet:

An RAO may not recover fees associated with record organization.

The RAO is attempting to charge for 1204 minutes or 20.1 hours for **search**: Search Time is defined as "The time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record." The search is complete, the RAO has identified 602 emails. The RAO/City/School District cannot and should be barred from assessing any charges for search.

The remainder of the time sought by the City is for segregation, the RAO is claiming 1 minute per email; "Malden thus estimates another 60.2 minutes or 1 hour"; and for possible redactions at 1 minute per email; "Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour". The total allowable estimate is therefore 120.4 minutes. As the RAO/City/School District cannot charge for the first 2 hours (120 Minutes), there should be NO charge for the production of all 602 responsive emails.

Therefore ask you order the RAO to release all 602 emails without delay, without charge and if any records are withheld, or redacted, a privilege log be created and provided so that any such redactions or withholding can be properly challenged through the appellate process.

Kindest Regards,

Bruce Friedman

From: Dorai, Shirley <sdorai@maldenps.org>
Date: Tuesday, April 20, 2021 at 2:54 PM
To: Bruce Friedman [redacted]>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Greg Lucey <glucey@cityofmalden.org>
Subject: Public Records Request dated March 11, 2021/FOIA Request 2021-107/SPR21-838

Dear Mr. Friedman,

Please see the attached response document. 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

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

April 20, 2021

BY E-MAIL

Bruce Friedman
[redacted]

Re: Public Records Request dated March 11, 2021/FOIA Request 2021-107/SPR21 838

Dear Mr. Friedman:

We have received the request that you submitted on March 11, 2021, but was received in our office on March 12, 2021 (the "Records Request"). Specifically, you requested the following:

> Please provide all emails where five or more of the following people at any Malden Public Schools email address:
> Gary Christenson,
> Michael Drummey,
> Robert S. McCarthy Jr.,
> Jennifer M. Spadafora,
> Leonard Iovino,
> Adam Weldai,
> Joseph Gray,
> Michelle Luong,
> John Froio,
> appear in one or more of the of the following email fields;
> From:
> To:
> Cc:
> Bcc:
> For the time period January 1, 2020 through the date you respond with the responsive documents.

I am providing you a revised response in accordance with SPR21-838. In terms of your request, the Malden Public Schools ("Malden") had to conduct a search with each school committee member in the "from," line and at least one school committee member in the "to," line. There is no other way to narrow down the information requested. The search generated 602 emails. Malden is not certain what percentage of the emails are responsive to the request.

To comply with your request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden. 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). Given that some emails will relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. They must be redacted. "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. The Supervisor of Public Records has allowed me to charge a fee to redact for attorney-client privilege.

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

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district"s receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, some of the emails from school committee members contain personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since some of these emails relate to the educational services and programming that Malden is providing to students, these records should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

Finally, these emails require redactions in accordance with the exemption set for at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:

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

In terms of the 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).

In accordance with the exemption, Malden needs to redact information on the emails such as information on employees that relates to performance or complaints, and personal information and contact information for families, such as information about a family‟s personal circumstances. Families and employees have a privacy interest to that information and the public interest does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. The Supervisor of Public Records has allowed me to charge a fee to redact under this exemption.

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.

Search time includes the time needed to locate and identify a public record. Although Malden could narrow down the email search, by conducting a search with each school committee member in the "from," line and at least one school committee member in the "to," line, these records are not completely responsive to your request for emails where there is more than a majority of the school committee members present on the email. As a result, each email must be

reviewed to determine whether it is responsive. Malden has no way to automate the search. Malden took a sample of ten emails. It took 20 minutes to review the ten emails to determine which ones are responsive to the request, as some of the emails had multiple emails in a chain. Specifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes

Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records.

Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C). Segregation time "includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. It took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour.

Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material. Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour.

As a result, Malden estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.5. 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 compiled until we receive a check in the amount of $502.50.

You could potentially reduce this estimate if you provided a specific person for the "to" and "from," boxes of the email search.

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 Records
Greg Lucey, Malden City Clerk

foiadirect | Requestor Dashboard | Communication | Change Profile | Help

Welcome Bruce Friedman ! [*Logout*]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:

Request Documents

No Document

Response Details

Response

For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format.

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

April 15, 2021
SPR21/0838

Shirley Dorai
Malden Public Schools
110 Pleasant Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the Malden Public Schools (School/Malden) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 11, 2021, Bruce Friedman requested emails from identified individuals "[f]or the time period January 1, 2020 through the date you respond with the responsive documents."

Previous petition

This request was the subject of a previous fee petition. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021). Please refer to the determination in SPR21/0742 for analysis of this issue. The School provided a fee estimate on March 25, 2021. Objecting to the fees, Mr. Friedman petitioned this office and this appeal, SPR21/0838, was opened as a result.

Fee estimate – municipalities

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

Municipalities may not assess a fee for the first (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 of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The School's March 25th estimate

In its March 25, 2021 fee estimate, the School indicates that its search generated a total of 602 email records. The School states, "[e]ach email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C)."

The School explains that with a sample of 10 emails, "[it] took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in a chain. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records." The School also states that "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour. . . . Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour." The School indicated that although the hourly rate of the lowest paid employee capable of producing the records exceeds $25.00, it would calculate its hourly rate at $25.

As a result, the School ". . . estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50."

Based on the School's response, it is unclear why the School requires 20 minutes to review 10 emails to determine if they are responsive to the request. Particularly, it is not certain how many of the email samples have multiple items in the email chain to require 20 minutes of review. The School must clarify this issue.

In its estimate, the School suggested that Mr. Friedman could potentially reduce this estimate if he could provide ". . . a specific person for the 'to' and 'from,' boxes of the email search." This office encourages Mr. Friedman and the School to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (a municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the municipality to produce records sought more efficiently and affordably). Mr. Friedman may wish to narrow his request.

Open Meeting Law

In his appeal petition, Mr. Friedman raises certain issues regarding the Open Meeting

Law that are beyond the purview of the Public Records Law. Mr. Friedman states, ". . . [t[here is no attorney-client privilege exception to the Open Meeting Law." Mr. Friedman is advised that any issues concerning the Open Meeting Law is within the authority of the Office of the Attorney General (AGO) and not this office. Mr. Friedman may wish to contact the AGO if he seeks a determination on this matter. See G. L. c. 30A, § 23.

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 1, 2021
SPR21/0838

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

Dear Bruce Friedman:

I have received your letter appealing the response of the Malden Public Schools to your request for records.

I have directed a member of my staff, Manza Arthur, 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,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Shirley Dorai

Boylan, Kassandra (SEC)

From: Bruce Friedman [redacted] >
Sent: Thursday, April 1, 2021 2:40 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Kathryn M. Fallon
Subject: Appeal of Response City of Malden # 2021-0107 A.K.A. SPR 21/0742
Attachments: exhibit 3 - OML 2019-140.pdf; 2017-Guide-with-ed-materials-revised-1-30-18.pdf; exhibit 4 - SPR21-0464.pdf; google_privacy_policy_en_us.pdf; google_terms_of_service_en.pdf; MX Record maldenpsorg.pdf; exhibit 1 original request 2021-0107.pdf; exhibit 2 - Fee Petition 2021-0107.pdf

Importance: High

Greetings:

I am hereby appealing the response (attached hereto as exhibit #2) of the Malden Public Schools received on March 25, 2021, and presented to your office as a fee petition under SPR 21/0589.

On March 11, 2021 I served the following verbatim request (attached hereto as exhibit #1) upon the Malden Public Schools RAO via the Official FOIA website: "Please provide all emails where five or more of the following people at any Malden Public
Schools email address:

Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,

appear in one or more of the of the following email fields;

From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

The facts regarding this request are as follows:

1. The request specifically and only seeks electronic mail (email).
2. The request specifically and only seeks email from the accounts of elected officials, operating in their official capacity as members of the Malden Public Schools School Committee.
3. The request specifically and only seeks email where the elected officials are communicating with a simple majority or quorum of School Committee members, including sub-committees.
4. The entire Malden Public Schools School Committee members (excluding the Chair who is also the Mayor) are up for re-election in 2021.
5. The City of Malden has a significant history of violating Open Meetings Laws as determined by the Attorney General of the Commonwealth.
6. This request is extremely time sensitive and urgent as the Candidates for School Committee are currently announcing their intentions to run or re-run for office during the pendency of this request. These records could significantly affect the outcome of the election.

In an effort to solve the immediate problem, I the requestor propose the following solutions:

1. I will receive all 602 identified emails and sort through them myself to exclude any emails that do not constitute a quorum or simple majority of the Committee as a whole or any sub-committee.
2. I will receive all emails from the accounts of all the School Committee members for the time period in the original request and exclude any emails that do not constitute a quorum or simple majority of the Committee as a whole or any sub-committee myself.

If neither of the above solutions are acceptable, the RAO should be ordered by your office to release all 602 responsive records to this request, without delay, and without fees or charges for the following reasons:

The City/School District and RAO have specific and heavy burdens to meet:

The fees requested are incorrect, abusive and without any legal merit. In determining the RAO's ability to charge fees for this public records request, your office must examine, weigh and undertake the following: "In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. Id."

1. The public interest herein is to allow inspection of records which are publicly unavailable through any other means besides this request as of today.
2. The public interest is served by allowing the voters to determine if the School Committee is deliberating in secret or in public as required by the Commonwealth's Open Meetings Laws during an election year, and as these records may or may not influence decisions regarding School Committee Member retention.
3. The public interest is served by allowing members of the public to refer potential Open Meetings Law violations to the Attorney General for a determination if evidence of deliberating the School Committee's business with a quorum of School Committee members through email is found in the responses to this public records request.
4. The public interest is served because responsive records will be published publicly via https://openmalden.com as this appeal currently is.
5. The City as a whole and the School District specifically have an abhorrent record with your office, the public and many public records requestors for subverting public records requests. The RAO in this case uses the fee process to create a financial firewall to prevent access to this request and many others. This financial firewall has a chilling effect on requestors behavior seeking public records, and the fees requested in the instant case could not be borne by the average citizen of Malden.

6. This request is extremely time sensitive and urgent as the Candidates for School Committee are currently announcing their intentions to run or re-run for office during the pendency of this request. These records could significantly affect the outcome of the election.
7. The secrecy of the documents responsive to these requests should only be allowed in the most extreme of circumstances, where the risks posed by public exposure clearly outweighs the rights of the public.
8. The public has the right to scrutinize the work product of our elected officials.
9. The RAO wants the requestor to pay for time to read every email, to protect disclosure of potentially damaging communications.
10. The fees are not properly calculated.
11. The RAO failed to produce the sample set of documents, the single record identified and deemed responsive (which ironically was not identified as protected), and/or any privilege log for the sample set.
12. The Sample set pulled is statistically not relevant. 61 emails (10%) is the minimum sample set required to be statistically relevant.

The RAO is only seeking attorney-client privilege in their response (exhibit #2) using the following verbiage :"The City is filing this request only to the extent that some of the redactions encompass attorney-client privilege and under Exemption (c). It is not seeking approval for redactions subject to student records law as outlined in its fee estimate."

The RAO cannot charge, segregate or redact from the responsive records for the following reasons:

1. An RAO may not recover fees associated with record organization.
2. The RAO has not even validated that any exemption does in fact apply. No records were provided, no privilege log was provided, no evidence of attorney-client privilege was provided, just words "To comply with the request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden." The operative word used in their response is expect. They ***expect*** that ***some*** of the emails might be exempted by attorney-client privilege, without contemplating any of the legal requirements. They failed to provide any examples.
3. There is no attorney-client privilege exception to the Open Meeting Law per the following AGO decision OML 2019-140 (exhibit #3):
    a. The determination is unmistakable: "Therefore, communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during a valid executive session." "However, there is no attorney-client privilege exception to the Open Meeting Law. Quite to the contrary, the Supreme Judicial Court has ruled that the Open Meeting Law constitutes a "statutory public waiver of any possible privilege of the public client in meetings of governmental bodies except in the narrow circumstances stated in the [Open Meeting Law]. " District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 634 (1985).
    b. My request was VERY specific: "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."
    c. I have also hereto attached the current and operative AGO OML guide and definitions for your reference. In this please find the following:

        "These four questions will help determine whether a communication constitutes a meeting subject to the law:
        1) is the communication between or among members of a public body;
        2) if so, does the communication constitute a deliberation;
        3) does the communication involve a matter within the body's jurisdiction; and

4) if so, does the communication fall within an exception listed in the law?"

d. "The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction."
e. "To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law."
f. "Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds."
g. "The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction." The law does not specifically define "jurisdiction." As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body's members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body."
h. "There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting)."

4. The specific responsive emails I requested are either non-deliberative, and as a result could not possibly infringe on any of the exemptions posed by the RAO/City because they were not about any matter of public business on which a quorum of the public body may make a decision or recommendation, thus no need for any of the exemptions cited by the RAO/City and/or Ms. Vasudevan, OR the email communications were in fact a matter of public business on which a quorum of the public body may make a decision or recommendation and they violated the Open Meetings Law and as such are not afforded any of the protections of privilege cited by the RAO/City and/or Ms. Vasudevan. Either way, the responsive emails sought could not possibly qualify for the exemptions sought, thus the RAO is barred from charging for search, segregation and redaction.
5. The City/School District/RAO does not enjoy attorney client privilege regarding the current request.
    a. The City/District/RAO incorrectly assume that, regardless of content all communications to and from the Legal Department and or the "attorney for Malden" are privileged and

confidential. Further, no privilege log was provided. This scenario is very similar to another decision released from the Secretary's office this week, SPR21/0464 (exhibit #4) which is hereto attached.

b. In its March 10th response, the City/District/RAO has claimed that the communications to and from the Legal Department/attorney for Malden are privileged and confidential under the common law attorney-client privilege as recognized by Suffolk Constr. Co., Inc. v. DCAM, 449 Mass. 444 (2008).
c. There is an implicit assumption 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." Brossard v. University of Massachusetts, 9 Mass. L. Rep. 471 (1998), referencing Judge Rotenberg Educ. Center, Inc., v. Comm'r of the Dept. of Mental Retardation (No. 1), 424 Mass. 430 (1997).
d. The issue of whether this privilege extends to governmental entities was discussed in the affirmative by the Massachusetts Supreme Judicial Court (Court). Suffolk Constr. Co., Inc., 449 Mass. 444. The Court found that the privilege applies in the public realm. The Supervisor has the authority to determine whether records may be withheld as privileged. See Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 414 Mass. 609, 614-615 (1993).
e. The Court affirmed the "general rule" that when matters are "communicated by a client to his attorney, in professional confidence, the attorney shall not be at any time afterwards called upon or permitted to disclose in testimony." Suffolk Constr. Co., Inc., 449 Mass. at 448, quoting Foster v. Hall, 12 Pick. 89, 93 (1831). The Court, however, admonished that a governmental entity has the burden of proving the existence of the attorney-client privilege. Id. The Court requires governmental custodians to satisfy a three-step test to claim not only that an attorney client relationship exists, but that, with respect to the privileged materials: (1) 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) the communications were made in confidence; and (3) the privilege as to these communications has not been waived.
f. Suffolk Constr. Co., 449 Mass. 450, fn9, citing Matter of the Reorganization of Elec. Mut. Liab. Ins. Co. Ltd. (Bermuda), 425 Mass. 419, 421 (1997); see also Hanover Ins. Co. v. Rapo & 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).
g. The City/District/RAO have failed the second and third prongs of their burden, the Malden Public Schools does not enjoy privilege, because the privilege has been summarily waived. The City/School District/RAO has failed to properly secure its electronic mail and its electronic mail system from third persons who are not providing professional legal services to the City/District/RAO, nor are they reasonably necessary for the transmission of the communication. The Malden Public Schools uses google mail, and/or gmail for all email addressed to @maldenps.org, which is the email responsive to this request and response/fee request. The attached MX record will validate this.
h. In Massachusetts a communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made to obtain or provide professional legal services to the client, and those reasonably necessary for the transmission of the communication.
i. See also: Commissioner of Revenue v. Comcast Corp. , 453 Mass. 293 (2009), and DaRosa v. City of New Bedford , 471 Mass. 446 (2015). In general, "information contained within a communication need not itself be confidential for the communication to be deemed privileged; rather the communication must be made in confidence—that is, with the expectation that the communication will not be divulged." Commissioner of Revenue v. Comcast Corp., 453 Mass. at 305. Thus, "[c]ommunications between an attorney and his client are not privileged, though made privately, if it is understood that the information communicated is to be conveyed to others." Peters v. Wallach , 366 Mass. 622, 627 (1975).

j. Google Mail requires users of their system to read and agree to the attached Google Terms of Service (Hereinafter "GToS") and the attached Google Privacy Policy.
k. In the attached GToS and Privacy Policy, under the "Things you create or provide to us" heading you will find: "We also collect the content you create, upload, or receive from others when using our services. This includes things like ***email you write and receive***, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos."
l. In the attached GToS and Privacy Policy under the heading "Permission to use your content" section the following is stated: "Your Content" is defined by Google as: "Things that you write, upload, submit, store, send, receive, or share with Google using our services, such as: Docs, Sheets, and Slides you create - blog posts you upload through Blogger - reviews you submit through Maps - videos you store in Drive - ***emails you send and receive*** - pictures you share with friends through Photos - travel itineraries that you share with Google. This is publicly available at: https://policies.google.com/terms#footnote-your-content
m. In the attached GToS and Privacy Policy under the heading "Rights" section the following is stated: "Rights ***This license allows Google to: host, reproduce, distribute, communicate, and use your content*** — for example, to save your content on our systems and make it accessible from anywhere you go publish, publicly perform, or publicly display your content, if you've made it visible to others modify and create derivative works based on your content, such as reformatting or translating it sublicense these rights to: other users to allow the services to work as designed, such as enabling you to share photos with people you choose our contractors…"
n. 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, "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). No privilege log has been provided.
o. In the attached GToS and Privacy Policy, under the "When Google shares your information" heading you will find: "With domain administrators If you're a student or work for an organization that uses Google services, your domain administrator and resellers who manage your account will have access to your Google Account. They may be able to access and retain information stored in your account, like your email…"
p. The School District has not and cannot demonstrate the expertise, personnel, or that they are able to exercise the proper controls, processes and that they have documented procedures to administer a proper separation of duties and least permission required policy. With unknown permissions, with no viable separation of duties, with no least permission required practice, there is no producible chain of custody nor can the City/District/RAO prove that privilege was not waived inadvertently or intentionally through the interactions granted by whomever has access, including Google.
q. In there is nothing confidential or private about the City/District/RAO's maldenps.org email and email system. By the very usage of google mail they have knowingly and willingly waived privilege because their email is exposed to and viewed by anonymous third parties through license and use of the system.

6. The RAO states "Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C).", This is Segregation, not search.
7. The RAO states that it will take 20 minutes to review each email, by reading each email ("Malden spent three hours locating the emails. Malden took a sample of ten emails. It took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in a chain."). The emails do not need to be read to determine if they are responsive. There are 602 emails where the sender is a member of the public body and is emailing at least one other member of the public body. Then she says that one of 10 from a sample produced a single responsive email, this took

20 minutes. All that is required to search for responsive records, even if it is a manual process is to read the remaining fields in the header of the email, To:, Cc:, Bcc: (we already have the From: field). If the sum of people in these fields are members of the specific group of nine total people representing the public body are a simple majority of the body, the record is responsive, if not, it is not.

8. I myself am an industry expert on email and email systems with over 25 experience. I have also consulted with several other industry experts all of whom believe a standard query can be electronically prepared and applied to reduce the entire email set into only responsive documents with about 30-45 minutes of preparation, validation and testing. However, they all stated that if they were forced to manually search the To:, Cc:, and Bcc: fields for a quorum, it would take less than 2 seconds per email on average. 2 X 602 = 1204 / 60 = 20 minutes.

Therefore ask you order the RAO to release all 602 emails without delay, without charge and if any records are withheld, or redacted, a privilege log be created and provided so that any such redactions or withholding can be properly challenged and overcome.

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.

foiadirect Requestor Dashboard Communication Change Profile Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:

Request Documents

No Document

Response Details

Response

For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format.

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

March 25, 2021

BY E-MAIL

Bruce Friedman
[redacted]

Re: Public Records Request dated March 11, 2021/FOIA Request 2021-0107

Dear Mr. Friedman:

We have received the request that you submitted on March 11, 2021, but was received in our office on March 12, 2021 (the "Records Request"). Specifically, you requested the following:

> Please provide all emails where five or more of the following people at any Malden Public Schools email address:
> Gary Christenson,
> Michael Drummey,
> Robert S. McCarthy Jr.,
> Jennifer M. Spadafora,
> Leonard Iovino,
> Adam Weldai,
> Joseph Gray,
> Michelle Luong,
> John Froio,
> appear in one or more of the of the following email fields;
> From:
> To:
> Cc:
> Bcc:
> For the time period January 1, 2020 through the date you respond with the responsive documents.

In terms of your request, the Malden Public Schools ("Malden") had to conduct a search with each school committee member in the "from," line and at least one school committee

member in the "to," line. There is no other way to narrow down the information requested. The search generated 602 emails. Malden is not certain what percentage of the emails are responsive to the request.

To comply with your request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden. 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). Given that some emails will relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. They must be redacted. "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. I have asked the Supervisor of Public Records to allow me to charge a fee to redact for attorney-client privilege.

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

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, some of the emails from school committee members contain personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since some of these emails relate to the educational services and programming that Malden is providing to students, these records should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

Finally, these emails require redactions in accordance with the exemption set for at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:

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

In terms of the 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).

In accordance with the exemption, Malden needs to redact information on the emails such as information on employees that relates to performance or complaints, and personal information and contact information for families, such as information about a family's personal circumstances. Families and employees have a privacy interest to that information and the public interest does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. As a result, I have asked the Supervisor of Public Records to allow me to charge a fee to redact under this exemption.

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.

Search time includes the time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record. Malden had previously for Request 2021-67, which is the same request, but a limited time period, took a sample of ten emails. It took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in

a chain. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records.

Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C). Segregation time "includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. It took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour.

Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material. Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour.

As a result, Malden estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50. 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 $502.50.

You could potentially reduce this estimate if you provided a specific person for the "to" and "from," boxes of the email search.

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 Records
Greg Lucey, Malden City Clerk

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

November 5, 2019

OML 2019 – 140

Kathryn Fallon, Esq.
Malden City Solicitor
City of Malden Legal Department
110 Pleasant Street, 3rd Floor
Malden, MA 02148

RE: Open Meeting Law Complaint

Dear Attorney Fallon:

This office received a complaint from Brian DeLacey on December 4, 2018, alleging that the Malden City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on September 21, 2018, and you responded on behalf of the Council by letter dated October 10, 2018. In his complaint, Mr. DeLacey alleges that a City Councilor deliberated outside of a public meeting via an email he sent to a quorum of the Council about a matter before the Council.[1]

We appreciate the patience and cooperation of the parties during this investigation. Following our review, we find that City Councilor Matheson violated the Open Meeting Law by deliberating outside of a public meeting. In reaching a determination, we reviewed the complaint, including the email at issue which was sent to us by the Complainant on April 5, 2019, the Council's response and the request for further review. In addition, we spoke with you by phone on September 16, 2019.

FACTS

We find the facts as follows. The Council is an eleven-member public body. Thus, any six members constitute a quorum.[2] On September 13, 2018, Councilor John Matheson sent an email to Malden Assistant Solicitor John McNaught and copied City Solicitor Fallon, eight City Councilors, an administrative assistant and the public representative on the Malden Hospital Site Development Committee.

[1] We decline to review any allegations made in the request for further review. Our office does not conduct broad audits of public bodies and will address only allegations made in an Open Meeting Law complaint in order to give public bodies a chance to address those allegations. See OML Declination 4-22-15; OML Declination 8-25-2015.
[2] For the purposes of the Open Meeting Law, a quorum is a simple majority of the members of a public body. G.L. c. 30A, § 18.

In the email in question, Councilor Matheson thanked Assistant Solicitor McNaught for his work on resolving a previous Open Meeting Law complaint that Mr. DeLacey had filed against the Malden Hospital Site Development Committee. Councilor Matheson went on to explain that he thought the previous complaint had been filed "with the intention of harassment" because he believed that Mr. DeLacey had a pattern "over the years" of "mak[ing] a request of someone with the intention of trapping the person who attempts to help him, like a game of gotcha." Councilor Matheson went on to recommend that the Council "comply strictly to the requirements of the open meeting law, without any additional courtesies, such as uploading committee minutes online, which can then be used to generate additional [Open Meeting Law] complaints. It is unfortunate that it has come to this, but necessary."

DISCUSSION

I. City Councilor Matheson violated the Open Meeting Law by deliberating outside of a public meeting via a September 13, 2018, email.

The purpose of the Open Meeting Law is "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." See Dist. Attorney for N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 563 (2009); Ghiglione v. School Comm. of Southbridge, 376 Mass. 70, 72 (1978). Accordingly, the law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. In relevant part, a "'meeting' is defined as a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines deliberation as "an oral or written communication through any medium, *including electronic mail*, between or among a quorum of a public body on any public business within its jurisdiction[.]" G.L. c. 30A, § 18 (emphasis added).

Here, we find that Councilor Matheson engaged in impermissible deliberation outside of a public meeting when he sent the September 13, 2018, email to eight other members of the Council, thereby reaching more than a quorum of the Council. The Council argues that the email was not deliberation because Councilor Matheson had not "intended for the quorum to deliberate." We find this argument unavailing. The mere act of sending such a communication to a quorum of other members is itself deliberation. The Open Meeting Law does not carve out an exception to the definition of "deliberation" for discussions that do not result in a decision or vote. OML 2019-120.[3] Furthermore, the expression of an opinion by one public body member on matters within the body's jurisdiction to a quorum of a public body is considered a deliberation, even if no other public body member responds. OML 2016-104; OML 2015-33; OML 2012-73.

The Council further asserts that any discussion of the first Open Meeting Law complaint in the email was not an issue "under consideration" of the Council because a response had already been sent to the first complaint. This argument also misconstrues the legal standard of deliberation, which includes "any public business within [the public body's] jurisdiction," regardless of timeframe. Furthermore, we find that the discussion of how Council meeting minutes should be handled in order to prevent future complaints was clearly a matter of public business within the jurisdiction of the Council, thereby satisfying that element of the standard.

[3] All previous determinations issued by the Division can be found on the Attorney General's website: https://www.mass.gov/the-open-meeting-law.

For these reasons, we find that the September 13, 2018, email constituted deliberation, and was impermissible outside of a properly noticed meeting under the Open Meeting Law.

II. Regardless of whether the September 13, 2018, email was privileged under the attorney-client privilege, it must be released to cure the Open Meeting Law violation.

The Council argues that the email was exempt from the requirements of the Open Meeting Law under the attorney-client privilege doctrine as enunciated by the Supreme Judicial Court in Suffolk Construction v. Division of Capital Asset Mgt., a case construing the Public Records Law. 449 Mass. 444 (2007). Our office does not quarrel with the right of the Council or its members to consult with counsel. See OML 2011-27. However, there is no attorney-client privilege exception to the Open Meeting Law. Quite to the contrary, the Supreme Judicial Court has ruled that the Open Meeting Law constitutes a "statutory public waiver of any possible privilege of the public client in meetings of governmental bodies except in the narrow circumstances stated in the [Open Meeting Law]." District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 634 (1985).

The Appeals Court recently confirmed that this rule remains in effect, notwithstanding the Supreme Judicial Court's 2007 decision in Suffolk Construction. Revere Retirement Bd. v. Attorney General, 93 Mass. App. Ct. 1117 (2018) (Rule 1:28 Decision) (Further Appellate Review denied Sep. 13, 2018). Therefore, communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during a valid executive session. See District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 632-634 (1985); see also; OML 2018-139; OML 2017-72. A discussion between a quorum of public body members and counsel may be held in executive session, outside of the view of the public, only if the communication falls within one of the enumerated executive session purposes. Id. The attorney-client privilege itself is not an explicitly enumerated basis for executive session, nor is there an implied executive session purpose for attorney-client communications. See Id.; G.L. c. 30A, § 21(a).

Where, as here, impermissible deliberation has taken place via email, our usual remedy is to order the release of the email communications to the public. See OML 2019-75; OML 2017-199; OML 2015-33; OML 2012-63; OML 2011-14. We need not analyze whether the September 13, 2018, email would fall within the scope of the attorney-client privilege in another context. Here, the Open Meeting Law constituted a "waiver of any possible privilege," District Attorney for the Plymouth Dist., 395 Mass. at 634, and the email communication constituted a deliberation that should have occurred only at a properly posted public meeting in the first instance. Therefore, we order that the Council publicly release the email within 30 days from receipt of this determination by disclosing it at a public meeting of the Council and listing it in the minutes. See OML 2017-72; OML 2015-10.

CONCLUSION

For the reasons stated above, we find that City Councilor Matheson violated the Open Meeting Law by deliberating outside of a public meeting. We commend the Committee for its subsequent efforts to ensure that all members are educated about the requirements of the Open Meeting Law and its stated commitment to comply with those requirements in the future.

We order the Council's immediate and future compliance with the Open Meeting Law and caution the Council that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law. We also order that the Council release to the public, within 30 days following its receipt of this determination, the September 13, 2018, email referenced in this letter.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Council. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,

Sarah Chase
Assistant Attorney General
Division of Open Government

cc: Brian DeLacey
Malden City Council

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

March 9, 2021
SPR21/0464

Gregory Lucey
Records Access Officer
City of Malden
110 Pleasant Street
Malden, MA 02148

Dear Mr. Lucey:

I have received the petition of Ryan O'Malley appealing the response of the City of Malden (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 3, 2021, Mr. O'Malley requested certain communications between December 30, 2020 and February 3, 2021.

The City provided a February 23, 2021 response which included some records; however, the City withheld certain communications, stating, "[t]he [City's] Legal Department serves as legal counsel on behalf of the City and therefore communications to and from the Legal Department are privileged and confidential. Public records responsive to your request are enclosed herewith."

As a result of the City's February 23rd response to withhold communications under the attorney-client privilege, Mr. O'Malley petitioned the Supervisor of Records (Supervisor), and this appeal was opened.

In his petition, Mr. O'Malley asserts, "[t]he City incorrectly assumes that, regardless of content all 'communications to and from the Legal Department are privileged and confidential.'" Further, Mr. O'Malley asserts, "[t]he City incorrectly assumes that private and/or personal advice provided to a specific councilor or councilors on non-legal matter[s] that are not before the City, is as privileged as legal advice provided to the full City Council related to an actual legal matter before the City." Additionally, Mr. O'Malley states that no privilege log was provided.

Common law attorney-client privilege

In its February 23, 2021 response, the City has claimed that the communications to and from the Legal Department are privileged and confidential under the common law attorney-client privilege as recognized by Suffolk Constr. Co., Inc. v. DCAM, 449 Mass. 444 (2008).

There is an implicit assumption 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." Brossard v. University of Massachusetts, 9 Mass. L. Rep. 471 (1998), referencing Judge Rotenberg Educ. Center, Inc., v. Comm'r of the Dept. of Mental Retardation (No. 1), 424 Mass. 430 (1997).

The issue of whether this privilege extends to governmental entities was discussed in the affirmative by the Massachusetts Supreme Judicial Court (Court). Suffolk Constr. Co., Inc., 449 Mass. 444. The Court found that the privilege applies in the public realm. The Supervisor has the authority to determine whether records may be withheld as privileged. See Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 414 Mass. 609, 614-615 (1993).

The Court affirmed the "general rule" that when matters are "communicated by a client to his attorney, in professional confidence, the attorney shall not be at any time afterwards called upon or permitted to disclose in testimony." Suffolk Constr. Co., Inc., 449 Mass. at 448, *quoting* Foster v. Hall, 12 Pick. 89, 93 (1831). The Court, however, admonished that a governmental entity has the burden of proving the existence of the attorney-client privilege. Id. The Court requires governmental custodians to satisfy a three-step test to claim not only that an attorney-client relationship exists, but that, with respect to the privileged materials:

(1) 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) the communications were made in confidence; and

(3) the privilege as to these communications has not been waived.

Suffolk Constr. Co., 449 Mass. 450, fn 9, citing Matter of the Reorganization of Elec. Mut. Liab. Ins. Co. Ltd. (Bermuda), 425 Mass. 419, 421 (1997); see also Hanover Ins. Co. v. Rapo & 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).

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, "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).

The City did not provide a privilege log in compliance with the law. See Suffolk, 449 Mass. 450, fn 9; see also G. L. c. 66, § 10A(a).

Records Management

It is also Mr. O'Malley's assertion that the City's Solicitor is using a private email address to conduct official City business. Mr. O'Malley asserts, "[t]here is no way of knowing if all public records are being retained properly."

The City is advised that a custodian of records has an affirmative duty to maintain, secure, and preserve governmental records throughout the records life cycle. As such, safeguards must be instituted by the City to ensure that all records are retained in accordance with both applicable law as well as the retention schedules promulgated by this office. See G. L. c. 66, § 8; G. L. c. 66, § 13 and G. L. c. 66, § 15.

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Ryan O'Malley
Kathryn M. Fallon, Esq., *City Solicitor*

GOOGLE PRIVACY POLICY

When you use our services, you're trusting us with your information. We understand this is a big responsibility and work hard to protect your information and put you in control.

This Privacy Policy is meant to help you understand what information we collect, why we collect it, and how you can update, manage, export, and delete your information.

Privacy Checkup

Looking to change your privacy settings?

Take the Privacy Checkup

Effective February 4, 2021

Archived versions

We build a range of services that help millions of people daily to explore and interact with the world in new ways. Our services include:

- Google apps, sites, and devices, like Search, YouTube, and Google Home
- Platforms like the Chrome browser and Android operating system
- Products that are integrated into third-party apps and sites, like ads and embedded Google Maps

You can use our services in a variety of ways to manage your privacy. For example, you can sign up for a Google Account if you want to create and manage content like emails and photos, or see more relevant search results. And you can use many Google services when you're signed out or without creating an account at all, like searching on Google or watching YouTube videos. You can also choose to browse the web privately using Chrome in Incognito mode. And across our services, you can adjust your privacy settings to control what we collect and how your information is used.

To help explain things as clearly as possible, we've added examples, explanatory videos, and definitions for key terms. And if you have any questions about this Privacy Policy, you can contact us.

INFORMATION GOOGLE COLLECTS

We want you to understand the types of information we collect as you use our services

We collect information to provide better services to all our users — from figuring out basic stuff like which language you speak, to more complex things like which ads you'll find most useful, the people who matter most to you online, or which YouTube videos you might like. The information Google collects, and how that information is used, depends on how you use our services and how you manage your privacy controls.

When you're not signed in to a Google Account, we store the information we collect with unique identifiers tied to the browser, application, or device you're using. This helps us do things like maintain your language preferences across browsing sessions.

When you're signed in, we also collect information that we store with your Google Account, which we treat as personal information.

Things you create or provide to us

When you create a Google Account, you provide us with personal information that includes your name and a password. You can also choose to add a phone number or payment information to your account. Even if you aren't signed in to a Google Account, you might choose to provide us with information — like an email address to receive updates about our services.

We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos.

Information we collect as you use our services

Your apps, browsers & devices

We collect information about the apps, browsers, and devices you use to access Google services, which helps us provide features like automatic product updates and dimming your screen if your battery runs low.

The information we collect includes unique identifiers, browser type and settings, device type and settings, operating system, mobile network information including carrier name and phone number, and application version number. We also collect information about the interaction of your apps, browsers, and devices with our services, including IP address, crash reports, system activity, and the date, time, and referrer URL of your request.

We collect this information when a Google service on your device contacts our servers — for example, when you install an app from the Play Store or when a service checks for automatic updates. If you're using an Android device with Google apps, your device periodically contacts Google servers to provide information about your device and connection to our services. This information includes things like your device type, carrier name, crash reports, and which apps you've installed.

Your activity

We collect information about your activity in our services, which we use to do things like recommend a YouTube video you might like. The activity information we collect may include:

- Terms you search for
- Videos you watch
- Views and interactions with content and ads
- Voice and audio information when you use audio features
- Purchase activity
- People with whom you communicate or share content
- Activity on third-party sites and apps that use our services
- Chrome browsing history you've synced with your Google Account

If you use our services to make and receive calls or send and receive messages, we may collect call and message log information like your phone number, calling-party number, receiving-party number, forwarding numbers, sender and recipient email address, time and date of calls and messages, duration of calls, routing information, and types and volumes of calls and messages.

You can visit your Google Account to find and manage activity information that's saved in your account.

Go to Google Account

Your location information

We collect information about your location when you use our services, which helps us offer features like driving directions for your weekend getaway or showtimes for movies playing near you.

Your location can be determined with varying degrees of accuracy by:

- GPS
- IP address
- Sensor data from your device
- Information about things near your device, such as Wi-Fi access points, cell towers, and Bluetooth-enabled devices

The types of location data we collect depend in part on your device and account settings. For example, you can turn your Android device's location on or off using the device's settings app. You can also turn on Location History if you want to create a private map of where you go with your signed-in devices.

In some circumstances, Google also collects information about you from publicly accessible sources. For example, if your name appears in your local newspaper, Google's Search engine may index that article and display it to other people if they search for your name. We may also collect information about you from trusted partners, including marketing partners who provide us with information about potential customers of our business services, and security partners who provide us with information to protect against abuse. We also receive information from advertisers to provide advertising and research services on their behalf.

We use various technologies to collect and store information, including cookies, pixel tags, local storage, such as browser web storage or application data caches, databases, and server logs.

We use data to build better services

We use the information we collect from all our services for the following purposes:

Provide our services

We use your information to deliver our services, like processing the terms you search for in order to return results or helping you share content by suggesting recipients from your contacts.

Maintain & improve our services

We also use your information to ensure our services are working as intended, such as tracking outages or troubleshooting issues that you report to us. And we use your information to make improvements to our services — for example, understanding which search terms are most frequently misspelled helps us improve spell-check features used across our services.

Develop new services

We use the information we collect in existing services to help us develop new ones. For example, understanding how people organized their photos in Picasa, Google's first photos app, helped us design and launch Google Photos.

Provide personalized services, including content and ads

We use the information we collect to customize our services for you, including providing recommendations, personalized content, and customized search results. For example, Security Checkup provides security tips adapted to how you use Google products. And Google Play uses information like apps you've already installed and videos you've watched on YouTube to suggest new apps you might like.

Depending on your settings, we may also show you personalized ads based on your interests. For example, if you search for "mountain bikes," you may see an ad for sports equipment when you're

browsing a site that shows ads served by Google. You can control what information we use to show you ads by visiting your ad settings.

- We don't show you personalized ads based on sensitive categories, such as race, religion, sexual orientation, or health.
- We don't share information that personally identifies you with advertisers, such as your name or email, unless you ask us to. For example, if you see an ad for a nearby flower shop and select the "tap to call" button, we'll connect your call and may share your phone number with the flower shop.

Go to Ad Settings

Measure performance

We use data for analytics and measurement to understand how our services are used. For example, we analyze data about your visits to our sites to do things like optimize product design. And we also use data about the ads you interact with to help advertisers understand the performance of their ad campaigns. We use a variety of tools to do this, including Google Analytics. When you visit sites that use Google Analytics, a Google Analytics customer may choose to enable Google to link information about your activity from that site with activity from other sites that use our ad services.

Communicate with you

We use information we collect, like your email address, to interact with you directly. For example, we may send you a notification if we detect suspicious activity, like an attempt to sign in to your Google Account from an unusual location. Or we may let you know about upcoming changes or improvements to our services. And if you contact Google, we'll keep a record of your request in order to help solve any issues you might be facing.

Protect Google, our users, and the public

We use information to help improve the safety and reliability of our services. This includes detecting, preventing, and responding to fraud, abuse, security risks, and technical issues that could harm Google, our users, or the public.

We use different technologies to process your information for these purposes. We use automated systems that analyze your content to provide you with things like customized search results, personalized ads, or other features tailored to how you use our services. And we analyze your content to help us detect abuse such as spam, malware, and illegal content. We also use algorithms to recognize patterns in data. For example, Google Translate helps people communicate across languages by detecting common language patterns in phrases you ask it to translate.

We may combine the information we collect among our services and across your devices for the purposes described above. For example, if you watch videos of guitar players on YouTube, you might see an ad for guitar lessons on a site that uses our ad products. Depending on your account settings, your activity on other sites and apps may be associated with your personal information in order to improve Google's services and the ads delivered by Google.

If other users already have your email address or other information that identifies you, we may show them your publicly visible Google Account information, such as your name and photo. This helps people identify an email coming from you, for example.

We'll ask for your consent before using your information for a purpose that isn't covered in this Privacy Policy.

YOUR PRIVACY CONTROLS

You have choices regarding the information we collect and how it's used

This section describes key controls for managing your privacy across our services. You can also visit the Privacy Checkup, which provides an opportunity to review and adjust important privacy settings. In addition to these tools, we also offer specific privacy settings in our products — you can learn more in our Product Privacy Guide.

Go to Privacy Checkup

Managing, reviewing, and updating your information

When you're signed in, you can always review and update information by visiting the services you use. For example, Photos and Drive are both designed to help you manage specific types of content you've saved with Google.

We also built a place for you to review and control information saved in your Google Account. Your Google Account includes:

Privacy controls

Activity Controls

Decide what types of activity you'd like saved in your account. For example, you can turn on Location History if you want traffic predictions for your daily commute, or you can save your YouTube Watch History to get better video suggestions.

Go to Activity Controls

Ad settings

Manage your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads. You can modify your interests, choose whether your personal information is used to make ads more relevant to you, and turn on or off certain advertising services.

Go to Ad Settings

About you

Control what others see about you across Google services.

Go to About You

Shared endorsements

Choose whether your name and photo appear next to your activity, like reviews and recommendations, that appear in ads.

Go to Shared Endorsements

Ways to review & update your information

My Activity

My Activity allows you to review and control data that's created when you use Google services, like searches you've done or your visits to Google Play. You can browse by date and by topic, and delete part or all of your activity.

Go to My Activity

Google Dashboard

Google Dashboard allows you to manage information associated with specific products.

Go to Dashboard

Your personal information

Manage your contact information, such as your name, email, and phone number.

Go to Personal Info

When you're signed out, you can manage information associated with your browser or device, including:

- Signed-out search personalization: Choose whether your search activity is used to offer you more relevant results and recommendations.
- YouTube settings: Pause and delete your YouTube Search History and your YouTube Watch History.
- Ad Settings: Manage your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads.

Exporting, removing & deleting your information

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.

Export your data

You can also request to remove content from specific Google services based on applicable law.

To delete your information, you can:

- Delete your content from specific Google services
- Search for and then delete specific items from your account using My Activity
- Delete specific Google products, including your information associated with those products
- Delete your entire Google Account

Delete your information

And finally, Inactive Account Manager allows you to give someone else access to parts of your Google Account in case you're unexpectedly unable to use your account.

There are other ways to control the information Google collects whether or not you're signed in to a Google Account, including:

- Browser settings: For example, you can configure your browser to indicate when Google has set a cookie in your browser. You can also configure your browser to block all cookies from a specific domain or all domains. But remember that our services rely on cookies to function properly, for things like remembering your language preferences.
- Device-level settings: Your device may have controls that determine what information we collect. For example, you can modify location settings on your Android device.

SHARING YOUR INFORMATION

When you share your information

Many of our services let you share information with other people, and you have control over how you share. For example, you can share videos on YouTube publicly or you can decide to keep your videos private. Remember, when you share information publicly, your content may become accessible through search engines, including Google Search.

When you're signed in and interact with some Google services, like leaving comments on a YouTube video or reviewing an app in Play, your name and photo appear next to your activity. We may also display this information in ads depending on your Shared endorsements setting.

When Google shares your information

We do not share your personal information with companies, organizations, or individuals outside of Google except in the following cases:

With your consent

We'll share personal information outside of Google when we have your consent. For example, if you use Google Home to make a reservation through a booking service, we'll get your permission before sharing your name or phone number with the restaurant. We'll ask for your explicit consent to share any sensitive personal information.

With domain administrators

If you're a student or work for an organization that uses Google services, your domain administrator and resellers who manage your account will have access to your Google Account. They may be able to:

- Access and retain information stored in your account, like your email
- View statistics regarding your account, like how many apps you install
- Change your account password
- Suspend or terminate your account access
- Receive your account information in order to satisfy applicable law, regulation, legal process, or enforceable governmental request

- Restrict your ability to delete or edit your information or your privacy settings

For external processing

We provide personal information to our affiliates and other trusted businesses or persons to process it for us, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures. For example, we use service providers to help us with customer support.

For legal reasons

We will share personal information outside of Google if we have a good-faith belief that access, use, preservation, or disclosure of the information is reasonably necessary to:

- Meet any applicable law, regulation, legal process, or enforceable governmental request. We share information about the number and type of requests we receive from governments in our Transparency Report.
- Enforce applicable Terms of Service, including investigation of potential violations.
- Detect, prevent, or otherwise address fraud, security, or technical issues.
- Protect against harm to the rights, property or safety of Google, our users, or the public as required or permitted by law.

We may share non-personally identifiable information publicly and with our partners — like publishers, advertisers, developers, or rights holders. For example, we share information publicly to show trends about the general use of our services. We also allow specific partners to collect information from your browser or device for advertising and measurement purposes using their own cookies or similar technologies.

If Google is involved in a merger, acquisition, or sale of assets, we'll continue to ensure the confidentiality of your personal information and give affected users notice before personal information is transferred or becomes subject to a different privacy policy.

KEEPING YOUR INFORMATION SECURE

We build security into our services to protect your information

All Google products are built with strong security features that continuously protect your information. The insights we gain from maintaining our services help us detect and automatically block security threats from ever reaching you. And if we do detect something risky that we think you should know about, we'll notify you and help guide you through steps to stay better protected.

We work hard to protect you and Google from unauthorized access, alteration, disclosure, or destruction of information we hold, including:

- We use encryption to keep your data private while in transit
- We offer a range of security features, like Safe Browsing, Security Checkup, and 2 Step Verification to help you protect your account
- We review our information collection, storage, and processing practices, including physical security measures, to prevent unauthorized access to our systems
- We restrict access to personal information to Google employees, contractors, and agents who need that information in order to process it. Anyone with this access is subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.

EXPORTING & DELETING YOUR INFORMATION

You can export a copy of your information or delete it from your Google Account at any time

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.

Export your data

To delete your information, you can:

- Delete your content from specific Google services
- Search for and then delete specific items from your account using My Activity
- Delete specific Google products, including your information associated with those products
- Delete your entire Google Account

Delete your information

RETAINING YOUR INFORMATION

We retain the data we collect for different periods of time depending on what it is, how we use it, and how you configure your settings:

- Some data you can delete whenever you like, such as the content you create or upload. You can also delete activity information saved in your account, or choose to have it deleted automatically after a set period of time.
- Other data is deleted or anonymized automatically after a set period of time, such as advertising data in server logs.
- We keep some data until you delete your Google Account, such as information about how often you use our services.
- And some data we retain for longer periods of time when necessary for legitimate business or legal purposes, such as security, fraud and abuse prevention, or financial record-keeping.

When you delete data, we follow a deletion process to make sure that your data is safely and completely removed from our servers or retained only in anonymized form. We try to ensure that our services protect information from accidental or malicious deletion. Because of this, there may be delays between when you delete something and when copies are deleted from our active and backup systems.

You can read more about Google's data retention periods, including how long it takes us to delete your information.

We regularly review this Privacy Policy and make sure that we process your information in ways that comply with it.

Data transfers

We maintain servers around the world and your information may be processed on servers located outside of the country where you live. Data protection laws vary among countries, with some providing more protection than others. Regardless of where your information is processed, we apply the same protections described in this policy. We also comply with certain legal frameworks relating to the transfer of data.

When we receive formal written complaints, we respond by contacting the person who made the complaint. We work with the appropriate regulatory authorities, including local data protection authorities, to resolve any complaints regarding the transfer of your data that we cannot resolve with you directly.

California requirements

The California Consumer Privacy Act (CCPA) requires specific disclosures for California residents.

This Privacy Policy is designed to help you understand how Google handles your information:

- We explain the categories of information Google collects and the sources of that information in Information Google collects.
- We explain how Google uses information in Why Google collects data.
- We explain when Google may share information in Sharing your information. Google does not sell your personal information.

The CCPA also provides the right to request information about how Google collects, uses, and discloses your personal information. And it gives you the right to access your information and request that Google delete that information. Finally, the CCPA provides the right to not be discriminated against for exercising your privacy rights.

We describe the choices you have to manage your privacy and data across Google's services in Your privacy controls. You can exercise your rights by using these controls, which allow you to access, review, update and delete your information, as well as export and download a copy of it. When you use them, we'll validate your request by verifying that you're signed in to your Google Account. If you have questions or requests related to your rights under the CCPA, you (or your authorized agent) can also contact Google.

The CCPA requires a description of data practices using specific categories. This table uses these categories to organize the information in this Privacy Policy.

Categories of personal information we collect

Identifiers such as your name, phone number, and address, as well as unique identifiers tied to the browser, application, or device you're using.

Demographic information, such as your age, gender and language.

Commercial information such as your payment information and a history of purchases you make on Google's services.

Biometric information if you choose to provide it, such as fingerprints in Google's product development studies.

Internet, network, and other activity information such as your search terms; views and interactions with content and ads; Chrome browsing history you've synced with your Google Account; information about the interaction of your apps, browsers, and devices with our services (like IP address, crash reports, and system activity); and activity on third-party sites and apps that use our services. You can review and control activity data stored in your Google Account in My Activity.

Geolocation data, such as may be determined by GPS, IP address, and other data from sensors on or around your device, depending in part on your device and account settings. Learn more about Google's use of location information.

Audio, electronic, visual and similar information, such as voice and audio information when you use audio features.

Professional, employment, and education information, such as information you provide or that is maintained through an organization using Google services at which you study or work.

Other information you create or provide, such as the content you create, upload, or receive (like photos and videos or emails, docs and spreadsheets). Google Dashboard allows you to manage information associated with specific products.

Inferences drawn from the above, like your ads interest categories.

Business purposes for which information may be used or disclosed

Protecting against security threats, abuse, and illegal activity: Google uses and may disclose information to detect, prevent and respond to security incidents, and for protecting against other malicious, deceptive, fraudulent, or illegal activity. For example, to protect our services, Google may receive or disclose information about IP addresses that malicious actors have compromised.

Auditing and measurement: Google uses information for analytics and measurement to understand how our services are used, as well as to fulfill obligations to our partners like publishers, advertisers, developers, or rights holders. We may disclose non-personally identifiable information publicly and with these partners, including for auditing purposes.

Maintaining our services: Google uses information to ensure our services are working as intended, such as tracking outages or troubleshooting bugs and other issues that you report to us.

Research and development: Google uses information to improve our services and to develop new products, features and technologies that benefit our users and the public. For example, we use publicly available information to help train Google's language models and build features like Google Translate.

Use of service providers: Google shares information with service providers to perform services on our behalf, in compliance with our Privacy Policy and other appropriate confidentiality and security measures. For example, we may rely on service providers to help provide customer support.

Advertising: Google processes information, including online identifiers and information about your interactions with advertisements, to provide advertising. This keeps Google's services and many of the websites and services you use free of charge. You can control what information we use to show you ads by visiting your ad settings.

Legal reasons: Google also uses information to satisfy applicable laws or regulations, and discloses information in response to legal process or enforceable government requests, including to law enforcement. We provide information about the number and type of requests we receive from governments in our Transparency Report.

Parties with whom information may be shared

Other people with whom you choose to share your information, like docs or photos, and videos or comments on YouTube.

Third parties to whom you consent to sharing your information, such as services that integrate with Google's services. You can review and manage third party apps and sites with access to data in your Google Account.

Service providers, trusted businesses or persons that process information on Google's behalf, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures.

Domain administrators, if you work or study at an organization that uses Google services.

Law enforcement or other third parties, for the legal reasons described in Sharing your information.

ABOUT THIS POLICY

When this policy applies

This Privacy Policy applies to all of the services offered by Google LLC and its affiliates, including YouTube, Android, and services offered on third-party sites, such as advertising services. This Privacy Policy doesn't apply to services that have separate privacy policies that do not incorporate this Privacy Policy.

This Privacy Policy doesn't apply to:

- The information practices of other companies and organizations that advertise our services
- Services offered by other companies or individuals, including products or sites that may include Google services, be displayed to you in search results, or be linked from our services

Changes to this policy

We change this Privacy Policy from time to time. We will not reduce your rights under this Privacy Policy without your explicit consent. We always indicate the date the last changes were published and we offer access to archived versions for your review. If changes are significant, we'll provide a more prominent notice (including, for certain services, email notification of Privacy Policy changes).

RELATED PRIVACY PRACTICES

Specific Google services

The following privacy notices provide additional information about some Google services:

- Chrome & the Chrome Operating System
- Payments
- Fiber
- Google Fi
- G Suite for Education
- Read Along
- YouTube Kids
- Google Accounts Managed with Family Link, for Children under 13 (or applicable age in your country)
- Voice and Audio Collection from Children's Features on the Google Assistant

If you're a member of an organization that uses Google Workspace or Google Cloud Platform, learn how these services collect and use your personal information in the Google Cloud Privacy Notice.

Other useful resources

The following links highlight useful resources for you to learn more about our practices and privacy settings.

- Your Google Account is home to many of the settings you can use to manage your account
- Privacy Checkup guides you through key privacy settings for your Google Account
- Google's safety center helps you learn more about our built-in security, privacy controls, and tools to help set digital ground rules for your family online
- Privacy & Terms provides more context regarding this Privacy Policy and our Terms of Service
- Technologies includes more information about:
    - How Google uses cookies
    - Technologies used for Advertising
    - How Google uses pattern recognition to recognize things like faces in photos
    - How Google uses information from sites or apps that use our services

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Key terms

Affiliates

An affiliate is an entity that belongs to the Google group of companies, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, Google Payment Corp, and Google Dialer Inc. Learn more about the companies providing business services in the EU.

Algorithm

A process or set of rules followed by a computer in performing problem-solving operations.

Application data cache

An application data cache is a data repository on a device. It can, for example, enable a web application to run without an internet connection and improve the performance of the application by enabling faster loading of content.

Browser web storage

Browser web storage enables websites to store data in a browser on a device. When used in "local storage" mode, it enables data to be stored across sessions. This makes data retrievable even after a browser has been closed and reopened. One technology that facilitates web storage is HTML 5.

Cookies

A cookie is a small file containing a string of characters that is sent to your computer when you visit a website. When you visit the site again, the cookie allows that site to recognize your browser. Cookies may store user preferences and other information. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. However, some website features or services may not function properly without cookies. Learn more about how Google uses cookies and how Google uses data, including cookies, when you use our partners' sites or apps.

Device

A device is a computer that can be used to access Google services. For example, desktop computers, tablets, smart speakers, and smartphones are all considered devices.

Google Account

You may access some of our services by signing up for a Google Account and providing us with some personal information (typically your name, email address, and a password). This account information is used to authenticate you when you access Google services and protect your account from unauthorized access by others. You can edit or delete your account at any time through your Google Account settings.

IP address

Every device connected to the Internet is assigned a number known as an Internet protocol (IP) address. These numbers are usually assigned in geographic blocks. An IP address can often be used to identify the location from which a device is connecting to the Internet.

Non-personally identifiable information

This is information that is recorded about users so that it no longer reflects or references an individually-identifiable user.

Personal information

This is information that you provide to us which personally identifies you, such as your name, email address, or billing information, or other data that can be reasonably linked to such information by Google, such as information we associate with your Google Account.

Pixel tag

A pixel tag is a type of technology placed on a website or within the body of an email for the purpose of tracking certain activity, such as views of a website or when an email is opened. Pixel tags are often used in combination with cookies.

Referrer URL

A Referrer URL (Uniform Resource Locator) is information transmitted to a destination webpage by a web browser, typically when you click a link to that page. The Referrer URL contains the URL of the last webpage the browser visited.

Sensitive personal information

This is a particular category of personal information relating to topics such as confidential medical facts, racial or ethnic origins, political or religious beliefs, or sexuality.

Server logs

Like most websites, our servers automatically record the page requests made when you visit our sites. These “server logs” typically include your web request, Internet Protocol address, browser type, browser language, the date and time of your request, and one or more cookies that may uniquely identify your browser.

A typical log entry for a search for “cars” looks like this:

```
123.45.67.89 - 25/Mar/2003 10:15:32 -
http://www.google.com/search?q=cars -
Firefox 1.0.7; Windows NT 5.1 -
740674ce2123e969
```

- `123.45.67.89` is the Internet Protocol address assigned to the user by the user’s ISP. Depending on the user’s service, a different address may be assigned to the user by their service provider each time they connect to the Internet.
- `25/Mar/2003 10:15:32` is the date and time of the query.
- `http://www.google.com/search?q=cars` is the requested URL, including the search query.
- `Firefox 1.0.7; Windows NT 5.1` is the browser and operating system being used.
- `740674ce2123a969` is the unique cookie ID assigned to this particular computer the first time it visited Google. (Cookies can be deleted by users. If the user has deleted the cookie from the computer since the last time they’ve visited Google, then it will be the unique cookie ID assigned to their device the next time they visit Google from that particular device).

Unique identifiers

A unique identifier is a string of characters that can be used to uniquely identify a browser, app, or device. Different identifiers vary in how permanent they are, whether they can be reset by users, and how they can be accessed.

Unique identifiers can be used for various purposes, including security and fraud detection, syncing services such as your email inbox, remembering your preferences, and providing personalized advertising. For example, unique identifiers stored in cookies help sites display content in your browser in your preferred language. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. Learn more about how Google uses cookies.

On other platforms besides browsers, unique identifiers are used to recognize a specific device or app on that device. For example, a unique identifier such as the Advertising ID is used to provide relevant advertising on Android devices, and can be managed in your device’s settings. Unique identifiers may also be incorporated into a device by its manufacturer (sometimes called a universally unique ID or UUID), such as the IMEI-number of a mobile phone. For example, a device’s unique identifier can be used to customize our service to your device or analyze device issues related to our services.

Additional Context

ads you'll find most useful

For example, if you watch videos about baking on YouTube, you may see more ads that relate to baking as you browse the web. We also may use your IP address to determine your approximate location, so that we can serve you ads for a nearby pizza delivery service if you search for "pizza." Learn more about Google ads and why you may see particular ads.

advertising and research services on their behalf

For example, advertisers may upload data from their loyalty-card programs so that they can better understand the performance of their ad campaigns. We only provide aggregated reports to advertisers that don't reveal information about individual people.

Android device with Google apps

Android devices with Google apps include devices sold by Google or one of our partners and include phones, cameras, vehicles, wearables, and televisions. These devices use Google Play Services and other pre-installed apps that include services like Gmail, Maps, your phone's camera and phone dialer, text-to-speech conversion, keyboard input, and security features.

combine the information we collect

Some examples of how we combine the information we collect include:

- When you're signed in to your Google Account and search on Google, you can see search results from the public web, along with relevant information from the content you have in other Google products, like Gmail or Google Calendar. This can include things like the status of your upcoming flights, restaurant, and hotel reservations, or your photos. Learn more
- If you have communicated with someone via Gmail and want to add them to a Google Doc or an event in Google Calendar, Google makes it easy to do so by autocompleting their email address when you start to type in their name. This feature makes it easier to share things with people you know. Learn more

- The Google app can use data that you have stored in other Google products to show you personalized content, depending on your settings. For example, if you have searches stored in your Web & App Activity, the Google app can show you news articles and other information about your interests, like sports scores, based your activity. Learn more

- If you link your Google Account to your Google Home, you can manage your information and get things done through the Google Assistant. For example, you can add events to your Google Calendar or get your schedule for the day, ask for status updates on your upcoming flight, or send information like driving directions to your phone. Learn more

customized search results

For example, when you're signed in to your Google Account and have the Web & App Activity control enabled, you can get more relevant search results that are based on your previous searches and activity from other Google services. You can learn more here. You may also get customized search results even when you're signed out. If you don't want this level of search customization, you can search and browse privately or turn off signed-out search personalization.

deliver our services

Examples of how we use your information to deliver our services include:

- We use the IP address assigned to your device to send you the data you requested, such as loading a YouTube video

- We use unique identifiers stored in cookies on your device to help us authenticate you as the person who should have access to your Google Account

- Photos and videos you upload to Google Photos are used to help you create albums, animations, and other creations that you can share. Learn more

- A flight confirmation email you receive may be used to create a "check-in" button that appears in your Gmail

- When you purchase services or physical goods from us, you may provide us information like your shipping address or delivery instructions. We use this information for things like processing, fulfilling, and delivering your order, and to provide support in connection with the product or service you purchase.

detect abuse

When we detect spam, malware, illegal content, and other forms of abuse on our systems in violation of our policies, we may disable your account or take other appropriate action. In certain circumstances, we may also report the violation to appropriate authorities.

devices

For example, we can use information from your devices to help you decide which device you'd like to use to install an app or view a movie you buy from Google Play. We also use this information to help protect your account.

ensure and improve

For example, we analyze how people interact with advertising to improve the performance of our ads.

ensure our services are working as intended

For example, we continuously monitor our systems to look for problems. And if we find something wrong with a specific feature, reviewing activity information collected before the problem started allows us to fix things more quickly.

Information about things near your device

If you use Google's Location services on Android, we can improve the performance of apps that rely on your location, like Google Maps. If you use Google's Location services, your device sends information to Google about its location, sensors (like accelerometer), and nearby cell towers and Wi-Fi access points (like MAC address and signal strength). All these things help to determine your location. You can use your device settings to enable Google Location services. Learn more

legal process, or enforceable governmental request

Like other technology and communications companies, Google regularly receives requests from governments and courts around the world to disclose user data. Respect for the privacy and security of

data you store with Google underpins our approach to complying with these legal requests. Our legal team reviews each and every request, regardless of type, and we frequently push back when a request appears to be overly broad or doesn't follow the correct process. Learn more in our Transparency Report.

make improvements

For example, we use cookies to analyze how people interact with our services. And that analysis can help us build better products. For example, it may help us discover that it's taking people too long to complete a certain task or that they have trouble finishing steps at all. We can then redesign that feature and improve the product for everyone.

may link information

Google Analytics relies on first-party cookies, which means the cookies are set by the Google Analytics customer. Using our systems, data generated through Google Analytics can be linked by the Google Analytics customer and by Google to third-party cookies that are related to visits to other websites. For example, an advertiser may want to use its Google Analytics data to create more relevant ads, or to further analyze its traffic. Learn more

partner with Google

There are over 2 million non-Google websites and apps that partner with Google to show ads. Learn more

payment information

For example, if you add a credit card or other payment method to your Google Account, you can use it to buy things across our services, like apps in the Play Store. We may also ask for other information, like a business tax ID, to help process your payment. In some cases, we may also need to verify your identity and may ask you for information to do this.

We may also use payment information to verify that you meet age requirements, if, for example, you enter an incorrect birthday indicating you're not old enough to have a Google Account. Learn more

personalized ads

You may also see personalized ads based on information from the advertiser. If you shopped on an advertiser's website, for example, they can use that visit information to show you ads. Learn more

phone number

If you add your phone number to your account, it can be used for different purposes across Google services, depending on your settings. For example, your phone number can be used to help you access your account if you forget your password, help people find and connect with you, and make the ads you see more relevant to you. Learn more

protect against abuse

For example, information about security threats can help us notify you if we think your account has been compromised (at which point we can help you take steps to protect your account).

publicly accessible sources

For example, we may collect information that's publicly available online or from other public sources to help train Google's language models and build features like Google Translate.

rely on cookies to function properly

For example, we use a cookie called 'lbcs' that makes it possible for you to open many Google Docs in one browser. Blocking this cookie would prevent Google Docs from working as expected. Learn more

safety and reliability

Some examples of how we use your information to help keep our services safe and reliable include:

- Collecting and analyzing IP addresses and cookie data to protect against automated abuse. This abuse takes many forms, such as sending spam to Gmail users, stealing money from advertisers by fraudulently clicking on ads, or censoring content by launching a Distributed Denial of Service (DDoS) attack.

- The “last account activity” feature in Gmail can help you find out if and when someone accessed your email without your knowledge. This feature shows you information about recent activity in Gmail, such as the IP addresses that accessed your mail, the associated location, and the date and time of access. Learn more

sensitive categories

When showing you personalized ads, we use topics that we think might be of interest to you based on your activity. For example, you may see ads for things like "Cooking and Recipes" or "Air Travel.” We don’t use topics or show personalized ads based on sensitive categories like race, religion, sexual orientation, or health. And we require the same from advertisers that use our services.

Sensor data from your device

Your device may have sensors that can be used to better understand your location and movement. For example, an accelerometer can be used to determine your speed and a gyroscope to figure out your direction of travel.

servers around the world

For example, we operate data centers located around the world to help keep our products continuously available for users.

services to make and receive calls or send and receive messages

Examples of these services include:

- Google Voice, for making and receiving calls, sending text messages, and managing voicemail
- Google Meet, for making and receiving video calls
- Gmail, for sending and receiving emails
- Google Chat, for sending and receiving messages
- Google Duo, for making and receiving video calls and sending and receiving messages

- Google Fi, for a phone plan

show trends

When lots of people start searching for something, it can provide useful information about particular trends at that time. Google Trends samples Google web searches to estimate the popularity of searches over a certain period of time and shares those results publicly in aggregated terms. Learn more

specific Google services

For example, you can delete your blog from Blogger or a Google Site you own from Google Sites. You can also delete reviews you've left on apps, games, and other content in the Play Store.

specific partners

For example, we allow YouTube creators and advertisers to work with measurement companies to learn about the audience of their YouTube videos or ads, using cookies or similar technologies. Another example is merchants on our shopping pages, who use cookies to understand how many different people see their product listings. Learn more about these partners and how they use your information.

synced with your Google Account

Your Chrome browsing history is only saved to your account if you've enabled Chrome synchronization with your Google Account. Learn more

the people who matter most to you online

For example, when you type an address in the To, Cc, or Bcc field of an email you're composing, Gmail will suggest addresses based on the people you contact most frequently.

third parties

For example, we process your information to report use statistics to rights holders about how their content was used in our services. We may also process your information if people search for your name

and we display search results for sites containing publicly available information about you.

Views and interactions with content and ads

For example, we collect information about views and interactions with ads so we can provide aggregated reports to advertisers, like telling them whether we served their ad on a page and whether the ad was likely seen by a viewer. We may also measure other interactions, such as how you move your mouse over an ad or if you interact with the page on which the ad appears.

your activity on other sites and apps

This activity might come from your use of Google services, like from syncing your account with Chrome or your visits to sites and apps that partner with Google. Many websites and apps partner with Google to improve their content and services. For example, a website might use our advertising services (like AdSense) or analytics tools (like Google Analytics), or it might embed other content (such as videos from YouTube). These services may share information about your activity with Google and, depending on your account settings and the products in use (for instance, when a partner uses Google Analytics in conjunction with our advertising services), this data may be associated with your personal information.

Learn more about how Google uses data when you use our partners' sites or apps.

GOOGLE TERMS OF SERVICE

Effective March 31, 2020

Archived versions

What's covered in these terms

We know it's tempting to skip these Terms of Service, but it's important to establish what you can expect from us as you use Google services, and what we expect from you.

These Terms of Service reflect the way Google's business works, the laws that apply to our company, and certain things we've always believed to be true. As a result, these Terms of Service help define Google's relationship with you as you interact with our services. For example, these terms include the following topic headings:

- What you can expect from us, which describes how we provide and develop our services
- What we expect from you, which establishes certain rules for using our services
- Content in Google services, which describes the intellectual property rights to the content you find in our services — whether that content belongs to you, Google, or others
- In case of problems or disagreements, which describes other legal rights you have, and what to expect in case someone violates these terms

Understanding these terms is important because, by using our services, you're agreeing to these terms.

Besides these terms, we also publish a Privacy Policy. Although it's not part of these terms, we encourage you to read it to better understand how you can update, manage, export, and delete your information.

Service provider

Google services are provided by, and you're contracting with:

Google LLC
organized under the laws of the State of Delaware, USA, and operating under the laws of the USA

1600 Amphitheatre Parkway
Mountain View, California 94043
USA

Age requirements

If you're under the age required to manage your own Google Account, you must have your parent or legal guardian's permission to use a Google Account. Please have your parent or legal guardian read these terms with you.

If you're a parent or legal guardian, and you allow your child to use the services, then these terms apply to you and you're responsible for your child's activity on the services.

Some Google services have additional age requirements as described in their service-specific additional terms and policies.

Your relationship with Google

These terms help define the relationship between you and Google. Broadly speaking, we give you permission to use our services if you agree to follow these terms, which reflect how Google's business works and how we earn money. When we speak of "Google," "we," "us," and "our," we mean Google LLC and its affiliates.

What you can expect from us

Provide a broad range of useful services

We provide a broad range of services that are subject to these terms, including:

- apps and sites (like Search and Maps)

- platforms (like Google Play)
- integrated services (like Maps embedded in other companies' apps or sites)
- devices (like Google Home)

Our services are designed to work together, making it easier for you to move from one activity to the next. For example, Maps can remind you to leave for an appointment that appears in your Google Calendar.

Improve Google services

We're constantly developing new technologies and features to improve our services. For example, we invest in artificial intelligence that uses machine learning to detect and block spam and malware, and to provide you with innovative features, like simultaneous translations. As part of this continual improvement, we sometimes add or remove features and functionalities, increase or decrease limits to our services, and start offering new services or stop offering old ones.

If we make material changes that negatively impact your use of our services or if we stop offering a service, we'll provide you with reasonable advance notice and an opportunity to export your content from your Google Account using Google Takeout, except in urgent situations such as preventing abuse, responding to legal requirements, or addressing security and operability issues.

What we expect from you

Follow these terms and service-specific additional terms

The permission we give you to use our services continues as long as you meet your responsibilities in:

- **these terms**
- **service-specific additional terms**, which could, for example, include things like additional age requirements

We also make various policies, help centers, and other resources available to you to answer common questions and to set expectations about using our services. These resources include our Privacy Policy, Copyright Help Center, Safety Center, and other pages accessible from our policies site.

Although we give you permission to use our services, we retain any intellectual property rights we have in the services.

Respect others

Many of our services allow you to interact with others. We want to maintain a respectful environment for everyone, which means you must follow these basic rules of conduct:

- comply with applicable laws, including export control, sanctions, and human trafficking laws
- respect the rights of others, including privacy and intellectual property rights
- don't abuse or harm others or yourself (or threaten or encourage such abuse or harm) — for example, by misleading, defrauding, defaming, bullying, harassing, or stalking others
- don't abuse, harm, interfere with, or disrupt the services

Our service-specific additional terms and policies provide additional details about appropriate conduct that everyone using those services must follow. If you find that others aren't following these rules, many of our services allow you to report abuse. If we act on a report of abuse, we also provide a fair process as described in the Taking action in case of problems section.

Permission to use your content

Some of our services are designed to let you upload, submit, store, send, receive, or share your content. You have no obligation to provide any content to our services and you're free to choose the content that you want to provide. If you choose to upload or share content, please make sure you have the necessary rights to do so and that the content is lawful.

License

Your content remains yours, which means that you retain any intellectual property rights that you have in your content. For example, you have intellectual property rights in the creative content you make, such as reviews you write. Or you may have the right to share someone else's creative content if they've given you their permission.

We need your permission if your intellectual property rights restrict our use of your content. You provide Google with that permission through this license.

What's covered

This license covers your content if that content is protected by intellectual property rights.

What's not covered

- This license doesn't affect your privacy rights — it's only about your intellectual property rights
- This license doesn't cover these types of content:
  - publicly-available factual information that you provide, such as corrections to the address of a local business. That information doesn't require a license because it's considered common knowledge that everyone's free to use.
  - feedback that you offer, such as suggestions to improve our services. Feedback is covered in the Service-related communications section below.

Scope

This license is:

- worldwide, which means it's valid anywhere in the world
- non-exclusive, which means you can license your content to others
- royalty-free, which means there are no fees for this license

Rights

This license allows Google to:

- host, reproduce, distribute, communicate, and use your content — for example, to save your content on our systems and make it accessible from anywhere you go

- publish, publicly perform, or publicly display your content, if you've made it visible to others
- modify and create derivative works based on your content, such as reformatting or translating it
- sublicense these rights to:
    - other users to allow the services to work as designed, such as enabling you to share photos with people you choose
    - our contractors who've signed agreements with us that are consistent with these terms, only for the limited purposes described in the Purpose section below

Purpose

This license is for the limited purpose of:

- **operating and improving the services**, which means allowing the services to work as designed and creating new features and functionalities. This includes using automated systems and algorithms to analyze your content:
    - for spam, malware, and illegal content
    - to recognize patterns in data, such as determining when to suggest a new album in Google Photos to keep related photos together
    - to customize our services for you, such as providing recommendations and personalized search results, content, and ads (which you can change or turn off in Ads Settings)

  This analysis occurs as the content is sent, received, and when it is stored.
- **using content you've shared publicly to promote the services**. For example, to promote a Google app, we might quote a review you wrote. Or to promote Google Play, we might show a screenshot of the app you offer in the Play Store.
- **developing new technologies and services** for Google consistent with these terms

Duration

This license lasts for as long as your content is protected by intellectual property rights.

If you remove from our services any content that's covered by this license, then our systems will stop making that content publicly available in a reasonable amount of time. There are two exceptions:

- If you already shared your content with others before removing it. For example, if you shared a photo with a friend who then made a copy of it, or shared it again, then that photo may continue to appear in your friend's Google Account even after you remove it from your Google Account.
- If you make your content available through other companies' services, it's possible that search engines, including Google Search, will continue to find and display your content as part of their search results.

Using Google services

Your Google Account

If you meet these age requirements you can create a Google Account for your convenience. Some services require that you have a Google Account in order to work — for example, to use Gmail, you need a Google Account so that you have a place to send and receive your email.

You're responsible for what you do with your Google Account, including taking reasonable steps to keep your Google Account secure, and we encourage you to regularly use the Security Checkup.

Using Google services on behalf of an organization

Many organizations, such as businesses, non-profits, and schools, take advantage of our services. To use our services on behalf of an organization:

- an authorized representative of that organization must agree to these terms
- your organization's administrator may assign a Google Account to you. That administrator might require you to follow additional rules and may be able to access or disable your Google Account.

Service-related communications

To provide you with our services, we sometimes send you service announcements and other information. To learn more about how we communicate with you, see Google's Privacy Policy.

If you choose to give us feedback, such as suggestions to improve our services, we may act on your feedback without obligation to you.

Content in Google services

Your content

Some of our services give you the opportunity to make your content publicly available — for example, you might post a product or restaurant review that you wrote, or you might upload a blog post that you created.

- See the Permission to use your content section for more about your rights in your content, and how your content is used in our services
- See the Removing your content section to learn why and how we might remove user-generated content from our services

If you think someone is infringing your intellectual property rights, you can send us notice of the infringement and we'll take appropriate action. For example, we suspend or close the Google Accounts of repeat copyright infringers as described in our Copyright Help Center.

Google content

Some of our services include content that belongs to Google — for example, many of the visual illustrations you see in Google Maps. You may use Google's content as allowed by these terms and any service-specific additional terms, but we retain any intellectual property rights that we have in our content. Don't remove, obscure, or alter any of our branding, logos, or legal notices. If you want to use our branding or logos, please see the Google Brand Permissions page.

Other content

Finally, some of our services give you access to content that belongs to other people or organizations — for example, a store owner's description of their own business, or a newspaper article displayed in Google News. You may not use this content without that person or organization's permission, or as otherwise allowed by law. The views expressed in other people or organizations' content are theirs, and don't necessarily reflect Google's views.

Software in Google services

Some of our services include downloadable software. We give you permission to use that software as part of the services.

The license we give you is:

- worldwide, which means it's valid anywhere in the world
- non-exclusive, which means that we can license the software to others
- royalty-free, which means there are no fees for this license
- personal, which means it doesn't extend to anyone else
- non-assignable, which means you're not allowed to assign the license to anyone else

Some of our services include software that's offered under open source license terms that we make available to you. Sometimes there are provisions in the open source license that explicitly override parts of these terms, so please be sure to read those licenses.

You may not copy, modify, distribute, sell, or lease any part of our services or software. Also, you may not reverse engineer or attempt to extract any of our source code unless you have our written permission or applicable law lets you do so.

When a service requires or includes downloadable software, that software sometimes updates automatically on your device once a new version or feature is available. Some services let you adjust your automatic update settings.

In case of problems or disagreements

By law, you have the right to (1) a certain quality of service, and (2) ways to fix problems if things go wrong. These terms don't limit or take away any of those rights. For example, if you're a consumer, then you continue to enjoy all legal rights granted to consumers under applicable law.

Warranty

We provide our services using reasonable skill and care. If we don't meet the quality level described in this warranty, you agree to tell us and we'll work with you to try to resolve the issue.

Disclaimers

The only commitments we make about our services (including the content in the services, the specific functions of our services, or their reliability, availability, or ability to meet your needs) are (1) described in the Warranty section, (2) stated in the service-specific additional terms, or (3) provided under applicable laws. We don't make any other commitments about our services.

And unless required by law, we don't provide implied warranties, such as the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

Liabilities

For all users

These terms only limit our responsibilities as allowed by applicable law. Specifically, these terms don't limit Google's liability for death or personal injury, fraud, fraudulent misrepresentation, gross negligence, or willful misconduct.

Other than the rights and responsibilities described in this section (In case of problems or disagreements), Google won't be responsible for any other losses, unless they're caused by our breach of these terms or service-specific additional terms.

For business users and organizations only

If you're a business user or organization, then to the extent allowed by applicable law:

- You'll indemnify Google and its directors, officers, employees, and contractors for any third-party legal proceedings (including actions by government authorities) arising out of or relating to your unlawful use of the services or violation of these terms or service-specific additional terms. This indemnity covers any liability or expense arising from claims, losses, damages, judgments, fines, litigation costs, and legal fees.
- Google won't be responsible for the following liabilities:
  - loss of profits, revenues, business opportunities, goodwill, or anticipated savings
  - indirect or consequential loss
  - punitive damages
- Google's total liability arising out of or relating to these terms is limited to the greater of (1) US$500 or (2) 125% of the fees that you paid to use the relevant services in the 12 months before the breach

If you're legally exempt from certain responsibilities, including indemnification, then those responsibilities don't apply to you under these terms. For example, the United Nations enjoys certain immunities from legal obligations and these terms don't override those immunities.

Taking action in case of problems

Before taking action as described below, we'll provide you with advance notice when reasonably possible, describe the reason for our action, and give you an opportunity to fix the problem, unless we reasonably believe that doing so would:

- cause harm or liability to a user, third party, or Google
- violate the law or a legal enforcement authority's order
- compromise an investigation
- compromise the operation, integrity, or security of our services

Removing your content

If we reasonably believe that any of your content (1) breaches these terms, service-specific additional terms or policies, (2) violates applicable law, or (3) could harm our users, third parties, or Google, then we reserve the right to take down some or all of that content in accordance with applicable law. Examples include child pornography, content that facilitates human trafficking or harassment, and content that infringes someone else's intellectual property rights.

Suspending or terminating your access to Google services

Google reserves the right to suspend or terminate your access to the services or delete your Google Account if any of these things happen:

- you materially or repeatedly breach these terms, service-specific additional terms or policies
- we're required to do so to comply with a legal requirement or a court order
- we reasonably believe that your conduct causes harm or liability to a user, third party, or Google — for example, by hacking, phishing, harassing, spamming, misleading others, or scraping content that doesn't belong to you

If you believe your Google Account has been suspended or terminated in error, you can appeal.

Of course, you're always free to stop using our services at any time. If you do stop using a service, we'd appreciate knowing why so that we can continue improving our services.

Settling disputes, governing law, and courts

For information about how to contact Google, please visit our contact page.

California law will govern all disputes arising out of or relating to these terms, service-specific additional terms, or any related services, regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.

To the extent that applicable local law prevents certain disputes from being resolved in a California court, then you can file those disputes in your local courts. Likewise, if applicable local law prevents

your local court from applying California law to resolve these disputes, then these disputes will be governed by the applicable local laws of your country, state, or other place of residence.

About these terms

By law, you have certain rights that can't be limited by a contract like these terms of service. These terms are in no way intended to restrict those rights.

These terms describe the relationship between you and Google. They don't create any legal rights for other people or organizations, even if others benefit from that relationship under these terms.

We want to make these terms easy to understand, so we've used examples from our services. But not all services mentioned may be available in your country.

If these terms conflict with the service-specific additional terms, the additional terms will govern for that service.

If it turns out that a particular term is not valid or enforceable, this will not affect any other terms.

If you don't follow these terms or the service-specific additional terms, and we don't take action right away, that doesn't mean we're giving up any rights that we may have, such as taking action in the future.

We may update these terms and service-specific additional terms (1) to reflect changes in our services or how we do business — for example, when we add new services, features, technologies, pricing, or benefits (or remove old ones), (2) for legal, regulatory, or security reasons, or (3) to prevent abuse or harm.

If we materially change these terms or service-specific additional terms, we'll provide you with reasonable advance notice and the opportunity to review the changes, except (1) when we launch a new service or feature, or (2) in urgent situations, such as preventing ongoing abuse or responding to legal requirements. If you don't agree to the new terms, you should remove your content and stop using the services. You can also end your relationship with us at any time by closing your Google Account.

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affiliate

An entity that belongs to the Google group of companies, which means Google LLC and its subsidiaries, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, and Google Dialer Inc.

business user

An individual or entity who is not a consumer (see consumer).

consumer

An individual who uses Google services for personal, non-commercial purposes outside of their trade, business, craft, or profession. (See business user)

copyright

A legal right that allows the creator of an original work (such as a blog post, photo, or video) to decide if and how that original work may be used by others.

disclaimer

A statement that limits someone's legal responsibilities.

EU Platform-to-Business Regulation

The Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services.

indemnify or indemnity

An individual or organization's contractual obligation to compensate the losses suffered by another individual or organization from legal proceedings such as lawsuits.

intellectual property rights (IP rights)

Rights over the creations of a person's mind, such as inventions (patent rights); literary and artistic works (copyright); designs (design rights); and symbols, names, and images used in commerce (trademarks). IP rights may belong to you, another individual, or an organization.

liability

Losses from any type of legal claim, whether the claim is based on a contract, tort (including negligence), or other reason, and whether or not those losses could have been reasonably anticipated or foreseen.

organization

A legal entity (such as a corporation, non-profit, or school) and not an individual person.

services

Google services that are subject to these terms are the products and services listed at https://policies.google.com/terms/service-specific, including:

- Google apps and sites (like Search and Maps)
- platforms (like Google Play)
- integrated services (like Maps embedded in other companies' apps or sites)
- devices (like Google Home)

trademark

Symbols, names, and images used in commerce that are capable of distinguishing the goods or services of one individual or organization from those of another.

warranty

An assurance that a product or service will perform to a certain standard.

your content

Things that you write, upload, submit, store, send, receive, or share with Google using our services, such as:

- Docs, Sheets, and Slides you create
- blog posts you upload through Blogger
- reviews you submit through Maps
- videos you store in Drive
- emails you send and receive through Gmail
- pictures you share with friends through Photos
- travel itineraries that you share with Google

SuperTool Beta7

maldenps.org | MX Lookup

Free MxToolBox Account
FREE
Get 1 Free Monitor*, Email Notifications and Troubleshooting Info

Delivery Center
PRO
Real-time insight into the Email Deliverability of you or your 3rd party senders

Blacklist Monitoring
PRO
100+ Blacklist Monitored + Delisting Support

MailFlow Monitoring
PRO
Round-trip email server monitoring for latency and email deliverability issues

Bulk Lookup
PRO
Run Bulk lists of IPs and Domains Blacklist, MX/NS/A Record, GeoIP, & more data

mx:maldenps.org

Find Problems (https://mxtoolbox.com/domain/maldenps.org/?source=findmonitors)

MxTOOLBOX has the experts you need to improve email delivery
Solve Email Delivery Problems (https://mxtoolbox.com/c/products/deliverycenter?source=supertool-mx)

mx

Pref	Hostname	IP Address	TTL		
1	aspmx.l.google.com	173.194.175.26 Google LLC (AS15169)	5 min	Blacklist Check	SMTP Test
1	aspmx.l.google.com	2607:f8b0:400d:c03::1b	5 min	Blacklist Check	
10	alt1.aspmx.l.google.com	64.233.186.26 Google LLC (AS15169)	5 min	Blacklist Check	SMTP Test
10	alt1.aspmx.l.google.com	2800:3f0:4003:c00::1a	5 min	Blacklist Check	

	Test	Result	
(https://mxtoolbox.com/problem/mx/dmarc-record-published?page=prob_mx&action=mx:maldenps.org&showlogin=1&hidepitch=0&hidetoc=1)	DMARC Record Published	No DMARC Record found	More Info (https://mxtoolbox.com/prob page=prob_mx&action=mx:maldenps.org&
(https://mxtoolbox.com/problem/mx/dmarc-policy-not-enabled?page=prob_mx&action=mx:maldenps.org&showlogin=1&hidepitch=0&hidetoc=1)	DMARC Policy Not Enabled	DMARC Quarantine/Reject policy not enabled	More Info (https://mxtoolbox.com/prob page=prob_mx&action=mx:maldenps.org&

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(https://mxtoolbox.com/problem/mx/dns-record-published?page=prob_mx&action=mx:maldenps.org&showlogin=1&hidepitch=0&hidetoc=1)	DNS Record Published	DNS Record found

```
Your email service provider is "Google Apps"  Need Bulk Email Provider
 Data? (https://mxtoolbox.com/bulklookup.aspx?referrer=supertool&type=
email)
```

dns lookup dns check whois lookup spf lookup dns propagation

Reported by **dana.ns.cloudflare.com** on 3/10/2021 at **2:52:32 PM (UTC -6)**, just for you (https://mxtoolbox.com/whatismyip/?justforyou=1). Transcript

An error has occurred with your lookup. Please try again.

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Invalid Input. 'mx' requires a Fully Qualified Domain Name. 'malden's.org' is invalid.. Documentation available at https://mxtoolbox.com/restapi.aspx

ABOUT THE SUPERTOOL!

All of your MX record, DNS, blacklist and SMTP diagnostics in one integrated tool. Input a **domain name** or **IP Address** or **Host Name.** Links in the results will guide you to other relevant tools and information. And you'll have a chronological history of your results.

If you already know exactly what you want, you can force a particular test or lookup. Try some of these examples:

(e.g. "blacklist: 127.0.0.2" will do a blacklist lookup)

Command	Explanation
blacklist:	Check IP or host for reputation
smtp:	Test mail server SMTP (port 25)
mx:	DNS MX records for domain
a:	DNS A record IP address for host name
spf:	Check SPF records on a domain
txt:	Check TXT records on a domain
ptr:	DNS PTR record for host name
cname:	DNS canonical host name to IP address
whois:	Get domain registration information
arin:	Get IP address block information
soa:	Get Start of Authority record for a domain
tcp:	Verify an IP Address allows tcp connections
http:	Verify a URL allows http connections
https:	Verify a URL allows secure http connections
ping:	Perform a standard ICMP ping
trace:	Perform a standard ICMP trace route
dns:	Check your DNS Servers for possible problems **New!**

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Other tools (NetworkTools.aspx)

Feedback: If you run into any problems with the site or have an idea that you think would make it better, we would appreciate your feedback. Please leave us some Feedback (mailto:feedback@mxtoolbox.com).

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Open Meeting Law Guide and Educational Materials

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL MAURA HEALEY

JANUARY 2018

0521

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Dear Massachusetts Residents:

One of the most important functions of the Attorney General's Office is to promote openness and transparency in government. Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives. My office is working to achieve that goal through fair and consistent enforcement of the Open Meeting Law, along with robust educational outreach about the law's requirements.

The Open Meeting Law requires that most meetings of public bodies be held in public, and it establishes rules that public bodies must follow in the creation and maintenance of records relating to those meetings. Our office is dedicated to providing educational materials, outreach and training sessions to ensure that members of public bodies and citizens understand their rights and responsibilities under the law.

Whether you are a town clerk or town manager, a member of a public body, or a concerned citizen, I want to thank you for taking the time to understand the Open Meeting Law. If you would like additional guidance on the law, I encourage you to contact my Division of Open Government at (617) 963-2540 or visit our website at www.mass.gov/ago/openmeeting for more information.

Sincerely,

Maura Healey
Massachusetts Attorney General

Attorney General's Open Meeting Law Guide

Overview

Purpose of the Law

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

Attorney General's Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General's Office. G.L. c. 30A, § 19(a). To help public bodies understand and comply with the law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and orders remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

Certification

Within two weeks of a member's election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences of violating it. The certification must be retained where the public body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General's regulations, this Guide, and Open Meeting Law determinations issued to the member's public body within the last five years in which the Attorney General found a violation of the law.

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law. A public body member must sign a new Certificate upon reelection or reappointment to the public body but need not sign a Certificate when joining a subcommittee.

Open Meeting Law Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. The complete law, as well as the Attorney General's regulations, training materials, and determinations and declinations as to complaints can be found on the Attorney General's Open Meeting website, www.mass.gov/ago/openmeeting. Members of public bodies, other local and state government officials, and the public are encouraged to visit the website regularly for updates on the law and the Attorney General's interpretations of it.

Meetings of Public Bodies

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

1) is the communication between or among members of a **public body**;
2) if so, does the communication constitute a **deliberation**;
3) does the communication involve a matter within the body's **jurisdiction**; and
4) if so, does the communication fall within an **exception** listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches[1] of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and

[1] Although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions must follow the Law's requirements.

its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.[2]

What constitutes a deliberation?

The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body's jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For

[2] See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction." The law does not specifically define "jurisdiction." As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body's members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for "quasi-judicial boards or commissions" to apply only to certain state "quasi-judicial" bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as "agencies" for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore,

the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.

Notice

What are the requirements for posting notice of meetings?

Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

What are the requirements for filing and posting meeting notices for local public bodies?

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located. In the event that meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or adopt the municipal website as the official method of notice posting.

Prior to utilizing the municipal website, the Chief Executive Officer of the municipality must authorize or vote to adopt such website as the official method of posting notice. The clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public bodies must consistently use the most current notice posting method on file with the Division. A description of the website, including directions on how to locate notices on the website, must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk's office is located. Note that meeting notices must still be available in or around the clerk's office so that members of the public may view the notices during normal business hours.

What are the requirements for posting notices for regional, district, county and state public bodies?

For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website.

The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings. As an alternative method of notice, a county public body may post notice of meetings on the county public body's website. The county public body must file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

State public bodies must post meeting notices on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the specific webpage location where notices will be posted and of any subsequent changes to that posting location. A copy of each meeting notice must also be sent to the Secretary of State's Regulations Division and should be forwarded to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

Where a public body adopts a website as the official method of posting notices, it must make every effort to ensure that the website is accessible at all hours. If a website becomes inaccessible within 48 hours of a meeting, not including Saturdays, Sundays or legal holidays, the website must be restored within six business hours of the discovery. If the website is not restored within six business hours, the public body must re-post notice of its meeting to another date and time, in accordance with the requirements of the Open Meeting Law.

A note about accessibility

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.[3] The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 963-2939.

[3] The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time, and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list "open session" as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice. If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted. Recording the date and time enables the public to observe that public bodies are complying with the Open Meeting Law's notice requirements without requiring constant vigilance. Additionally, in the event of a complaint, it provides the Attorney General with evidence of compliance with those requirements.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

Executive Session

When can a public body meet in executive session?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

1. **To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

   This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

   While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. **To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;**

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

3. **To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and

voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

4. **To discuss the deployment of security personnel or devices, or strategies with respect thereto;**

5. **To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

6. **To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details

would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

7. **To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;**

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

8. **To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;**

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

9. **To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:**

   (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

   (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. **To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:**

    - in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
    - in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
    - in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
    - when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

Remote Participation

May a member of a public body participate remotely?

The Attorney General's Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow

individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7.

If the chief executive officer in a municipality authorizes remote participation, that authorization applies to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation and may decide to fund the practice only for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

Note about Local Commissions on Disability: Local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely only if physical attendance would be unreasonably difficult.

What are the acceptable means of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation. Note that accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

1. A quorum of the body, including the chair or, in the chair's absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely; such information must also be recorded in the meeting minutes. The chair's statement does not need to contain any detail about the reason for the member's remote participation.

Members of public bodies who participate remotely may vote and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions but must state at the start of any such session that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair (or, in the chair's absence, person chairing the meeting) may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

Public Participation

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual may not disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove the person. Although public participation is entirely within the chair's discretion, the

Attorney General encourages public bodies to allow as much public participation as time permits.

Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance.

Minutes

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must include:

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely.

While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes, and all documents and exhibits used, are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law. The State and Municipal Record Retention Schedules are available through the Secretary of the Commonwealth's website at: http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A "timely manner" is considered to be within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages minutes to be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within ten days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within ten days of a request.

There are two exemptions to the open session records disclosure requirement: 1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any résumé submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes, or other materials used in an executive session if the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they fall within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.

A public body must respond to a request to inspect or copy executive session minutes within ten days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within ten days, notifying the requestor that it is conducting this review.

Open Meeting Law Complaints

What is the Attorney General's role in enforcing the Open Meeting Law?

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to receive and investigate complaints, bring enforcement actions, issue advisory opinions, and promulgate regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements. The Division of Open Government offers periodic online and in-person training on the Open Meeting Law and will respond to requests for guidance and information from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint ***with the public body*** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a Complaint Form available on the Attorney General's website, www.mass.gov/ago/openmeeting. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to meet to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the complainant. The public body must simultaneously notify the Attorney General that it has responded to the complainant and provide the Attorney General with a copy of the response and a description of any remedial action taken. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so. A public body is not required to respond to unsigned complaints or complaints not made on the Attorney General's complaint form.

The public body may request additional information from the complainant within seven business days of receiving the complaint. The complainant then has ten business days to respond; the public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take remedial action. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

Step 3. Filing a Complaint with the Attorney General's Office

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are ***not*** automatically treated as filed for review by the Attorney General upon filing with the public body. A complainant who has filed a complaint with a public body and seeks further review by the Division of Open Government must file the complaint with the Attorney General after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation or the date that the violation was reasonably discoverable.

When filing the complaint with the Attorney General, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the response of the public body. Note, however, that the Attorney General will not review allegations that were not raised in the initial complaint filed with the public body. Under most circumstances, complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

The Attorney General will review the complaint and any remedial action taken by the public body. The Attorney General may request additional information from both the complainant and the public body. The Attorney General will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The Attorney General may decline to investigate a complaint that is filed with our office more than 90 days after the date of the alleged violation.

May a public body request mediation to resolve a complaint?

If a complainant files five complaints with the same public body or within the same municipality within 12 months, the public body may request mediation upon the fifth or subsequent complaint in order to resolve the complaint. The public body must request mediation prior to, or with, its response to the complaint, and will assume the expense of such mediation. If the parties cannot come to an agreement after mediation, the public body will

have ten business days to respond to the complaint and its resolution will proceed in the normal course.

Mediation may occur in open session or in executive session under Purpose 9. In addition, a public body may designate a representative to participate on behalf of the public body. If mediation does not resolve the complaint to each party's satisfaction, the complainant may file the complaint with the Attorney General. The complaint must be filed within 30 days of the last joint meeting with the mediator.

The mediator will be chosen by the Attorney General. If the complainant declines to participate in mediation after a request by the public body, the Attorney General may decline to review a complaint thereafter filed with our office. A public body may always request mediation to resolve a complaint, but only mediation requested upon a fifth or subsequent complaint triggers the requirement that the complainant participate in the mediation before the Attorney General will review the complaint.

Any written agreement reached in mediation must be disclosed at the public body's next meeting following execution of the agreement and will become a public record.

When is a violation of the law considered "intentional"?

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than $1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An "intentional violation" is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law's requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements, its conduct will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02. A fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel. G.L. 30A, § 23(g); 940 CMR 29.07.

Will the Attorney General's Office provide training on the Open Meeting Law?

The Open Meeting Law directs the Attorney General to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The Attorney General has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, the Attorney General's determination letters resolving complaints, and other resources. The Attorney General offers periodic webinars and in-person regional training events for members of the public and public bodies, in addition to offering a free online training video.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the Attorney General's Division of Open Government. The Attorney General also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

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Appendix

The Open Meeting Law, G.L. c. 30A, §§ 18-25[4]

Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.

Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session;

[4] NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

1. the general background of the legal requirements for the open meeting law;
2. applicability of sections 18 to 25, inclusive, to governmental bodies;
3. the role of the attorney general in enforcing the open meeting law; and
4. penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

1. the number of open meeting law complaints received by the attorney general;
2. the number of hearings convened as the result of open meeting law complaints by the attorney general;
3. a summary of the determinations of violations made by the attorney general;
4. a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
5. an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
6. the number of actions filed in superior court seeking relief from an order of the attorney general; and
7. any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or

town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the

appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. Executive Sessions

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
    i. to be present at such executive session during deliberations which involve that individual;
    ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
    iii. to speak on his own behalf; and
    iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

    The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
    i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
    ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:
1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. Meeting Minutes; Records

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney- client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of

said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g) (1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

2. Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

1. compel immediate and future compliance with the open meeting law;
2. compel attendance at a training session authorized by the attorney general;
3. nullify in whole or in part any action taken at the meeting;
4. impose a civil penalty upon the public body of not more than $1,000 for each intentional violation;
5. reinstate an employee without loss of compensation, seniority, tenure or other benefits;
6. compel that minutes, records or other materials be made public; or
7. prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. Investigation by Attorney General of Violations of Open Meeting Law

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. Regulations; Letter Rulings; Advisory Opinions

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

940 CMR 29.00: Open Meeting Law Regulations

The official regulations are published in the Massachusetts Register. For more information, contact the Secretary of the Commonwealth's State Publications and Regulations Division.

Section
29.01: Purpose, Scope and Other General Provisions
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29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body. A public body created by county government with jurisdiction that comprises a single county.

District Public Body. A public body with jurisdiction that extends to two or more municipalities.

Emergency. A sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation. An act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, the public body or public body member that:

(a) acted with specific intent to violate the law;

(b) acted with deliberate ignorance of the law's requirements; or

(c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person. All individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice. To place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body. Has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that Public Body shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office. The election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body. A public body with jurisdiction that extends to two or more municipalities.

Remote Participation. Participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies.

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.

(b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.

(d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

(a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.

(b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.

1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.

(c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices *via* other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.

(d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.

(3) Requirements Specific to Regional or District Public Bodies.

(a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

(a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

(a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

29.04: Certification

(1) For local public bodies, the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall, upon a public body member's qualification for office, either deliver to the public body member, or require the public body member to obtain from the Attorney General's website, the following educational materials:

(a) The Attorney General's Open Meeting Law Guide, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and 940 CMR 29.00.
(b) A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25. Open Meeting Law determinations are available at the Attorney General's website.

(2) Educational materials may be delivered to public body members by paper copy or in digital form.

(3) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(4) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(5) A public body member must sign a new certification upon reelection or reappointment to the public body.

29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.

(4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25 or, if the alleged violation of M.G.L. c. 30A, §§ 18 through 25 could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(7) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered. However, this time may be extended if the Attorney General grants an extension to the public body to respond to a complaint or if the complainant demonstrates good cause for the delay in filing with the Attorney General.

(8) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days.

(9) Mediation to Resolve a Complaint.

(a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and will be selected by the Attorney General.

(b) A public body must request mediation prior to, or with, its response to the complaint. If the mediation does not produce an agreement, the public body will have ten business days from the last joint meeting with the mediator to respond to the complaint.

(c) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.

(d) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), the Attorney General may decline to review the complaint if it is thereafter filed with the Attorney General.

(e) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.

(f) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.

(g) Nothing in 940 CMR 29.05(9) shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).

(h) Nothing in 940 CMR 29.05(9) shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(d).

29.06: Investigation

Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25 has occurred, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

(a) Take testimony under oath;
(b) Examine or cause to be examined any documentary material; or
(c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or in a written determination to resolve the investigation pursuant to 940 CMR 29.07.

29.07: Resolution

(1) No Violation. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has not been violated, the Attorney General shall issue a written determination to the subject of the complaint and copy any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

(a) Informal Action. The Attorney General may resolve the investigation with a letter or other appropriate form of written communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.
(b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:
    1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;

2. attendance at a training session authorized by the Attorney General;
3. nullification of any action taken at the relevant meeting, in whole or in part;
4. that minutes, records or other materials be made public;
5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or
6. other appropriate action.

(c) Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00: *Formal Rules*, as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25 occurred, and whether the public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

(a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
(b) attendance at a training session authorized by the Attorney General;
(c) nullification of any action taken at the relevant meeting, in whole or in part;
(d) imposition of a fine upon the public body of not more than $1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
(e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
(f) that minutes, records or other materials be made public; or
(g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body, subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07, shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring immediate and future compliance pursuant to 940 CMR 29.07(2)(b)1. or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of *certiorari*. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25 pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may, by majority vote of the commissioners at a regular meeting, authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting in accordance with the procedures described in 940 CMR 29.10(7) only if physical attendance would be unreasonably difficult.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

1. telephone, internet, or satellite enabled audio or video conferencing;
2. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines after investigation that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY
940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

Certificate of Receipt of Open Meeting Law Materials

I, _____, who qualified as a member of the
(Name)

_____, on _____, certify pursuant
(Public Body) (Date)

to G.L. c. 30A, § 20(h) and 940 CMR 29.04, that I have received and reviewed copies of the following Open Meeting Law materials:

1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;

2) the Attorney General's Regulations, 940 CMR 29.00–29.11;

3) the Attorney General's Open Meeting Law Guide, explaining the Open Meeting Law and its application; and

4) if applicable, a copy of each Open Meeting Law determination issued by the Attorney General within the last five (5) years to the public body of which I am a member and in which the Attorney General found a violation of the Open Meeting Law.

I have read and understand the requirements of the Open Meeting Law and the consequences of violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes to the Open Meeting Law during my term of office.

_____
(Name)

_____
(Name of Public Body)

_____
(Date)

Pursuant to G.L. c. 30A, § 20(h), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

Mackenzie Nekton

From: Bottorf, Augustine (SEC)
Sent: Friday, April 23, 2021 9:56 AM
To: sdorai@maldenps.org; [redacted]
Cc: SEC-DL-PREWEB
Subject: Determination SPR21-0491
Attachments: spr210491 recon.pdf

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

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

ATTACHMENT NO. 76

Attachment to Email:
Public Records Division – Reconsideration Determination SPR21/0491
April 23, 2021

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. 75)

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Mackenzie Nekton

From: Chan, Benjamin (SEC)
Sent: Friday, April 23, 2021 9:57 AM
To: sdorai@maldenps.org; Felicia S. Vasudevan; Kathryn M. Fallon (kfallon@CITYOFMALDEN.ORG)
Cc: [redacted]; SEC-DL-PREWEB
Subject: Public Records Division - Reconsideration Determination SPR21/0491
Attachments: spr210491 recon.pdf

Good Morning,

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

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

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

ATTACHMENT NO. 78

Attachment to Email:
SPR21/0491 Determination
April 23, 2021

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. 77)

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Mackenzie Nekton

From: Bruce Friedman [redacted] >
Sent: Monday, April 26, 2021 4:24 PM
To: Arthur, Manza (SEC); Foley, Lauren (SEC); Puccini, Angela (SEC); SEC-DL-PREWEB
Cc: Dorai, Shirley; Oteri, John; Greg Lucey; Kathryn M. Fallon; Felicia S. Vasudevan
Subject: RE SPR 21/1043 AND SPR 21/1042

Importance: High

Good Afternoon:

1. Search Time. The time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record.
2. Segregation Time. The time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. Segregation time shall not include time expended to review record for accuracy and correct errors.
3. Redact. To delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material.
4. An RAO may not recover fees associated with record organization.
5. There are 602 emails identified in SPR 21/1043. There are 1785 emails identified in SPR 21/1042. No further search is required in either request/appeal.
6. The City/RAO/District has clearly identified 1 minute per email for segregation and 1 minute per email for redaction where necessary.

Please feel free to reach to me if you have any questions or concerns.

Kindest Regards,

- Bruce

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Date: Monday, April 26, 2021 at 2:28 PM
To: Arthur, Manza (SEC) <marthur.arthur2@state.ma.us>, Foley, Lauren (SEC) <lauren.foley2@state.ma.us>
Cc: Dorai, Shirley <sdorai@maldenps.org>, Oteri, John <joteri@maldenps.org>, Greg Lucey <glucey@CITYOFMALDEN.ORG>, Kathryn M. Fallon <kfallon@cityofmalden.org>, Bruce Friedman <[redacted]
Subject: SPR21-1043, 1043

Dear Attorney Foley and Manza:

I am writing to both of you relative to these two appeals as they are essentially the same request, although the time requested differs for both of them. In the Supervisor's decision, in SPR21-718, you wrote: "Specifically, it is unclear why it will take the School '62.5 hours to search the records.' Further, where the School has indicated the responsive records are emails, it is unclear why '[s]earch time includes the time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record.; The School must clarify these matters."

In SPR21-838, the Supervisor said: "Based on the School's response, it is unclear why the School requires 20 minutes to review 10 emails to determine if they are responsive to the request. Particularly, it is not certain how many of the email samples have multiple items in the email chain to require 20 minutes of review. The School must clarify this issue."

Although in SPR21-718,Malden was just quoting the legal definition of search, in its revised response, it addressed feedback from both these letters. It explained that while it could do a computer search to narrow down the field, the computer search could not in of itself identify all responsive records. As a result, each email/email chain from the narrowed search will need to be reviewed to determine whether it fits within the request, which is the definition of search. Malden gave the time it took for each of the ten emails in the sample and the length of the longer emails to explain the estimate. There is no further detail that Malden can provide. It has carried its burden to demonstrate its fee estimate. The Supervisor has already ruled that Malden can charge. Mr. Friedman is not entitled to the relief requested.

In terms of the refund that Malden has, Mr. Friedman never stated before that he wanted it applied to this estimate. If he would like to do so, Malden is happy to do so and he can pay the difference between the estimates and the refund.

Felicia

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: Wednesday, May 5, 2021 5:36 PM
To: Arthur, Manza (SEC); Foley, Lauren (SEC); SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Dorai, Shirley; Oteri, John; Greg Lucey; Kathryn M. Fallon; Felicia S. Vasudevan; kanderson@cityofmalden.org
Subject: New relevant evidence in re: SPR 21/1042 and SPR 21/1043
Attachments: 2021-0194 fee-time petition[31].docx

Importance: High

Greetings:

On the eve of the decision date for both SPR 21/1042 and SPR 21/1043, I would like to introduce additional relevant evidence to further indicate the review/redaction times as estimated by the Director of IT for the entire City of Malden, including the Malden Public Schools. If you refer to SPR 21/1143 (Attached hereto as 2021-0194 fee-time petition) where the City of Malden's interim Super RAO, Ms. Karen Anderson states "The average time required to ***review and redact*** an email was 25 seconds". Conversely this request, and appeals in the instant case here the City/RAO/District is asking for multiple minutes per email. The difference is significant in terms of hours of time required and dollars requested under fees. Clearly the Director of IT for the entire City of Malden has been identified by the City/Super RAO as an expert in reviewing and redacting emails has estimated the 25 seconds per email.

Please feel free to contact me for any reason relating to these appeals.

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.

City of Malden
Massachusetts

Karen Anderson,
kanderson@cityofmalden.org
www.cityofmalden.org

City Clerk's Office
215 Pleasant Street, Second Floor
Malden, Massachusetts 02148

Phone 781-397-7000
Ext. 2116

May 4, 2021

By E-mail:
Supervisor of Records
Email: pre@sec.state.ma.us

FEE AND TIME PETITION

Re: Public Records Request, dated April 22, 2021/2021-0194

Dear Supervisor of Records:

We have received a request submitted by Open Malden on April 22, 2021 ('the request"). Specifically, it requests the following: "For the dates January 1, 2021 through the date you provide a response, please provide all electronic documents regarding Anthony Rodrigues including but not limited to email sent to and sent from the email account arodrigues@CITYOFMALDEN.ORG, text messages, voice mail messages. This request includes specifically but is not limited to all electronic mail, text messages and documentation related to Mr. Rodrigues."

We are requesting clarification on what is meant by "all electronic documents regarding Anthony Rodrigues" Pending receipt of clarification, we are attempting to respond to that portion of the request that relates to e-mails sent to and sent from the email account arodrigues@cityofmalden.org. from January 1, 2021 to present.

In relation to the request for Mr. Rodrigues' emails, the City has determined that approximately 7,000 emails are responsive to this request. The City hereby requests that it be allowed to charge $25 per hour for the time that it may take to segregate and redact these records. The City also requests that the time for response to the request be extended to 30 business days.

The City's request should be granted for the following reasons.

FEE PETITION
Mr. Rodrigues is the Information Technology Director for the City of Malden.

To comply with the request, Malden will need to redact the records as some of the emails contain cybersecurity and/or public safety information, exempt under MGL C.4, s. 7, cl. 26(n), publication of which would threaten the integrity of the city's electronic recordkeeping systems,

potentially allow unauthorized alteration of records, disrupt systems used by public safety, emergency management and first responders, or expose employees and residents to the disclosure of personal information, exempt under MGL C.4, s. 7, cl 26(c). The importance of city's interest in preventing a potential breach of network systems and/or unauthorized access to systems and records cannot be overstated.

Additionally, these emails require redactions in accordance with the exemption set forth in MGL C. 4, s. 7, cl. 26 (c) as it relates to Mr. Rodrigues, himself, and his staff. This would include information that relates to performance or complaints, and personal information, which outweighs public interest in access to records, as it would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner.

To develop an estimate for the cost of responding to the request, a sample set of 20 records was taken. Of the sample set, four records contained material exempt under cl. 26(n) (cyber security) and three contained information exempt under cl. 26(c) (personal information). The average time required to review and redact an email was 25 seconds. Based on this average, review of approximately 7,000 e-mails is expected to take 48.6 hours. The hourly rate of the lowest paid employee capable of conducting this review exceeds $25.00/hour. In accordance with 950 CMR 37.02(2)(m)(1) Open Malden will not be charged for the first two (2) hours of those services. 46.6 hours multiplied by $25 per hour yields a fee estimate of $1165.00.

TIME PETITION
As described above, the city estimates that 48.6 hours will be required to provide Open Malden with the requested records.

Mr. Rodrigues is the only employee capable of conducting a review of these records because he is both the only employee privy to the information contained in the records requiring redaction and the only employee with the requisite knowledge to identify exempt materials.

As a full time employee, Mr. Rodrigues works 35 hours per week, or 70 hours in ten business days. If, over the course of 10 business days or 70 work-hours, Mr. Rodrigues were required to devote 46.6 hours to responding to the request, only 21.4 hours in 10 days (or, on average, 2.1 hours per day) would be left to address the myriad important tasks assigned to him as Information Technology Director.

The city believes that the magnitude of this request unduly burdens the other responsibilities of the Information Technology Department and would adversely impact multiple functions, including public safety, emergency management and systems used by first responders who depend on Information Technology services to function.

In accordance with the requirements of law, a copy of this petition has been provided to Open Malden.

Sincerely,
Karen Anderson
City Clerk's Office

Cc: Greg Lucey (glucey@cityofmalden.org)
Open Malden (info@openmalden.com)

City of Malden
Massachusetts

Karen Anderson,
kanderson@cityofmalden.org
www.cityofmalden.org

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Malden, Massachusetts 02148

Phone 781-397-7000
Ext. 2116

May 4, 2021

By E-mail:
Supervisor of Records
Email: pre@sec.state.ma.us

FEE AND TIME PETITION

Re: Public Records Request, dated April 22, 2021/2021-0194

Dear Supervisor of Records:

We have received a request submitted by Open Malden on April 22, 2021 ('the request"). Specifically, it requests the following: "For the dates January 1, 2021 through the date you provide a response, please provide all electronic documents regarding Anthony Rodrigues including but not limited to email sent to and sent from the email account arodrigues@CITYOFMALDEN.ORG, text messages, voice mail messages. This request includes specifically but is not limited to all electronic mail, text messages and documentation related to Mr. Rodrigues."

We are requesting clarification on what is meant by "all electronic documents regarding Anthony Rodrigues" Pending receipt of clarification, we are attempting to respond to that portion of the request that relates to e-mails sent to and sent from the email account arodrigues@cityofmalden.org. from January 1, 2021 to present.

In relation to the request for Mr. Rodrigues' emails, the City has determined that approximately 7,000 emails are responsive to this request. The City hereby requests that it be allowed to charge $25 per hour for the time that it may take to segregate and redact these records. The City also requests that the time for response to the request be extended to 30 business days.

The City's request should be granted for the following reasons.

FEE PETITION
Mr. Rodrigues is the Information Technology Director for the City of Malden.

To comply with the request, Malden will need to redact the records as some of the emails contain cybersecurity and/or public safety information, exempt under MGL C.4, s. 7, cl. 26(n), publication of which would threaten the integrity of the city's electronic recordkeeping systems,

potentially allow unauthorized alteration of records, disrupt systems used by public safety, emergency management and first responders, or expose employees and residents to the disclosure of personal information, exempt under MGL C.4, s. 7, cl 26(c). The importance of city's interest in preventing a potential breach of network systems and/or unauthorized access to systems and records cannot be overstated.

Additionally, these emails require redactions in accordance with the exemption set forth in MGL C. 4, s. 7, cl. 26 (c) as it relates to Mr. Rodrigues, himself, and his staff. This would include information that relates to performance or complaints, and personal information, which outweighs public interest in access to records, as it would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner.

To develop an estimate for the cost of responding to the request, a sample set of 20 records was taken. Of the sample set, four records contained material exempt under cl. 26(n) (cyber security) and three contained information exempt under cl. 26(c) (personal information). The average time required to review and redact an email was 25 seconds. Based on this average, review of approximately 7,000 e-mails is expected to take 48.6 hours. The hourly rate of the lowest paid employee capable of conducting this review exceeds $25.00/hour. In accordance with 950 CMR 37.02(2)(m)(1) Open Malden will not be charged for the first two (2) hours of those services. 46.6 hours multiplied by $25 per hour yields a fee estimate of $1165.00.

TIME PETITION
As described above, the city estimates that 48.6 hours will be required to provide Open Malden with the requested records.

Mr. Rodrigues is the only employee capable of conducting a review of these records because he is both the only employee privy to the information contained in the records requiring redaction and the only employee with the requisite knowledge to identify exempt materials.

As a full time employee, Mr. Rodrigues works 35 hours per week, or 70 hours in ten business days. If, over the course of 10 business days or 70 work-hours, Mr. Rodrigues were required to devote 46.6 hours to responding to the request, only 21.4 hours in 10 days (or, on average, 2.1 hours per day) would be left to address the myriad important tasks assigned to him as Information Technology Director.

The city believes that the magnitude of this request unduly burdens the other responsibilities of the Information Technology Department and would adversely impact multiple functions, including public safety, emergency management and systems used by first responders who depend on Information Technology services to function.

In accordance with the requirements of law, a copy of this petition has been provided to Open Malden.

Sincerely,
Karen Anderson
City Clerk's Office

Cc: Greg Lucey (glucey@cityofmalden.org)
Open Malden (info@openmalden.com)

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 7, 2021
SPR21/1043

Shirley Dorai
Malden Public Schools
110 Pleasant Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the Malden Public Schools (School/Malden) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 11, 2021, Bruce Friedman requested emails from identified individuals "[f]or the time period January 1, 2020 through the date you respond with the responsive documents."

Previous petition and appeal

This request was the subject of a previous fee petition and subsequent appeal. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021) and SPR21/0838 Determination of the Supervisor of Records (April 15, 2021). In my April 15th determination, I directed the School to clarify why it requires 20 minutes to review 10 emails to determine their responsiveness. Accordingly, I ordered the School to provide Mr. Friedman with a response. Subsequently, the School provided a response on April 20, 2021. Unsatisfied with the response, Mr. Friedman petitioned this office and this appeal, SPR21/1043, was opened as a result.

Fee estimate – municipalities

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

Municipalities may not assess a fee for the first (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 of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The School's April 20th response

In its April 20, 2021 response, the School reiterates that its search generated a total of 602 email records, and "[e]ach email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C)." Further, the School explains, "[s]earch time includes the time needed to locate and identify a public record. Although Malden could narrow down the email search, by conducting a search with each school committee member in the 'from,' line and at least one school committee member in the 'to,' line, these records are not completely responsive to your request for emails where there is more than a majority of the school committee members present on the email. As a result, each email must be reviewed to determine whether it is responsive. Malden has no way to automate the search." The School explains that because of this reviewing process, it pulled a sample of 10 emails which required 20 minutes to review as some had multiple emails in a chain. The School indicates, "[s]pecifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes[.]"

The School explains, "Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records." The School also states that "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour. . . . Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour." As a result, the School ". . . estimates a total of 22.1 hours. In

accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50."

In its response, the School suggests that Mr. Friedman ". . . could potentially reduce this estimate if [he] provided a specific person for the 'to' and 'from,' boxes of the email search." In light of the School's response, I encourage Mr. Friedman and the School to communicate in order to facilitate producing records efficiently and affordably. Mr. Friedman may wish to narrow the parameters or include applicable time periods or factors to enable the search to be processed. G. L. c. 66, § l0(a)(i). The School must use its knowledge of the records to facilitate providing any responsive records. G. L. c. 66, § l0(a)(vii) (an agency or municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably). Please be advised the School received approval to charge for segregation and redaction, to the extent the responsive records contain the exempt information. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021).

Conclusion

Accordingly, I will consider this administrative appeal closed. If issues remain after further communication, Mr. Friedman may file an appeal.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia Vasudevan, Esq.

Mackenzie Nekton

From: Robertson, Jack (SEC)
Sent: Friday, May 7, 2021 12:41 PM
To: Dorai, Shirley; fvasudevan@mhtl.com
Cc: SEC-DL-PREWEB; Bruce Friedman
Subject: SPR21/1043 Determination
Attachments: spr211043.pdf

Good Afternoon,

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

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

Thank you,

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. 84

Attachment to Email:
SPR21/1491 Reconsideration
May 7, 2021

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. 83)

,

Mackenzie Nekton

From: Felicia S. Vasudevan <fvasudevan@mhtl.com>
Sent: Friday, May 7, 2021 4:32 PM
To: SEC-DL-PREWEB
Cc: John Oteri; Dorai, Shirley; Bruce Friedman; Kevin S. Freytag; Kathryn M. Fallon; Gary J. Christenson; Greg Lucey; jmcnaught@cityofmalden.org; mrumley@cityofmalden.org
Subject: Request for Reconsideration in SPR21-491 and Time Petition
Attachments: SIGNED 05-07-21 Request for Additional Time.PDF

Dear Supervisor:

Please find attached Request for Reconsideration and Time Petition in the above matter. Please let me know if you have any questions.

Felicia

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

Felicia Vasudevan
fvasudevan@mhtl.com

May 7, 2021

VIA FIRST CLASS MAIL
AND E- MAIL

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

RE: ***Public Records Request September 24, 2020***
Request for Reconsideration and Extension of Time

Dear Supervisor of Records:

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

Mr. Friedman seeks the following records in the Request:

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

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

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

Request for Reconsideration of SPR21-491

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

1. Malden's Response to the Request was Timely

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Request is Intended to Harass Malden

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

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

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

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

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

Time Petition

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

Massachusetts General Law, Chapter 66, Section 10(c) states that "[u]pon a showing of good cause, the supervisor of records may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days." It continues that:

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

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

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

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

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

Finally, Malden states that the Supervisor of Records must determine that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity as outlined earlier.

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

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

Respectfully,

Felicia Vasudevan

Felicia Vasudevan

cc: Bruce Friedman
John Oteri, Superintendent

Mackenzie Nekton

From: Bruce Friedman <[redacted]>
Sent: Tuesday, May 11, 2021 12:18 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Greg Lucey; sdorai@maldenps.org; Kathryn M. Fallon; kanderson@cityofmalden.org; sdorai@maldenps.org
Subject: FW: SPR21/1043 Determination
Attachments: spr211043.pdf; SPR 1043 Payment.pdf

Importance: High

Greetings:

Be it known, that today, May 11, 2021 I personally conveyed a check in the amount of $502.50 and hand delivered same to the Malden Public Schools @ 77 Salem Street, Malden, MA. 02148. Steve at the front security desk took the package and indicated that Ms. Dorai would have the package before the end of the day.

I will be expecting the documents to be released ASAP.

Kindest Regards,

- Bruce Friedman

From: Robertson, Jack (SEC) <jack.robertson@state.ma.us>
Date: Friday, May 7, 2021 at 12:41 PM
To: Dorai, Shirley <sdorai@maldenps.org>, fvasudevan@mhtl.com <fvasudevan@mhtl.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman[redacted]
Subject: SPR21/1043 Determination

Good Afternoon,

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

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

Thank you,

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

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[redacted]

Fidelity®Cash Management Account

[redacted]

Pay to the Order of Malden Public Schools

5/11/21 Date

$ 502.50

Five hundred Two dollars $ 50/100 Dollars

Photo Safe Deposit® Details on back

Fidelity INVESTMENTS UMB Bank, N.A. Kansas City, MO

For Estimate 2021-0107

[redacted]

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the

Request Documents

No Documents

Response Details

Response

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 7, 2021
SPR21/1043

Shirley Dorai
Malden Public Schools
110 Pleasant Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the Malden Public Schools (School/Malden) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 11, 2021, Bruce Friedman requested emails from identified individuals "[f]or the time period January 1, 2020 through the date you respond with the responsive documents."

Previous petition and appeal

This request was the subject of a previous fee petition and subsequent appeal. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021) and SPR21/0838 Determination of the Supervisor of Records (April 15, 2021). In my April 15th determination, I directed the School to clarify why it requires 20 minutes to review 10 emails to determine their responsiveness. Accordingly, I ordered the School to provide Mr. Friedman with a response. Subsequently, the School provided a response on April 20, 2021. Unsatisfied with the response, Mr. Friedman petitioned this office and this appeal, SPR21/1043, was opened as a result.

Fee estimate – municipalities

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

Municipalities may not assess a fee for the first (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 of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The School's April 20th response

In its April 20, 2021 response, the School reiterates that its search generated a total of 602 email records, and "[e]ach email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C)." Further, the School explains, "[s]earch time includes the time needed to locate and identify a public record. Although Malden could narrow down the email search, by conducting a search with each school committee member in the 'from,' line and at least one school committee member in the 'to,' line, these records are not completely responsive to your request for emails where there is more than a majority of the school committee members present on the email. As a result, each email must be reviewed to determine whether it is responsive. Malden has no way to automate the search." The School explains that because of this reviewing process, it pulled a sample of 10 emails which required 20 minutes to review as some had multiple emails in a chain. The School indicates, "[s]pecifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes[.]"

The School explains, "Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records." The School also states that "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour. . . . Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour." As a result, the School ". . . estimates a total of 22.1 hours. In

accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50."

In its response, the School suggests that Mr. Friedman ". . . could potentially reduce this estimate if [he] provided a specific person for the 'to' and 'from,' boxes of the email search." In light of the School's response, I encourage Mr. Friedman and the School to communicate in order to facilitate producing records efficiently and affordably. Mr. Friedman may wish to narrow the parameters or include applicable time periods or factors to enable the search to be processed. G. L. c. 66, § l0(a)(i). The School must use its knowledge of the records to facilitate providing any responsive records. G. L. c. 66, § l0(a)(vii) (an agency or municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably). Please be advised the School received approval to charge for segregation and redaction, to the extent the responsive records contain the exempt information. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021).

Conclusion

Accordingly, I will consider this administrative appeal closed. If issues remain after further communication, Mr. Friedman may file an appeal.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia Vasudevan, Esq.

Mackenzie Nekton

From: Dorai, Shirley <sdorai@maldenps.org>
Sent: Wednesday, May 12, 2021 3:56 PM
To: SEC-DL-PREWEB
Cc: Greg Lucey; Karen Anderson; Bruce Friedman; Malden Transparency; Felicia S. Vasudevan
Subject: Petition for Extension of Time to Respond
Attachments: FOIA Request 2021-0067, 0107 and 207 Time Petition.pdf

Dear Supervisor Murray,

Please see the attached petition. 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

May 12, 2021

VIA EMAIL ONLY
pre@sec.state.ma.us
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
ATTN: Rebecca Murray, Supervisor of Records

RE: Petition for Extension of Time to Respond

Dear Supervisor Murray:

This is a petition on behalf of Malden concerning the three record requests, detailed below, from Mr. Friedman/OpenMalden, received on February 25, 2021, March 11, 2021 and April 26, 2021 respectively.

Specifically, there were the following requests:

1) FOIA Request 2021-0067 dated 2/25/2021 - Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.

2) FOIA Request 2021-0107 dated 3/11/2021 - Please provide all emails where five or more of the following people at any Malden Public Schools email address: Gary Christenson, Michael Drummey, Robert S. McCarthy Jr., Jennifer M. Spadafora, Leonard Iovino, Adam Weldai, Joseph Gray, Michelle Luong, John Froio appear in one or more of the of the following email fields;
From:
To:
Cc:

Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.

3) FOIA Request: 2021-0207 dated 4/26/2021 - Request Detail: Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
And where the Business Manager, Toni Mertz is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. Thisrequest specifically seeks the email header information, all fields of the email, the body of the email, This request specifically seeks the email header information, allfields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format. Please provide the responsive documents electronically to the email address info@openmalden.com.

The first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost.

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

Malden has estimated that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing.

Malden hereby petitions for an extension of time to respond to Mr. Friedman's/Open Malden's public records requests. Given that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension. Pursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt payment for the work, to response to these requests. Malden's demonstration of good cause is based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents in immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce.

Responding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time.

Thank you for your consideration of this Petition. Please do not hesitate to contact me with any questions or to discuss further.

Sincerely,
Shirley Dorai
School Department

cc: Greg Lucey, Records Access Officer, City of Malden
Karen Anderson, Records Access Officer, City of Malden
Bruce Friedman/Open Malden, Requestor
Felicia Vasudevan, Attorney for Malden

Mackenzie Nekton

From: Bruce Friedman [redacted]
Sent: Thursday, May 13, 2021 5:36 PM
To: SEC-DL-PREWEB; Puccini, Angela M (SEC)
Cc: Kathryn M. Fallon; kanderson@cityofmalden.org; sdorai@maldenps.org; Greg Lucey; Felicia S. Vasudevan
Subject: In re: Request for reconsideration of Determination SPR21/0491
Attachments: spr210491 recon.pdf; 21-0836 File[82].pdf; SPR21-0855[42].pdf; spr210855 spr210856[65].pdf; spr210836 spr210837[50].pdf

Importance: High

Greetings:

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

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

1. The City comes with unclean hands.

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

SPR Number	Original Filing Date	Determination Date	Due Date by D
SPR20/2372 –	Friday, November 6, 2020	Tuesday, December 15, 2020	Wednesda
SPR20/2373 –	Friday, November 6, 2020	Tuesday, December 15, 2020	Wednesda
SPR20/2455 –	Thursday, October 22, 2020	Tuesday, December 22, 2020	Thu
SPR21/0004 –	Wednesday, October 21, 2020	Tuesday, January 19, 2021	Tues
SPR21/0021 –	Friday, December 11, 2020	Wednesday, January 20, 2021	Wednes
SPR21/0628 –	Thursday, February 25, 2021	Monday, March 29, 2021	M
SPR21/0649 –	Thursday, February 25, 2021	Wednesday, March 31, 2021	Wed
SPR21/0667 –	Tuesday, March 2, 2021	Wednesday, March 31, 2021	Wed
SPR21/0825 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0827 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0828 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0829 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0830 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0831 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0832 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0833 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0834 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0835 –	Thursday, March 11, 2021	Wednesday, April 14, 2021	Th
SPR21/0836 –	Friday, March 12, 2021	Wednesday, April 14, 2021	Th
SPR21/0837 –	Friday, March 12, 2021	Wednesday, April 14, 2021	Th

SPR21/0853 –	Thursday, March 18, 2021	Tuesday, April 20, 2021	
SPR21/0855 –	Thursday, March 18, 2021	Tuesday, April 20, 2021	
SPR21/0856 –	Thursday, March 18, 2021	Tuesday, April 20, 2021	
SPR21/0879 –	Sunday, March 21, 2021	Tuesday, April 20, 2021	
SPR21/0880 –	Sunday, March 21, 2021	Tuesday, April 20, 2021	
SPR21/0881 –	Sunday, March 21, 2021	Tuesday, April 20, 2021	
SPR21/0912 –	Wednesday, March 24, 2021	Friday, April 23, 2021	
SPR21/0941 –	Sunday, March 28, 2021	Tuesday, April 27, 2021	T
SPR21/0973 –	Wednesday, January 6, 2021	Wednesday, March 3, 2021	Thu
SPR21/1018 –	Wednesday, April 21, 2021	Friday, April 23, 2021	

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

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

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

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

AND

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

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

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

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

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

Kindest Regards,

- Bruce Friedman

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

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

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

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The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 1, 2021
SPR21/0836

Bruce Friedman
[redacted]
Malden, MA [redacted]

Dear Bruce Friedman:

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

I have directed a member of my staff, Attorney Lauren Foley, 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: Gregory Lucey

From: Bruce Friedman
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Greg Lucey; Kathryn M. Fallon; Gary J. Christenson
Subject: Request for Appeal Malden #2021-0109 A.K.A. SPR 21/0799
Date: Wednesday, March 31, 2021 8:29:32 PM
Attachments: 3-30-31FriedmanPRRResponses_03312021092246[29].docx
2021-0109 request.pdf
SPR21-0799.pdf
Exhibit 1 2021-0109.pdf
Exhibit 1 2021-0109 Attachment.pdf
Exhibit 2 2021-0109.pdf
Exhibit 3 2021-0109.pdf
Exhibit 4 2021-0109.pdf
Exhibit 5 2021-0109.pdf
Exhibit 6 2021-0109.pdf
Exhibit 6 Attachment 1 2021-0109.pdf
Exhibit 6 attachment 2 2021-0109.pdf
Exhibit 6 attachment 3 2021-0109.pdf
Importance: High

Greetings:

On Friday, March 12 the City of Malden was served the following (attached) verbatim request through their official FOIA web portal: ” Please provide all documents of city business conducted by any employee of the City Clerk’s
Office on the following dates:
Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020
Friday, September 25, 2020
Friday, October 2, 2020
Friday, October 9, 2020
Friday, October 16, 2020
Friday, October 23, 2020
Friday, October 30, 2020
Friday, November 6, 2020
Friday, November 13, 2020
Friday, November 20, 2020
Friday, November 27, 2020
Friday, December 4, 2020
Friday, December 11, 2020
Friday, December 18, 2020
Friday, December 25, 2020
Friday, January 1, 2021
Friday, January 8, 2021
Friday, January 15, 2021
Friday, January 22, 2021
Friday, January 29, 2021
Friday, February 5, 2021

Friday, February 12, 2021
Friday, February 19, 2021
Friday, February 26, 2021
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021
Friday, March 26, 2021
This request specifically seeks electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

Today, the City provided a "response" (attached and below):

There are significant issues with this "response". The issues are bulleted below:

- The "response" to this specific request is a single consolidated response document without attachments covering ***FIFTEEN*** (15) separate FOIA requests and their appellate peers, all of which were filed for lack of timely response. Your office issued fifteen separate appeals, and in each one, ordered that the City respond within 10 business days. I have read and re-read this document it is confusing at best and perhaps better defined as anarchic. There is nothing proper or conforming about this response.
- In the middle of the "response" the following verbatim text can be found regarding request 2021-0109:"There are no documents responsive to your request."
- This requestor is in possession of several emails from members of the City Clerk's office which were generated and sent on one of the Dates listed above. Some of these emails contain attachments of documents which are work product of one of the dates listed above. A sample of these emails are attached hereto as Exhibits 1-6 with attachments, there are more. It should also be noted that several of the exhibits come directly from the Super RAO, Mr. Greg Lucey himself who is the signor of the "response" document.
- The City is acting in bad faith, by failing to disclose responsive records it its possession and control.
- The response was not timely made; The City/RAO had until the COB Thursday, March 25, 2021 to respond per G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c). The City failed to respond timely; See below:

Date	Day Tolled
Friday, March 12, 2021	
Saturday, March 13, 2021	
Sunday, March 14, 2021	
Monday, March 15, 2021	1

Tuesday, March 16, 2021	2
Wednesday, March 17, 2021	3
Thursday, March 18, 2021	4
Friday, March 19, 2021	5
Saturday, March 20, 2021	
Sunday, March 21, 2021	
Monday, March 22, 2021	6
Tuesday, March 23, 2021	7
Wednesday, March 24, 2021	8
Thursday, March 25, 2021	9
Friday, March 26, 2021	10
Saturday, March 27, 2021	
Sunday, March 28, 2021	
Monday, March 29, 2021	11
Tuesday, March 30, 2021	12
Wednesday, March 31, 2021	13

My attempt to obtain basic electronic documentation has been fraught with time consuming impediments. The City of Malden's process has required multiple requests for the same basic electronic documentation. This has led to numerous appeals requiring time-consuming resource commitments of the City of Malden, the Supervisor of Records and the requestor. This is wasteful of taxpayer resources and reduces transparency. It is unclear if these procedural delays are introduced by the City of Malden intentionally, in order to withhold information, or as a result of city-wide incompetence and/or lack of skills.

Because the trust in our government and elected officials is undermined in a significant way as a result of the history with FOIA requests and the City of Malden as a whole, I am hereby respectfully asking the Supervisor of Records to make an inquiry as to whether City of Malden email records are being intentionally withheld or slow-walked and assess whether public officials are:

1. knowingly or unknowingly withholding, deleting or destroying electronic records improperly;
2. failing to adhere to Massachusetts municipal records retention regulations of electronic records;
3. concealing, withholding, or hiding public records related to alleged violations of law, specifically open meeting law complaints;
4. improperly using private email addresses in the course of important public business, for example the following address: kathryn@attorneyfallon.com

I am asking that the Supervisor of Records for the Commonwealth issue an order to the City of Malden to ***re-search*** the entirety of the City Clerk's electronic documents including email, and release responsive records without fees, without redaction, and without any further delay.

Kindest Regards,

· Bruce Friedman

From: foiadirect@townforms.com <foiadirect@townforms.com>
Date: Wednesday, March 31, 2021 at 9:42 AM
To: [redacted]
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, glucey@cityofmalden.org <glucey@cityofmalden.org>, GChristenson@cityofmalden.org <GChristenson@cityofmalden.org>, glucey@cityofmalden.org <glucey@cityofmalden.org>
Subject: Request# 2021-0097 : Response to your Request

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:2021-0097
Requester: **Bruce Friedman**
Request Date: **Monday, March 15, 2021 8:30:00 AM**
Response Due Date: **Wednesday, March 31, 2021**

Dear Bruce Friedman:

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

Request Response

Mr. Friedman,

Please find attachments and an estimated fee in response to your public records requests 2021-0014, 2021-0113, 2021-0112, 2021-0111, 2021-0110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098 and

021-0097.

Please be advised that if you object to this response, you have the right to petition the Commonwealth of Massachusetts Supervisor of Public Records. Your written appeal petition must be made within 90 calendar days of the date of this response, and must specify the nature of your objections to this response, and include a copy of your electronic request with all header information including the time, date, subject, sender and recipient email address, and a copy of this written response, and sent to the following address:

Supervisor of Records Division of Public Records

Office of the Secretary of the Commonwealth

One Ashburton Place, Room 1719

Boston, MA 02108

or; pre@sec.state.ma.us

Electronic communication is strongly encouraged and is the preferred method of correspondence.

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.

3/31/21

Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests submitted Friday, 3/12/21 and received Monday, 3/15/21- 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

Dear Mr. Friedman:

In response to the above-referenced public records requests, submitted by you on Friday, 3/12/21, received on Monday, 3/15/21 please consider this as the City of Malden's formal written response. As you are aware, City offices have been and remain temporarily closed on Fridays, on an emergency basis, due to the State of Emergency declared by the Mayor in the City of Malden, and by the Governor in the Commonwealth of Massachusetts, as a result of the COVID19 pandemic. The City RAO and City staff are not present on Fridays due to the necessity for deep cleaning and sanitizing of City offices for safety of employees working during Monday through Thursday, and others visiting City offices during Monday through Friday. Due to the emergency closure on Fridays, the RAO as well as various Departments do not have access or ability to respond or work on responses on Fridays to your multiple public records requests.

2021-0114: seeking: "Please provide evidence of any disbursements made directly to or on the behalf or for the benefit of the following people for the time frame January 1, 2017 through the date you respond:
Michael Drummey
Robert S. McCarthy Jr.
Jennifer M. Spadafora
Leonard Iovino
Adam Weldai
Joseph Gray
Michelle Luong
John Froio
This request specifically seeks electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. If the responsive documents regularly maintained in a non-electronic format, please provide information identifying the document, the length of the document and the cost to digitize or reproduce the document."

Attached is the response that has been previously sent.

2021-0113: seeking:
Please provide all documentation regarding any and or all School Committee Members from January 1, 2017 through the date you answer this request where any of the following occur:

- Physical equipment is issued to the Committee Member
- Instruction is issued to the Committee Member, which requires the acknowledgement of the Committee Member
- Training information for FOIA, Open Meetings Law, or any other open government initiative
- Policies regarding use of electronic mail
- Policies regarding electronic communications
- Policies regarding social media
- Policies regarding instant messaging
- Policies regarding records retention
- Reimbursements are made to the Committee Member for cell phone usage

Attached is the response that has been previously sent.

2021-0112: seeking:
Please provide evidence of any disbursements made directly to or on the behalf or for the benefit of the following people for the time frame January 1, 2017 through the date you respond:

Gary Christensen
Kathryn Fallon
Neal Anderson
Peg Crowe
Paul Condon
Amanda Linehan
Ryan O'Malley
Barbara Murphy
David Camell
Jadeane Sica
Debbie DeMaria
Craig Spadafora
Stephen Winslow

Response has already been sent (attached).

3/31/21
Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0111: seeking: "Please provide all documentation regarding any and or all City Council Members from January 1, 2017 through the date you answer this request where any of the following occur:
Physical equipment is issued to the Councilperson
Instruction is issued to the Councilperson, which requires the acknowledgement of the Councilperson
Training information for FOIA, Open Meetings Law, or any other open government initiative
Policies regarding use of electronic mail
Policies regarding electronic communications
Policies regarding social media
Policies regarding instant messaging
Policies regarding records retention
Reimbursements are made to the Councilperson for cell phone usage
This request specifically seeks electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored."

As to each separate request contained:

Physical equipment is issued to the Councilperson
No documents exist responsive to your request.

Instruction is issued to the Councilperson, which requires the acknowledgement of the Councilperson
No documents exist responsive to your request.

Training information for FOIA, Open Meetings Law, or any other open government initiative
All elected officials are required to sign for Open Meeting Law Materials. See documents that have been responded to in Public Records Request 2021-0113.

Policies regarding use of electronic mail
Page 6 & 7 of the Malden Employee Handbook (attached0

Policies regarding electronic communications
Page 6 & 7 of the Malden Employee Handbook (attached)

Policies regarding social media
No documents exist responsive to your request.

Policies regarding instant messaging
No documents exist responsive to your request.

Policies regarding records retention
The city follows the Secretary of State's guidelines for the retention of records.
http://www.sec.state.ma.us

Reimbursements are made to the Councilperson for cell phone usage
No documents exist responsive to your request.

3/31/21
Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0110: seeking: "any and all email addresses used by the following people that traversed the City's electronic mail system from January 1, 2017 through the date you respond to this request: Gary Christensen, Kathryn Fallon, Neal Anderson, Peg Crowe, Paul Condon, Amanda Linehan, Ryan O'Malley, Barbara Murphy, David Camell, Jadeane Sica, Debbie DeMaria, Craig Spadafora, Stephen Winslow. This request specifically seeks electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored."

There are no public records responsive to your request. To the extent public records exist relating to your request, the emails used by the individuals identified can be an be found on the City of Malden website, found at https://www.cityofmalden.org , with specific emails in the "Government" and "Elected Officials" sections.

2021-0109: seeking: "Please provide all documents of city business conducted by any employee of the City Clerk's
Office on the following dates:
Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020

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

3/31/21
Mr. Bruce Friedman
Via email delivery [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0109: CNTD:
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021
Friday, March 26, 2021
This request specifically seeks electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

There are no documents responsive to your request.

2021-0106: seeking: "Please provide all emails where kfallon@cityofmalden.org and five or more of the following:
pcrowe@cityofmalden.org
nanderson@cityofmalden.org
alinehan@cityofmalden.org
romalley@cityofmalden.org
bmurphy@cityofmalden.org
dcamell@cityofmalden.org

ddemaria@cityofmalden.org
cspadafora@cityofmalden.org
swinslow@cityofmalden.org
jsica@cityofmalden.org
pcondon@cityofmalden.org
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

The estimate of time to respond to this portion of your 3/15/21 public records request totals 8 hours.
A subset of records was reviewed in order to determine the total time necessary to respond to this portion of your 3/15/21 public records request. This estimate of time includes research, review and extraction of any records which may exist and which may be responsive to your request.

3/31/21
Mr. Bruce Friedman
Via email delivery [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0106: CNTD:
Research is required in order to determine if records once extracted are exempt from disclosure based upon Attorney/Client privilege, because this request specifically seeks documentation consisting of Attorney communications which are not public records within the meaning of the law. Review must be conducted by Attorneys on behalf of the City of Malden and therefore the fee estimate is billed at $25.00 per hour. Attorney/client communications are privileged and not public records within the meaning of the law and therefore not subject to disclosure in response to public records requests. Suffolk Construction Co. v. Division of Capital Asset Mgmt., 449 Mass. 444, 449-450 (2007). The Malden Legal Department serves as legal counsel on behalf of the City and therefore communications to and from the Legal Department are privileged and confidential.

2021-0105: seeking: "Please provide all emails where jsica@cityofmalden.org and swinslow@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

2021-0104: seeking: "Please provide all emails where jsica@cityofmalden.org and dcamell@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

3/31/21
Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0103: seeking: "Please provide all emails where jsica@cityofmalden.org and alinehan@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

2021-0102: seeking: "Please provide all emails where jsica@cityofmalden.org and ddemaria@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

2021-0101: seeking: "Please provide all emails where jsica@cityofmalden.org and nanderson@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

3/31/21
Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0100: seeking: "Please provide all emails where jsica@cityofmalden.org and bmurphy@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

2021-0099: seeking: "Please provide all emails where jsica@cityofmalden.org and cspadafora@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format"

2021-0098: seeking: "Please provide all emails where jsica@cityofmalden.org and pcrowe@cityofmalden.org both appear in one or more of the of the following email fields;
From:

To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

3/31/21
Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

2021-0097: seeking: "Please provide all emails where jsica@cityofmalden.org and pcondon@cityofmalden.org both appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2021 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost, or .eml format."

2021-0097, 2021-0098, 2021-0099, 2021-0100, 2021-0101, 2021-0102, 2021-0103, 2021-0104, and 2021-0105, as described above, yields an estimate of 3,513 records.

In response to these records requests, research is required in order to determine if records once extracted are exempt from disclosure based upon Attorney/Client privilege, because these requests may encompass documentation consisting of Attorney communications which are not public records within the meaning of the law. Malden must review every record for possible redaction or segregation of records transmitted between Malden and its attorneys, which are attorney-client privileged and exempt from disclosure, as communications between attorney and client for purposes of legal advice. Suffolk Constr. Co., Inc. v. Div. of Cap. Asset Mgmt., 449 Mass. 444 (2007).

Counsel for Malden must review the records in order to determine whether the same are responsive to your request, or are otherwise exempt from disclosure based upon privacy concerns, or are otherwise exempt from disclosure based on attorney/client privilege, and in which case privilege log must be created, adding additional time to the estimate of hours. Each record compiled must also be reviewed in order to determine if other statutory or regulatory exemptions are applicable, for example, records which are "…specifically or by necessary implication exempted from disclosure by statute" pursuant to MGL c. 4 § 7, Twenty sixth clause (a),

and/or "… materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy", pursuant to MGL c. 4 § 7, Twenty sixth clause (c).

Due to the fact that this request requires more than two hours of time to search, compile, segregate, redact, or remove records, the following fee estimate is provided. The total fee estimate to be charged to provide response to your records request on 3/15/21, including 2021-0097, 2021-0098, 2021-0099, 2021-0100, 2021-0101, 2021-0102, 2021-0103, 2021-0104, 2021-0105, and 2021-0106 totals $775.00.

3/31/21
Mr. Bruce Friedman
Via email delivery - [redacted]
Re: Public Records Requests - 2021-0114, 2021-0113, 2021-0112, 2021-0111, 2021-1110, 2021-0109, 2021-0106, 2021-0105, 2021-0104, 2021-0103, 2021-0102, 2021-0101, 2021-0100, 2021-0099, 2021-0098, and 2021-0097

FEE ESTIMATE DESCRIPTION CNTD:

The estimated time required to process your requests includes five hours required of IT to compile records containing the searches you requested, and twenty-height hours of review by the Legal Department. The fee to be charged is based on the hourly rate of the lowest paid employee with the requisite skill to search, compile, segregate, redact, or reproduce the record in accordance with MGL c. 66 §10(d)(iii), which rate is not to exceed $25. In regard to the aforementioned requests, the lowest paid employee with the requisite skills to complete the tasks described in order to produce the records is paid at an hourly rate in excess of $25. Therefore, a fee of $25/hour has been used to calculate the estimated fee of $775.00, calculated at 33 hours, less the first two hours, for a total of 31 hours x $25/hour.

In addition, please be advised that this is an estimate only, and additional time and fees may be calculated and required, and therefore the actual fee to produce the records may vary based on the actual time required to review the records sought. Review of the records for production will not occur until receipt of payment in the amount of $775.00.

You are advised that you have the right to appeal this response to the Commonwealth of Massachusetts Supervisor of Public Records. Your petition for appeal of this response must be made within 90 calendar days of the date of this response, in writing, and must specify the nature of your objections to this response, and include a copy of your electronic request with all header information including the time, date, subject, sender and recipient email address, and a copy of the within written response, and the attachment(s) related hereto.

Your petition should be sent to the Supervisor at the following address:

Supervisor of Records Division of Public
Records
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719
Boston, Massachusetts 02108
or: pre@sec.state.ma.us

Electronic communication is strongly encouraged and is the preferred method of correspondence. If you have any further questions regarding this response, please do not hesitate to contact me.

Sincerely,

Greg Lucey, City Clerk, RAO

cc: preweb@sec.state.ma.us

City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Minutes - Draft

City Council

Council President Neal Anderson,
Councillor David Camell,
Councillor Paul Condon,
Councillor Peg Crowe,
Councillor Deborah DeMaria,
Councillor Amanda Linehan,
Councillor Barbara Murphy,
Councillor Ryan O'Malley,
Councillor Jadeane Sica,
Councillor Craig Spadafora,
Councillor Stephen Winslow

Tuesday, March 2, 2021 **7:00 PM** **REMOTE VIRTUAL MEETING**

76-21

In accordance with Governor Baker's 3/12/20 Order Suspending Certain Provisions of the Open Meeting Law, G.L.c.30A,ss18, and the Governor's 3/23/20 Revised Guidance on Order by the Governor Prohibiting Assemblage of More than Ten People, this meeting will be conducted via remote participation.
In person attendance by members of the public is prohibited, and all effort will be made to permit public attendance of this meeting, in the manner specified below, via remote access by internet, telephone, and if available via public broadcast of the meeting by Malden Access Cable Television on public access television channels.
Public access will also be provided by posting draft minutes, and/or a transcript, recording, or record of the meeting on the city of Malden website at cityofmalden.org as soon as practicable after the meeting.

Additional information/guidelines for the public can be found here:
<https://www.cityofmalden.org/DocumentCenter/View/2487/Public-information-on-Public-Meetings-and-Hearings-during-the-Declared-State-of-Emergency-related-to-COVID19PDF>

Members of the public who wish to attend remotely can do so using the following information:

Please click the link below to join the webinar:
<https://cityofmalden.zoom.us/j/95821269057?pwd=VnlhcmRrRkVUZHoxeUpnR3R1VFBwZz09>
Passcode: 979054
Or iPhone one-tap :
US: +19294362866,,95821269057#,,,,*979054#
+16465189805,,95821269057#,,,,*979054#
Or Telephone:
Dial (for higher quality, dial a number based on your current location):
US: +1 929 436 2866

+1 646 518 9805
Webinar ID: 958 2126 9057
Passcode: 979054
International numbers available: <https://cityofmalden.zoom.us/u/abUb6kSxji>

If you would like to request a reasonable accommodation, please contact Maria Luise, ADA Compliance Coordinator at mluise@cityofmalden.org <mailto:mluise@cityofmalden.org> <mailto:mluise@cityofmalden.org> or 781-397-7000, Ext 2005.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE IN HONOR OF SERVICEMEN & WOMEN

3. ROLL CALL

Meeting started at 7:05 P.M.

Also in attendance Asst. City Solicitor John McNaught.

Present - Councillors: 11 - Neal Anderson, David Camell, Paul Condon, Peg Crowe, Deborah DeMaria, Amanda Linehan, Barbara Murphy, Ryan O'Malley, Jadeane Sica, Craig Spadafora and Stephen Winslow

4. GUESTS, CITIZEN ACHIEVEMENT AND ANNOUNCEMENTS

5. PUBLIC COMMENT

The following spoke at Public Comment:

Philip Bronder-Giroux, 40 Sprague Street, Malden spoke on his concerns regarding rescinding the vote on the Malden River Zoning Papers.

The following submitted emails:
1) Marcia Monong, 296 Bryant Street, Malden in support of Malden River Zoning changes.
2) Karen Buck, 323 Forest Street, Malden, in support of the Malden River Zoning changes and being heard at the Planning Board hearing.
3) Brian DeLacey, 1 Earl Street, Malden is support of the reappointment of the City Clerk.
4) Daniel Koff, 53 Glen Street, Malden in support of the Planning Board Hearing for zoning changes at the Malden River.
5) Amber Christoffersen on behalf of the Mystic River Watershed Association and the Malden River Works project team in support of a Malden River Zoning Ordinance.

6. APPROVAL OF MINUTES

77-21 Minutes of the Meeting of February 16, 2021.

A motion was made by Councillor Condon, seconded by Councillor DeMaria, that the Council Minutes be approved. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

78-21 Minutes of the Meeting of February 23, 2021.

A motion was made by Councillor Condon, seconded by Councillor DeMaria, that the Council Minutes be approved. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

7. APPOINTMENTS & ELECTIONS

79-21 Council Re-Appointment: Gregory Lucey, 30 Huntley Street, Malden, MA as City Clerk, said term to expire February 28, 2024.

Sponsors: Peg Crowe

A motion was made by Councillor Crowe, seconded by Councillor DeMaria, that the Appointment be appointed. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

80-21 Council Re-Appointment: Daniel L. Grover III, 22A Wigglesworth Street, Malden, MA as Treasurer, said term to expire December 31, 2023.

Sponsors: Peg Crowe

A motion was made by Councillor Crowe, seconded by Councillor DeMaria, that the Appointment be appointed. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

8. HEARINGS, PETITIONS, MEMORIALS AND REMONSTRANCES

81-21 Taxi Cab: Malden Transportation, Inc. 290 Eastern Ave., Malden, 9 cabs (Renewal)

Sponsors: Paul Condon

A motion was made by Councillor Condon that the Petition be referred to the License Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

82-21 Second-Hand Dealer: Cash King, 35-45 Lebanon St., Malden (New)

Sponsors: Paul Condon

A motion was made by Councillor Condon that the Petition be referred to the License Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

83-21 Petition: Cellco Partnership d/b/a Verizon Wireless - to collocate small wireless facilities (also referred to as “small cells” on existing wooden utility poles located within the public right of way at the following locations:

1. 52 Porter Street
2. 149 Webster Street
3. 235 Forest Street
4. 79 Lyme Street
5. 37-39 Wilard Street
6. 187 Harvard Street
7. 51 Fairmount Street
8. 133 Cross Street
9. 11 Phillips Street
10. 7 Broadway
11. 84 Boylston Street
12. 18 Warren Avenue
13. 555 Main Street
14. 245 Bryant Street
15. 52 High Street
16. 30 Ferry Stret
17. 110 Green Street
18. 175 Broadway
19. 385 Lebanon Street
20. 54 Newland Street

Sponsors: Amanda Linehan

A motion was made by Councillor Linehan that the Petition be referred to the Public Property Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

9. MOTIONS, ORDERS AND RESOLUTIONS

84-21 Order the City of Malden increase the Residental Tax Exemption Program to 35%

Sponsors: Craig Spadafora

A motion was made by Councillor Spadafora, seconded by Councillor O'Malley, that the Order be referred to the Finance Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

85-21 Order: That the City submit to the Massachusetts Legislature for passage in substantially the following form:

AN ACT RELATIVE TO THE PREPARATION OF CERTAIN BILINGUAL BALLOTS IN THE CITY OF MALDEN

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. As used in this act, "transliteration" shall mean the translation into the relevant Chinese characters to represent the phonetic equivalent of the syllables of an English name or a name in a language that is not traditionally written using Chinese characters.

SECTION 2. Notwithstanding the provisions of any general or special state law to the contrary, in any election in which the state secretary or the city clerk is required by federal law to print bilingual English and Chinese ballots for use by voters of the city, the state secretary or city clerk, as the case may be, shall also provide for the transliteration of all candidates' names. Each candidate shall be provided with a written copy of the proposed transliteration of that candidate's name, and may, within 7 days, request in writing any modification to the proposed transliteration or may decline to have the candidate's own name transliterated on the ballot. The transliteration shall be subject to final approval by the state secretary or city clerk, as the case may be. The state secretary or city clerk shall provide public notice of transliterated names as soon as practicable.

SECTION 3. Notwithstanding any general or special law to the contrary, the city in any primary or state or federal election shall be responsible for the cost of transliteration and the state secretary shall be responsible for all other costs resulting from the implementation of this act including, without limitation, the production of ballots.

SECTION 4. This act shall take effect upon its passage.

Sponsors: Craig Spadafora

A motion was made by Councillor Spadafora, seconded by Councillor O'Malley, that the Order be referred to the Rules & Ordinance Committee. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

86-21 Ordered: That the vote taken on February 2, 2021 to refer papers #40-21, #41-21 and #42-21 to the Planning Board and the Ordinance Committee for a joint public hearing be rescinded and that the papers containing the same text be included on the next docket to be sent to Ordinance Committee for deliberation.

Sponsors: Peg Crowe

The paper was withdrawn by the sponsor, Councillor Crowe because the paper was out of order to be on the Council Docket. The 3 papers 40-21, 41-21 and 42-21 were referred to

a joint Planning Board and Ordinance at the Council meeting on February 2, 2021. The papers has already been submitted to the City Planner.

A motion was made by Councillor Crowe, seconded by Councillor O'Malley, that the Order be withdrawn. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

87-21

Resolve: That it is the sense of the City Council that the Mayor create a line item in the FY 2022 Budget for the Green Malden fund and that $50 from the revenues collected from sales of additional trash tags annually be dedicated to such fund for purposes of funding litter pick-up, maintenance of the trash boom in the Malden River as well as recycling and waste reduction programs and education.

Sponsors: Stephen Winslow and Deborah DeMaria

The sponsor of the Resolve, Councillor Winlsow moved to table the paper because the Resolution was contingent on paper 89-21, amendment #1 further down the docket of passing.

A motion was made by Councillor Winslow, seconded by Councillor O'Malley, that the Resolution be tabled. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

88-21

Resolve: Be it resolved that it is the sense of the City Council that the City of Malden explore options for increasing the amount of time allotted for use of South Broadway Park and Rotundi Field by the City of Malden and Malden Public Schools for recreational activities. Be it further resolved that, the City Solicitor investigate options for relief from contracts with third parties involving the use of South Broadway Park and Rotundi Field, including but not limited to, modification, termination, or a structured buy-out of the term of the contracts. Particular attention should be paid to whether the contracts reflect the fair market value of the use of the fields."

Sponsors: Ryan O'Malley

The sponsor of the paper, Councillor O'Malley made a motion to withdraw the paper.

A motion was made by Councillor O'Malley, seconded by Councillor DeMaria, that the Order be withdrawn. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

10. COMMUNICATIONS

11. COMMITTEE REPORTS

89-21 Committee Report: Rules & Ordinance Paper # 70-20 Order: Be it hereby ordained

that Section 9.28 of the Revised Ordinances of 2020 be amended as follows:

The Standing Committee on ordinance to who was referred Paper #70-20 having considered the same make the following report: Committee recommends that this paper be reported out favorable with the following amendments ;

1. Amend Section 9.020.050 Section A by adding (First per household) after Annual Trash Tag and adding an additional line under Annual Trash Tag, Each Additional Trash Tag $125.
2. Accept the Municode version and language for Receptacles, adding section 9.20.025 and language changes in 9.20.030 section D,E,G and H.

Sponsors: Craig Spadafora

A motion was made by Councillor Spadafora that the Committee Report be received and filed. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

70-20

Order: Be it hereby ordained that Section 9.28 of the Revised Ordinances of 2020 be amended as follows:
Section A by amending City of Malden approved trash bags with City of Malden approved trash bag, such bag to be contained in a Trash Barrel, or in a City of Malden Trash Barrel affixed with a City of Malden annual trash tag, provided that no Trash Barrel shall exceed 35 lbs, and adding that such barrel shall be filled in such a way that the cover can be fully closed.
Section A by adding the City of Malden may declare up to three trash holiday weeks per year, during which time trash shall be permitted to be placed in containers other than City approved trash bags or barrels affixed with an annual trash tag, provided that said trash shall always be contained within a closed container.
The section titled “Mandatory Recycling” by removing any references to recycling bin and replacing with recycling barrel and by adding the following paragraph in place of the existing language:
Each qualifying household shall be provided with one City of Malden issued recycling barrel. Residents may place all designated recyclables together in the recycling barrel utilizing a ‘single stream’ recycling method, provided that the barrel shall only be filled in such a way that the cover can be completely closed. Residents may purchase additional recycling barrels from the Department of Public Works, or may utilize their own covered recycling barrel for additional recycling materials. Damaged barrels may be turned in for free replacement. Stolen barrels will be replaced with the filing of a police report reporting such theft. Specialized recycling days will be scheduled based upon availability of funding as published by the Department of Public Works. The Department of Public Works shall provide at the city yard, during regular hours of operation and on Saturdays

from 9 a.m. to noon, a facility for recycling of paper, plastic, cans and bottles.

Section C, section 1 titled 'Fees' shall be updated as follows:

Fees for collection of residential waste and for collection of commercial waste shall be as follows:

Approved 35 gallon trash bags:	$ 2
Approved 15 gallon trash bags:	$ 1
Approved 8 gallon trash bags:	$.50
Annual Trash hang tag:	$ 75
White Good (residential only):	$ 20
Additional Recycling or Trash Barrel:	At city's actual cost

Sponsors: Peg Crowe, Deborah DeMaria, David Camell, Jadeane Sica and Barbara Murphy

The Ordinance Committee recommended the paper be voted favorably as amended with two amendments:

1) Amend section 9.20.050 Section A by adding (First per household) after Annual Trash Tag and adding and an additional line under Annual Trash Tag, (Each Additional Trash Tag $125).

2) Accept the Municode version and language for Receptacles, adding section 9.20.025 and language changes in 9.20.030 section D,E,G and H.

Councillor Winslow provided documentation on "Impacts on Costs to Residents on Changes to the Residential Trash and Recycling Program Paper 70-20 with amendment recommended by Rules and Ordinance". Councillor Winslow voiced his concerns about the future costs to the City if the second Trash Tag did not have a higher fee than the first Trash Tag and future challenges of the recycling program.

Councillor Sica made a motion to amend amendment #1 and go back to the original plan of $75 for all Trash Tags. Councillor Condon seconded the motion, the following roll call vote was taken: Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (Present), Sica (y), Spadafora (y), Winslow (N), Anderson (y). Motion passes 10-1

This Ordinance was amended

Councillor Spadafora made a motion to approve the second amendment: Accept the Municode version and language for Receptacles, adding section 9.20.025 and language changes in 9.20.030 section D,E,G and H.

A motion was made by Councillor Spadafora, seconded by Councillor DeMaria, that the Ordinance be approved as amended. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

A motion was made by Councillor Crowe, seconded by Councillor Condon, that the Ordinance be enrolled as amended. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

90-21 Committee Report: Finance (Paper # 64-21 Order: That the appropriation enumerated below, being in the amount of $30,000 (Thirty Thousand Dollars), be appropriated from the Community Preservation Act Fund for the following project: Kierstead and Tartikoff Parks Revitalization and Willow Street Recreational Corridor (Master Plan and 25% Design): $30,000 from budgeted reserve account. Total Appropriation = $30,000.)

Sponsors: Barbara Murphy

A motion was made by Councillor Murphy that the Committee Report be received and filed. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

64-21 Order: That the appropriation enumerated below, being in the amount of $30,000 (Thirty Thousand Dollars), be appropriated from the Community Preservation Act Fund for the following project:
Kierstead and Tartikoff Parks Revitalization and Willow Street Recreational Corridor
(Master Plan and 25% Design): $30,000 from budgeted reserve account.
Total Appropriation = $30,000.

Sponsors: Barbara Murphy

A motion was made by Councillor Murphy, seconded by Councillor Winslow, that the Order be adopted. The motion carried by the following vote:

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

12. TABLED PAPERS

13. PERSONAL PRIVILEGE

14. ADJOURNMENT

A motion was made by Councillor Condon, seconded by Councillor Crowe, that the meeting be adjourned. The motion carried by the following vote:

The meeting adjourned at 9:05 P.M.

Yea: 11 - Anderson, Camell, Condon, Crowe, DeMaria, Linehan, Murphy, O'Malley, Sica, Spadafora and Winslow

GREGORY LUCEY, CITY CLERK

Subject: Re: COVID-19 Vaccinations
Date: Friday, December 18, 2020 at 9:55:48 AM Eastern Standard Time
From: Greg Lucey
To: Stephen Winslow
CC: Jadeane Sica

We will have to wait for the first meeting back in January.

Sent from my iPad

> On Dec 18, 2020, at 9:19 AM, Stephen Winslow <swinslow@cityofmalden.org> wrote:
>
> I proposed the following resolution:
>
> Resolved: That it is the sense of the City Council that the Commonwealth of Massachusetts Department of Public Health should prioritize communities with the highest infection rates when considering distribution of COVID-19 vaccines to the general public and establish vaccination centers in those communities.
>
> Would be great to have this on Tuesday's agenda if it is not too late.
>
> Steve

Subject: RE: Billboard Contracts
Date: Friday, December 4, 2020 at 2:16:34 PM Eastern Standard Time
From: Kathryn Fallon
To: Jadeane Sica

These did not receive legal review so I'm glad Chuck has some frame of reference for this.
Did you find out whether there was any vote of the Council to distribute those funds directly to the Ward Fund?

From: Jadeane Sica <jsica@CITYOFMALDEN.ORG>
Sent: Friday, December 4, 2020 8:24 AM
To: Kathryn Fallon <kathryn@attorneyfallon.com>
Subject: FW: Billboard Contracts

Sent from Mail for Windows 10

From: Charles A. Ranaghan
Sent: Thursday, December 3, 2020 1:33 PM
To: Jadeane Sica
Subject: Billboard Contracts

Here are the contracts.

They both have the same language in that it states the we wish to be compensated for any impact to the community from the installation and operation of the billboard. That certainly implies that the funding would have to be spent in and around the area of the billboards, which are ward 8.

Do you want me to reach out to Kate or do you want to?

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Subject: Panelist for Ordinance 6:00, City Council 7:00
Date: Friday, November 6, 2020 at 10:58:32 AM Eastern Standard Time
From: Greg Lucey
To: jsica@cityofmalden.org

Hi Jadeane Sica,

You are invited to a Zoom webinar.

Date Time: Nov 10, 2020 06:00 PM Eastern Time (US and Canada)
Topic: Ordinance 6:00, City Council 7:00

Join from a PC, Mac, iPad, iPhone or Android device:
Click Here to Join
Note: This link should not be shared with others; it is unique to you.
Passcode: 538504
Add to Calendar Add to Google Calendar Add to Yahoo Calendar

Or iPhone one-tap:
US: +19294362866,,93395854311# or +16465189805,,93395854311#

Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 929 436 2866 or +1 646 518 9805
Webinar ID: 933 9585 4311
Participant ID: 111258
Passcode: 538504
International numbers available: https://cityofmalden.zoom.us/u/aehN9EMKiZ

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Subject: Panelist for Personal Appointments
Date: Friday, November 6, 2020 at 11:46:43 AM Eastern Standard Time
From: Greg Lucey
To: jsica@cityofmalden.org

Hi Jadeane Sica,

You are invited to a Zoom webinar.

Date Time: Nov 9, 2020 06:00 PM Eastern Time (US and Canada)
Topic: Personal Appointments

Join from a PC, Mac, iPad, iPhone or Android device:
Click Here to Join
Note: This link should not be shared with others; it is unique to you.
Passcode: 710112
Add to Calendar Add to Google Calendar Add to Yahoo Calendar

Or iPhone one-tap:
US: +16465189805,,99140082870# or +19294362866,,99140082870#

Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 646 518 9805 or +1 929 436 2866
Webinar ID: 991 4008 2870
Participant ID: 375292
Passcode: 710112
International numbers available: https://cityofmalden.zoom.us/u/acnPnxWYWP

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Subject: FW: PB Rec to City Council 7 Linehurst Rd
Date: Friday, October 23, 2020 at 8:22:10 AM Eastern Daylight Time
From: Greg Lucey
To: Peg Crowe, Paul Condon, Amanda Linehan, Ryan O'Malley, Barbara Murphy, David Camell, Neal Anderson, debbiedemaria@aol.com, Craig Spadafora, Stephen Winslow
Attachments: 7 Linehurst PBR 10.14.20.pdf, Peer Review 6.26.20 Task 11 - 7 Linehurst Road.pdf, Peer Review Follow Up 9.22.20 7 Linehurst Road .pdf

From: Michelle A. Romero <mromero@CITYOFMALDEN.ORG>
Sent: Thursday, October 22, 2020 5:10 PM
To: Greg Lucey <glucey@CITYOFMALDEN.ORG>
Cc: Patricia Bucciero <pbucciero@CITYOFMALDEN.ORG>; Jadeane Sica <jsica@CITYOFMALDEN.ORG>; Nelson Miller <nmiller@CITYOFMALDEN.ORG>
Subject: PB Rec to City Council 7 Linehurst Rd

Good Afternoon Greg
Re: the special permit petition for a Marijuana Establishment at 7 Linehurst Road, attached please find the Planning Board Report & Recommendation to the City Council, and the City's peer review reports referenced therein.

Please enter this Recommendation into the record of the public hearing.

I will be plan to remotely attend the hearing to answer any questions the Council may have about the Recommendation.

Please contact me with any questions. Thank you.
Michelle

Michelle A. Romero
City Planner
City of Malden
Inspectional Services
215 Pleasant Street
3rd Floor
Malden, MA 02148
Tel. (781) 397-7000 ext. 2044 (direct) Ext. 2030 (main)

PLANNING BOARD REPORT & RECOMMENDATION

To: Malden City Council
From: Malden Planning Board
Date: October 14, 2020
Subject: 7 Linehurst Road (Parcel ID #185 575 563L)
Special Permit/§12.12.190, Ch. 12, Revised Ordinances of 2020 (MZO)
(Formerly §300.20, Ch. 12, Revised Ordinances of 1991)
To Allow Marijuana Establishment, Marijuana Retailer in Highway Business zoning district

PROCEDURAL: This advisory report and recommendation is submitted to the special permit granting authority, the City Council [§12.32.030(B)(2), MZO]. The proposal was reviewed by the City's Cannabis Licensing and Enforcement Commission (CLEC) and approved to proceed to this zoning process; if the Council grants a special permit, the City will negotiate a Community Host Agreement, following which petitioner may apply for a license from the state Cannabis Control Commission (CCC); if the proposal is approved by the CCC, the CLEC will review for issuance of a local license.

SUBJECT PROPERTY: The subject property consists of a parcel that contains 21,563 square feet and is the site of a paved parking lot used by the abutting businesses and a freestanding sign (billboard) structure; the property includes a portion of Linehurst Road. Vehicular access to the site is from two private ways, Linehurst Road and Leonardo Avenue, which are accessible from state highway, Frank P. Bennett Highway (Route 1) North; Linehurst Road continues southeast into Revere and is accessible via Agatha and Morris Streets in Revere.

PETITION: Petitioner is the proposed tenant, doing business as East Coast Cannabis and/or "Standard Naturals," and the proposed use is a marijuana establishment, namely, a marijuana retailer. The proposal is to construct a new single-story building with a gross floor area of 3,000 SF (2,986.13 SF), that includes the following:

First Floor	*SF (approx)*	***Open to Public (P) Employee Only (E)***
Retail Area *Includes:* 25 "Point of sales" stations Entrance vestibule Security checkpoint Exit vestibule	1,551	P
Office	110	E
Product storage	269	E
Intake space	200	E
Breakroom	172	E
mechanical, utilities, security, janitor, restrooms	700	E

The following plans and information were submitted in support of the petition:

1. Site plan, "CONCEPT SITE PLAN OF LAND IN MALDEN, MA 7 LINEHURST ROAD Malden, Massachusetts," (C1), dated January 8, 2020 (stamped/signed January 15, 2020), prepared by Katherine A. Cruz, Reg. P.E., Hancock Associates, Danvers, MA.
2. Site plan, "LAYOUT AND MATERIALS PLAN OF LAND IN MALDEN, MA 7 LINEHURST ROAD Malden, Massachusetts," (C1), dated February 28, 2020 (stamped/signed April 21, 2020), prepared by Katherine A. Cruz, Reg. P.E., Hancock Associates, Danvers, MA.
3. Set of plans, "East Coast Cannabis, 7 Linehurst Road, Malden, MA Special Permit Drawings," dated January 8, 2020, prepared by Dale A. Gienapp, Reg. Architect, Gienapp Architects, Danvers, MA, that contain:
   a) First floor plan, "Proposed First Floor Plan."
   b) "Rendering 1," "Rendering 2," "Rendering 3," and "Rendering 4," showing perspective views of proposed building from different sides.
   c) "Exterior Elevations 1," showing proposed northwest and southwest façades of proposed building.
   d) "Exterior Elevations 2," showing proposed northeast and southeast façades of proposed building.

4) Traffic impact report, "Memorandum," dated June 4, 2020, and follow-up response correspondence dated August 28, 2020, prepared by Kenneth P. Cram, P.E., Bayside Engineering, Woburn, MA.

Under the proposal, the existing freestanding sign (billboard) structure will remain and the existing parking lot will be eliminated.

ZONING & OCCUPANCY: The property is located in the Highway Business zoning district. The property is currently used for a parking lot with 46 spaces used by the abutting businesses.

The proposed marijuana retailer use is a business use allowed by special permit in the Highway Business zoning district.

The direct abutter to the south, a self-storage business (9 Linehurst Road); to the west, a vacant parcel of land designated as a "paper" (unconstructed) street, Robbins Street, owned by the City of Malden; to the east, on the other side of Linehurst Road, a retail sales business (Kappy's Liquor Store at 325 State Highway); and to the north, on the other side of Route 1, a motel and mobile home (trailer park). Surrounding land uses are residential uses to the south and west, on Linehurst Road, Agatha Street and Morris Street in Revere, and to the south and west on Overlook Ridge Drive.

DIMENSIONAL CONTROLS: The property is the site of a freestanding non-accessory sign structure, mounted with two billboard signs, which is a preexisting nonconforming structure prohibited by current zoning, reconstructed by special permit (Case #14-03) (§§12.24.010 and 12.28.010, MZO).

The proposed new building complies with all dimensional controls (§12.16.010, MZO).

PARKING & LOADING REQUIREMENTS(§§12.20.010 and 12.20.030, MZO).

Use	*SF gfa*	*Parking Formula*	*Required Pkg. Spaces*	*Loading Calc.*	*Loading Space/ Bay Required*
Marijuana Retailer *(proposed)*	3,000	4 spaces/1,000 SF gfa	12	1 per establishment (<25,000 SF floor space)	1

Number of Spaces.
The site plan depicts a total of nineteen (19) parking spaces on-site and one loading spaces/bays:
1. Fourteen (14) in a parking lot in the northern side of the building/lot; all configured as "head-on."
2. Five (5) in a parking lot area south of the building; all configured as "head-on."

Layout. The proposed access aisles are 24 feet in width, which is conforming for angled parking spaces and the proposed two-way traffic circulation pattern (§12.20.020.B, MZO). Two existing driveways are accessed via two existing curb-cuts on Linehurst Road.

Note 1: *According to petitioner, petitioner may enter into an agreement for the use in perpetuity of thirty (30) parking spaces on the abutting property, 325 State Highway (Parcel ID 185 574 401/Kappy's Liquor Store).*

TRAFFIC IMPACT: The City's peer review report of petitioner's traffic impact report and follow-up response is contained in correspondence dated June 26, 2020 and September 22, 2020 from Kenneth Petraglia, P.T.O.E., Malden, which includes the following recommendations for traffic and safety mitigation:
1) Traffic Signs: Install traffic signs (or similar devices) at three locations: an advance sign to alert northbound motorists of the approaching southerly access; a YIELD sign at each of the two site egresses; and a STOP sign for the motorists exiting at the northern most exit.
2) Pavement Markings: Restripe lane delineations; painted arrows; shoulders; markings; and painted arrows within the study area.
3) Pedestrian Activity: Install a bold crosswalk to shelter pedestrians walking between the proposed site and the proposed additional parking at the adjacent site (Kappy's) and other generators.
4) Landscaping: Set back a minimum of three feet, or more if required, to provide adequate sight distance; cut back and maintain existing vegetation be cut back and maintained, and that new plantings be designed to be provide proper sight distance.

5) Deceleration Lane: Coordinate with MassDOT to modify the existing shoulder on the approach to the southerly access to a Deceleration Lane.

OTHER SPECIAL CONTROLS and REQUIREMENTS (§12.12.190 (B)-(F), MZO].

The proposal must be in conformance with the following controls and requirements:

1) The City Council must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood.
2) Located in a permanent building and not within a mobile facility or movable structure.
3) Not be located inside a building containing residential units, including transient housing such as hotels, motels, dormitories.
4) Must be the principal use of the property and may be accessory only to another type of Marijuana Establishment at the same property and shall be prohibited as an accessory use to any other use.
5) The location must comply with the following buffer zones (all distances as measured from the closest property line of the proposed Marijuana Establishment to the closest property line of a property that, as of the date of filing of the petition for a special permit for the Marijuana Establishment, is lawfully used for the following). No Marijuana Establishment shall be located within:
   a. 75 feet of a Substance Abuse Treatment Center, as defined by this Ordinance;
   b. 500 feet of a public or private school providing education in kindergarten, or Grades 1- 12;
   c. 75 feet of any residential use;
   d. 250 feet of any park playground, recreational field or recreational facility, and including, but not limited to: the Malden Teen Enrichment Center, the YMCA and the YWCA;
   e. 75 feet of any religious facility; and
   f. 75 feet of any daycare licensed by the Commonwealth of Massachusetts; Except for a Marijuana Establishment located at property in the Marijuana Establishment Overlay zoning district, which shall not be subject to a buffer zone from any residential use, however, shall comply with all other buffer zones specified herein this Ordinance.

Note 2*: Building Commissioner/Zoning Enforcement Officer Nelson Miller has determined the proposed location complies with all applicable buffer zones.*

FINDINGS REQUIRED to GRANT SPECIAL PERMIT [§12.12.190(G), MZO]:

For a special permit to be granted, the City Council must find:

1) The proposal will not be more detrimental to the neighborhood.
2) The proposal is not in conflict with surrounding land uses.
3) The proposal is in the interest of the common good.
4) The traffic and traffic patterns generated by the proposal will not adversely impact any of the surrounding streets or create a traffic or safety hazard.
5) The proposal will not generate any noise, odor, fumes, vibration, heat or other conditions that may be noxious or cause a nuisance to the community, a danger to public health, or impair public comfort and convenience.
6) The proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.

PLANNING RECOMMENDATION: *(Prepared prior to the public hearing and made provided the City Council finds the proposal to be in conformance with the required controls and makes the required findings):* To recommend to the City Council that a special permit be granted, **subject to the following conditions**:

1. The special permit granted in Case #14-03 shall remain in full force and effect.
2. All development shall be as per plans, which are incorporated herein by reference and except where modified by these conditions.
3. The retail sales area open to the public shall be limited to the location, area and size shown on the plans; any change shall require an amendment of this special permit.
4. Install, repair or replace sidewalks, driveways and perform necessary incidental work adjacent to the property to the reasonable satisfaction of the DPW Director.
5. Implement traffic and safety mitigation recommended by City Peer Reviewer in reports dated June 26, 2020 and September 22, 2020 regarding traffic signs, pavement markings, crosswalk to abutting property, landscaping and deceleration lane, subject to review and approval of MassDOT, where required.
6. The special permit is non-transferable and non-assignable.

7. Design and implement a Security Plan approved by the Malden Police Chief, which shall include, without limitation: all security measures for the site and the transportation of Marijuana and Marijuana Products to and from off-site premises to ensure the safety of employees and the public and to protect the premises property from theft or other criminal activity; a detailed explanation of payment method, if applicable, acceptable at such establishment and the protection and security of such payments and, if applicable, cash on site; and the presence of a security guard on site at all hours of operation.
8. Consumption of Marijuana and/or Marijuana Products is prohibited at or within 500 feet.
9. Smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises.
10. Marijuana in any form, including plants, and Marijuana Products shall not be visible from outside of the building.
11. Any outside storage of any kind is prohibited.
12. Any outside display of any kind is prohibited.
13. Incorporate odor control technology and provisions, and ensure that emissions do not violate M.G.L. c.111 § 31C, including but not limited to those specified for odors.
14. Prior to issuance of any building permit or occupancy permit, submit copies of the following licenses and approvals: a) A valid license issued by the Massachusetts Cannabis Control Commission, as defined herein this Ordinance; b) A fully executed Community Host Agreement with the City of Malden, as defined herein this Ordinance; c). Any required license and/or approvals issued by the Malden License Board; and d) Any required license and/or approvals issued by the Malden Board of Health.
15. Provide copy of written agreement for use in perpetuity of thirty (30) parking spaces offsite at abutting property, 325 State Highway, Malden (Parcel ID185 574 401).

Note 3: *Conditions 6-14 are REQUIRED conditions to any Special Permit in all cases, per §12.12.190 (H) of the City zoning ordinance.*

Kenneth J. Petraglia, PE, PTOE

Traffic Engineer

June 26, 2020

Malden City Council
Malden City Hall
110 Pleasant Street
Malden, MA 02148

RE: Task 11 – 7 Linehurst Road – Marijuana Dispensary
City of Malden Comments to Bayside Engineering

Dear Councilors:

The subject proposal has been submitted for review and comment, as requested by the City of Malden as part of the requirements of the Special Permit Application. The reviewed material includes a Memorandum prepared by Bayside Engineering, dated June 4, 2020. The Project, as described in the Memorandum, will consist of a 3,000 square foot Marijuana Dispensary, and nineteen (19) parking spaces. An additional thirty (30) spaces are available for use on the adjacent Kappy's Fine Wine and Spirits (Kappy's) site – employees of the dispensary will be required to park in these spaces.

EXISTING CONDITIONS

1. STUDY AREA/GEOMETRY

The study area description includes the general area facing Kappy's and, much of the area south of Kappy's at the site of the proposed development. No intersections have been analyzed. While traffic activity is not currently heavy, nor is it expected to be under build conditions, **this is a high velocity area for motorists entering or exiting the site.**

2. PUBLIC TRANSPORTATION

Public transportation is not feasible at this site.

3. TRAFFIC VOLUMES

During conduct of this study new traffic volumes could not be collected due to the effect of the COVID 19 pandemic. The BAYSIDE team relied on two previous counts for a base, including

the Essex Landing and Overlook Ridge projects. Under these circumstances, this is an acceptable approach.

4. BACKROUND GROWTH

The annual growth estimate of 0.5 percent per year is reasonable, and the data were properly forecast to a 7-year horizon.

5. CRASH ANALYSIS

The crash rate calculations are acceptable, as they are below the statewide average of 0.57 for unsignalized intersections.

6. SIGHT DISTANCE

Sight distance is adequate at the existing access and egress points.

7. PARKING

Nineteen parking spaces will be provided at the proposed site, although Malden Zoning only requires twelve. Up to an additional 30 spaces will be available for use at the adjacent property (Kappy's). The conditions and duration of this agreement are not provided.

.

FUTURE CONDITIONS

1. **ROUTE 1 RESURFACING** – Future roadway improvements include resurfacing Route 1 from Route 99 in Saugus to the Saugus/Lynnfield Town line.

2. TRIP GENERATION/FUTURE TRAFFIC VOLUMES

Trip Generation is shown in Table 3.

TRIP DISTRIBUTION/ASSIGNMENT

Trip distribution is limited to: vehicles entering from the southmost exit; vehicles exiting to the north at the exit adjacent location; and vehicles exiting at the northern most curb cut. All future traffic volumes should be provided.

3. INTERSECTION ANALYSIS

The report presumes that intersection analysis will not be required. We disagree due to the combination of high speeds and the trip generation table, which includes 66 new vehicles (33 entering and 33 exiting) during the weekday evening hour. The table also includes 110 new vehicles (55 entering and 55 exiting) during the Saturday mid-day peak. These numbers are not insignificant, particularly the above volumes, which do not appear to include current traffic from other existing trip generators. It is recommended that intersection be analyzed at each of the three access/egress points.

RECOMMENDATIONS and REQUESTS for INFORMATION

It is recommended that the proponent provide the following information and make the following improvements to mitigate traffic and safety impacts.

RECOMMENDATIONS/REQUESTS

- **Traffic Signs –** Install traffic signs (or similar devices) at three locations: an advance sign to alert northbound motorists of the approaching southerly access; a YIELD sign at each of the two site egresses; and a STOP sign for motorists exiting at the northern most exit.
- **Pavement Markings** – Restripe lane delineations; painted arrows; shoulders; markings; and pained arrows within the study area.
- **Pedestrian Activity –** It is likely that this project will result in significant pedestrian activity during peak periods. A bold crosswalk is requested to shelter pedestrians walking between the proposed site and the proposed additional parking at the adjacent site (Kappy's) and other generators.
- **Traffic Analysis -** Conduct traffic analysis at each access/egress location. Include all components, including other existing businesses, and residential traffic.
- **Sight Distance** -Set back landscaping a minimum of three feet, or more if needed to provide adequate sight distance.
- **Deceleration Lane** – Work with MassDOT to modify the existing shoulder on the approach to the southerly access and modify that section of road to a Deceleration Lane. This would provide a safer approach but will require coordination with MassDOT.
- **Parking** - Please clarify the arrangement between the proponent and Kappy's regarding parking.

- **Build Components** – Please include a graphic or table that shows all peak hour traffic components (i.e., build and site generated numbers), including existing all existing peak hour traffic.

We request the opportunity to review the proponent response before final approval. Please call with any comments or questions. Thank you.

Very truly yours,

Kenneth J. Petraglia, PE, PTOE

Kenneth J. Petraglia, PE, PTOE

Traffic Engineer

September 22, 2020

Malden City Council
Malden City Hall
215 Pleasant Street
Malden, MA 02148

Re: Peer Review Comments/Follow-Up
7 Linehurst Road
Malden, MA 02148

Dear Council Members:

In a letter dated August 28,2020, Bayside Engineering, Inc. has responded to the June 26, 2020 peer review prepared by Kenneth J. Petraglia of the Traffic Impact Memorandum (TIM), Traffic (dated June 4, 2020). The proposed marijuana dispensary is to be located a 7 Linehurst Road in Malden, Massachusetts. The purpose of this letter is to respond to the August 28, 2020 letter. Following are Bayside comments followed by Peer Review comments.

Comment 1: ***Traffic Signs*** *– Install traffic signs (or similar devices) at three locations: an advance sign to alert northbound motorists of the approaching southerly access; a YIELD sign at each of the two site egresses; and a STOP sign for the motorists exiting at the northern most exit.*

Response: The Applicant agrees to the implementation of the suggested signage, subject to the review and approval of the Massachusetts Department of Transportation (MassDOT).

Comment 2: ***Pavement Markings*** *– Restripe lane delineations; painted arrows; shoulders; markings; and painted arrows within the study area.*

Response: The Applicant agrees to restripe lane delineations; painted arrows, shoulders; markings; and painted arrows within the study area. Any pavement marking updates on Route 1 are subject to MassDOT review and approval.

Comment 3: ***Pedestrian Activity*** *– It is likely that this project will result in significant pedestrian activity during peak hours. A bold crosswalk is requested to shelter pedestrians walking between the proposed site and the proposed additional* parking at the adjacent site (Kappy's) and other generators.

Response: The Applicant agrees to add a crosswalk from the site to the sidewalk in front of the Kappy's, which in turn would provide access to the additional parking.

Comment 4: ***Traffic Analysis*** *– Conduct traffic analysis at each access/egress location. Include all components, including other existing businesses, and residential traffic.*

Response: Additional traffic counts were conducted at the Route1 intersection with Linehurst Road and the Route 1 intersections with the existing driveways to gather turning movement data for vehicles entering and exiting the driveways. Site Drive 1 is the southerly right turn out, and Site Drive 2 is the northerly turn out.

Review of MassDOT current Transportation Improvement Projects (TIP) indicate that Route 1 is planned to be widened from Copeland circle in Revere to Route 99 in Saugus. While this project is currently in the Preliminary Design Phase, no construction is scheduled at this time.

Current field observations indicate that motorists currently accept smaller gaps between vehicles than those required in the actual analysis programs. This implies that the Highway Capacity Model (HCM) overstates the required spacing between motorists in this area.

Conversely, the Bayside analysis assumes that only one lane (instead of the actual two lanes) is available for Route 1 North traffic flow. This assumption leads to a very conservative analysis, resulting in overstated delays.

Comment 5: ***Sight Distance*** *– Landscaping will be set back a minimum of three feet, or more if required, to provide adequate sight distance.*

Response: It is recommended that existing vegetation be cut back and maintained, and that new plantings be designed to be provide proper sight distance.

Comment 6: ***Deceleration Lane*** *– Coordinate with MassDOT to modify the existing shoulder on the approach to the southerly access to a Deceleration Lane. This would provide a safer approach but will require coordination with MassDOT.*

Response: The applicant will work with MassDOT to modify the Linehurst Road into a deceleration/right turn-only lane.

Comment 7: ***Parking*** *– Please clarify the arrangement between the proponent and Kappy's regarding parking supply*.

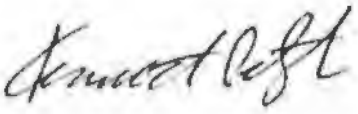
Response: The Applicant, Standard Naturals, and the owner of Kappy's have an on-going business relationship. If required in the future, an arrangement to provide 30 off-site parking spaces can be provided and will run in perpetuity with both properties.

SUMMARY

Bayside has responded fully to comments 1-3, and 4-7. Comment 4, however, includes the challenging assumption that only one of the two existing lanes will be included in the intersection calculations. Actual conditions with two lanes would provide more favorable results.

Please feel free to call with questions.

Very truly yours,



Kenneth J. Petraglia, PE, PTOE

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

March 31, 2021
SPR21/0799; SPR21/0801; SPR21/0803; SPR21/0804; SPR21/0807

Greg Lucey
City Clerk
City of Malden
110 Pleasant Street, First Floor
Malden, MA 02148

Dear Mr. Lucey:

I have received the petitions of Mr. Bruce Friedman appealing the nonresponse of the City of Malden (City) to his requests for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 12, 2021, Mr. Friedman submitted five public records requests seeking various categories of records in the City's possession.

Claiming to not yet have received a response, Mr. Friedman petitioned this office and these appeals were opened as a result.

Conclusion

Subsequently, I learned the City provided Mr. Friedman with a response to his requests dated March 31, 2021. Whereas the basis of these appeals were opened as a result of the City's lack of response to Mr. Friedman's requests, I will now consider these administrative appeals closed. Mr. Friedman may appeal the substantive nature of the City's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Mr. Bruce Friedman

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

March 30, 2021
SPR21/0799

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

Dear Mr. Bruce Friedman:

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

I have directed a member of my staff, Jack Robertson, 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: Mr. Gregory Lucey

From:	Bruce Friedman
To:	SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc:	Greg Lucey; Kathryn M. Fallon
Subject:	Request for Appeal - City of Malden # 2021-0109 - Timeliness
Date:	Tuesday, March 30, 2021 12:05:14 AM
Attachments:	2021-0109 request.pdf
Importance:	High

Greetings:

On Thursday, March 12, 2021 the City of Malden was served the following (attached) verbatim request through their official FOIA web portal: "Please provide all documents of city business conducted by any employee of the City Clerk's
Office on the following dates:
Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020
Friday, September 25, 2020
Friday, October 2, 2020
Friday, October 9, 2020
Friday, October 16, 2020
Friday, October 23, 2020
Friday, October 30, 2020
Friday, November 6, 2020
Friday, November 13, 2020
Friday, November 20, 2020
Friday, November 27, 2020
Friday, December 4, 2020
Friday, December 11, 2020
Friday, December 18, 2020
Friday, December 25, 2020
Friday, January 1, 2021
Friday, January 8, 2021
Friday, January 15, 2021
Friday, January 22, 2021
Friday, January 29, 2021
Friday, February 5, 2021
Friday, February 12, 2021
Friday, February 19, 2021
Friday, February 26, 2021
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021
Friday, March 26, 2021
This request specifically seeks electronic documents and they are to be provided in the same

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

As of today, the City has failed to provide any response: The City/RAO had until the COB Monday, March 29, 2021 to respond per G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c). The City failed to respond timely; See below:

Date	Day Tolled
Friday, March 12, 2021	
Saturday, March 13, 2021	
Sunday, March 14, 2021	
Monday, March 15, 2021	1
Tuesday, March 16, 2021	2
Wednesday, March 17, 2021	3
Thursday, March 18, 2021	4
Friday, March 19, 2021	5
Saturday, March 20, 2021	
Sunday, March 21, 2021	
Monday, March 22, 2021	6
Tuesday, March 23, 2021	7
Wednesday, March 24, 2021	8
Thursday, March 25, 2021	9
Friday, March 26, 2021	10
Saturday, March 27, 2021	
Sunday, March 28, 2021	
Monday, March 29, 2021	11
Tuesday, March 30, 2021	12

As such, I am formally requesting that the Secretary issue an order requiring the City of Malden to provide the responses to this request without delay 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.
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." 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."

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.

Welcome Bruce Friedman ! [Logout]

Back

Request Details

foiadirect | Requestor Dashboard | Communication | Change Profile | Help

Request for Details

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

Description of Request

Request Number	2021-0109	Department	Clerk
Request Sent Date	03/12/2021 09:47 AM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all documents of city business conducted by any employee of the City Clerk's Office on the following dates:

Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020
Friday, September 25, 2020
Friday, October 2, 2020
Friday, October 9, 2020
Friday, October 16, 2020
Friday, October 23, 2020
Friday, October 30, 2020
Friday, November 6, 2020
Friday, November 13, 2020
Friday, November 20, 2020
Friday, November 27, 2020
Friday, December 4, 2020
Friday, December 11, 2020
Friday, December 18, 2020

Request Documents

No Document.

Response Details

Response

Friday, December 25, 2020
Friday, January 1, 2021
Friday, January 8, 2021
Friday, January 15, 2021
Friday, January 22, 2021
Friday, January 29, 2021
Friday, February 5, 2021
Friday, February 12, 2021
Friday, February 19, 2021
Friday, February 26, 2021
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021
Friday, March 26, 2021

Response Documents
No Documents

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

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 5, 2021
SPR21/0855

Malden Transparency
openmalden.com

Dear Malden Transparency:

I have received your letter appealing the response of the City of Malden 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,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Mr. Gregory Lucey

Mackenzie Nekton

From: Malden Transparency <info@openmalden.com>
Sent: Sunday, April 4, 2021 12:57 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Greg Lucey; Kathryn M. Fallon
Subject: Request for Appeal Malden #2021-0128 - Timeliness
Attachments: 2021-0128 Request ack email 3-18-2021.pdf; FOIA Request 2021-0128 3-18-21.pdf

Importance: High

Greetings:

On March 18, 2021, the City of Malden was served with the attached verbatim Public Records Request via their official Public Records Site: “Please provide all emails sent by any City of Malden employee on these specific dates:
Friday, August 7, 2020
Friday, August 14, 2020
Friday, August 21, 2020
Friday, August 28, 2020
Friday, September 4, 2020
Friday, September 11, 2020
Friday, September 18, 2020
Friday, September 25, 2020
Friday, October 2, 2020
Friday, October 9, 2020
Friday, October 16, 2020
Friday, October 23, 2020
Friday, October 30, 2020
Friday, November 6, 2020
Friday, November 13, 2020
Friday, November 20, 2020
Friday, November 27, 2020
Friday, December 4, 2020
Friday, December 11, 2020
Friday, December 18, 2020
Friday, December 25, 2020
Friday, January 1, 2021
Friday, January 8, 2021
Friday, January 15, 2021
Friday, January 22, 2021
Friday, January 29, 2021
Friday, February 5, 2021
Friday, February 12, 2021
Friday, February 19, 2021
Friday, February 26, 2021
Friday, March 5, 2021
Friday, March 12, 2021
Friday, March 19, 2021
Friday, March 26, 2021

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

The City responded with the attached acknowledgement signed by the Malden Super RAO, Greg Lucey.

The Commonwealth has specific public records laws which require a municipality such as the City of Malden to respond within 10 business days. The City/RAO had until the COB Friday, April 2, 2021 to respond per G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c). The City has failed to respond timely; See below:

Date	Day Tolled
Thursday, March 18, 2021	
Friday, March 19, 2021	1
Saturday, March 20, 2021	
Sunday, March 21, 2021	
Monday, March 22, 2021	2
Tuesday, March 23, 2021	3
Wednesday, March 24, 2021	4
Thursday, March 25, 2021	5
Friday, March 26, 2021	6
Saturday, March 27, 2021	
Sunday, March 28, 2021	
Monday, March 29, 2021	7
Tuesday, March 30, 2021	8
Wednesday, March 31, 2021	9
Thursday, April 1, 2021	10
Friday, April 2, 2021	11
Saturday, April 3, 2021	
Sunday, April 4, 2021	
Monday, April 5, 2021	12

Therefore, Open Malden respectfully requests that the City of Malden be ordered by your office to respond, and that your order acknowledge the requirements of per G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c), which bar the City of Malden from assessing any charges for this request. Open Malden respectfully requests request that the City of Malden be ordered to respond without delay.

Kindest Regards,

OpenMalden.com

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.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 23, 2021
SPR21/0491

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

Dear Ms. Dorai:

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

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

Prior determinations

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

Fees – Requirement of Timeliness in Responding

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

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

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

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

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

Conclusion

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

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

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

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 14, 2021
SPR21/0836; SPR21/0837

Greg Lucey
City Clerk
City of Malden
110 Pleasant Street, First Floor
Malden, MA 02148

Dear Mr. Lucey:

I have received the petitions of Bruce Friedman appealing the response of the City of Malden (City) to his requests for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 12, 2021, Mr. Friedman submitted two separate public records requests seeking various categories of records in the City's possession.

Previous Appeals

This request was the subject of previous appeals. See SPR21/0799; SPR21/0801 Supervisor of Records Determination (March 31, 2021). In my March 31st determination, I found the City provided Mr. Friedman with a response to his requests dated March 31, 2021, which included a fee estimate. Unsatisfied with the City's response, Mr. Friedman petitioned this office and SPR21/0836 and SPR21/0837 were opened as a result.

The Public Records Law

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

Fee estimate – municipalities

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

Municipalities may not assess a fee for the first (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 of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The City's March 31st response

In its March 31st response, the City states, "[i]n response to the above-referenced public records requests, submitted by you on Friday, 3/12/21, received on Monday, 3/15/21 please consider this as the City of Malden's formal written response. As you are aware, City offices have been and remain temporarily closed on Fridays, on an emergency basis, due to the State of Emergency declared by the Mayor in the City of Malden, and by the Governor in the Commonwealth of Massachusetts, as a result of the COVID19 pandemic. The City RAO and City staff are not present on Fridays due to the necessity for deep cleaning and sanitizing of City offices for safety of employees working during Monday through Thursday, and others visiting City offices during Monday through Friday. Due to the emergency closure on Fridays, the RAO as well as various Departments do not have access or ability to respond or work on responses on Fridays to your multiple public records requests."

G. L. c. 66, § 10(e)

In his appeals, Mr. Friedman contends "[t]he response was not timely made…per G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c)."

G. L. c. 66, § 10(e) provides that "[a] records access officer shall not charge a fee for a

public record unless the records access officer responded to the requestor within 10 business days under subsection (b).” Please be advised, “business day” is defined as Monday through Friday, but does not include weekdays where a custodian's office is closed *unexpectedly*. See 950 C.M.R. 32.02. If the City offices are scheduled to be closed every Friday, it is uncertain how the office is closed unexpectedly on Fridays.

Where Mr. Friedman submitted his public records requests on March 12, 2021, and the City provided a response on March 31st, I find it is unclear whether the City complied with G. L. c. 66, § 10(e). The City is advised in order to assess a fee for the requested records, it must demonstrate it provided a response in compliance with G. L. c. 66, § 10(b). The City must clarify this.

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 20, 2021
SPR21/0855; SPR21/0856

Gregory Lucey
Super Records Access Officer
City of Malden Clerk's Office
110 Pleasant Street
Malden, MA 02148

Dear Mr. Lucey:

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

SPR21/0855; City's Request No. 2021-0128

"…all emails sent by any [City] employee [on 34 Fridays in 2020 and 2021]. Please provide the responsive emails including all electronic header information electronically to the email address info@openmalden.com..."

SPR21/0856; City's Request No. 2021-0129

Malden Transparency requested: "…all detailed cellular billing statements for any [c]ellular [p]hones used by and/or issued to any City employee for the time period of August 2020 through the most current statement in [the City's] possession. Please include the assignment of said phone to said employee. This request includes but is not limited to any cellular billing submitted for reimbursement. Please provide the responsive documents electronically to the email address infor@openmalden.com."

In March 18, 2021 emails, the City provided Malden Transparency with acknowledgements from the FOIA Direct system to these requests. In its March 18th email, the City indicated that it would provide fee estimates on both of these requests by Tuesday, April 6, 2021.

Due to the response, Malden Transparency petitioned the Supervisor of Records (Supervisor), and this appeal was opened. In the April 4th petitions, Malden Transparency

asserted, "[t]he RAO had until the COB on Friday, April 2, 2021 to respond per G. L. c. 66, §10(b), G. L. c. 66, §10(e) and/or 950 C.M.R. 32.06(2)(c). The City failed to timely respond." As a result, these appeals were opened.

Fees - Timeliness of response

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. However, it is unclear whether the City provided Malden Transparency with written responses within ten (10) business days from their March 18, 2021 requests.

G. L. c. 66, § 10(e) provides that "[a] records access officer shall not charge a fee for a public record unless the records access officer responded to the requestor within 10 business days under subsection (b)." Please be advised, "business day" is defined as Monday through Friday, but does not include weekdays where a custodian's office is closed *unexpectedly*. See 950 C.M.R. 32.02. If the City offices are scheduled to be closed every Friday, it is uncertain how the office is closed unexpectedly on Fridays. The City is advised in order to assess a fee for the requested records, it must demonstrate it provided a response in compliance with G. L. c. 66, § 10(b). The City must clarify this.

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Malden Transparency

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

June 1, 2021
SPR21/0491

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

Dear Ms. Dorai:

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

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

Prior determinations

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

Fees – Requirement of Timeliness in Responding

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

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

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

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

> G. L. c. 66, § 10(e) provides that "[a] records access officer shall not charge a fee for a public record unless the records access officer responded to the requestor within 10 business days under subsection (b)." After reviewing the March 2nd response, the School District is advised, "business day" is defined as Monday through Friday, but does not include weekdays where a custodian's office is closed *unexpectedly*. See 950 C.M.R. 32.02.

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

Reconsideration of April 23, 2021 determination

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

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

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

Mackenzie Nekton

From: Bottorf, Augustine (SEC)
Sent: Tuesday, June 1, 2021 2:47 PM
To: sdorai@maldenps.org; [redacted]
Cc: SEC-DL-PREWEB
Subject: Determination SPR21-0491 Reconsideration
Attachments: spr210491.pdf

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

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

ATTACHMENT NO. 95

Attachment to Email:
SPR21/0491 Reconsideration
June 1, 2021

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. 94)

,

Mackenzie Nekton

From: Dorai, Shirley <sdorai@maldenps.org>
Sent: Tuesday, June 8, 2021 4:05 PM
To: Malden Transparency
Cc: SEC-DL-PREWEB; Greg Lucey; Karen Anderson; Chan, Benjamin (SEC)
Subject: Public Records Request dated May 7, 2021/FOIA Request 2021-0221
Attachments: Mald01 Invoices.PDF; Privelege Log.pdf; SPR 21-221 response_with records.pdf

Good evening,

Please see the attached response documents. 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

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000

300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479 6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/23/21
Bill number 80422
Billing through 03/31/21

00001 General Ongoing

Total fees for this matter	$1,334.50
Total disbursements for this matter	$23.19

00261 [redacted]

Total fees for this matter	$1,523.00
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$400.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$850.00
Total disbursements for this matter	$0.00

00270 [redacted] **Appeal**

Total fees for this matter	$1,498.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**25.90 hrs**	**$5,606.00**
TOTAL EXPENSES FOR THIS BILL		**$23.19**
TOTAL DUE THIS BILL		**$5,629.19**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/23/21
Bill number 80422
Billing through 03/31/21

00001 General Ongoing

For professional services rendered:

Call with sped director regarding Charter School student [redacted]; Email with Attorney Gomes; Call with Attorney Gomes regarding student at [redacted] Email sped director; Review custody documents; Email with sped director and Mr. Concannon; Call with Mr. Gomes [redacted] Email with sped director; Email with Ms. Chase [redacted] Email with law form representing family; Email [redacted] and Ms. Chase; Read letter from parent, and email with sped director [redacted] Emailed o [redacted] Review [redacted] Review of [redacted] Email to client, Pam MacDonald [redacted] Email with sped director [redacted]

Total fees for this matter	5.40 hrs	$1,334.50

Disbursements:

03/03/21	Express Mail - Postage (UPS)	$23.19
	Total disbursements for this matter	$23.19

00261 [redacted]

For professional services rendered:

Emailed on public records responses; Emailed on new public records request; Drafted [redacted] Emailed on public records responses; Emailed [redacted] Reviewed [redacted] Emailed on public records responses; Draft letters to BSEA [redacted] Email

with parents and Hearing Officer regarding upcoming hearing date; Email with parties regarding rescheduling pre-hearing conference; Email with [redacted] Drafted [redacted] Emailed supervisor

Total fees for this matter	6.20 hrs	$1,523.00

00266 [redacted]

For professional services rendered:

Email with Attorney Presson regarding upcoming meeting; Call with Attorney Presson in preparation for Team meeting; Attend Team meeting

Total fees for this matter	1.60 hrs	$400.00

00268 [redacted]

For professional services rendered:

Email with Attorney Dalton [redacted] Call with Ms. Bryson and Ms. Whittington; Read reports; Attend IEP Team meeting; Email from Attorney Dalton [redacted] Email and call with Team; Email with Attorney Dalton [redacted]

Total fees for this matter	3.40 hrs	$850.00

00270 [redacted] **Appeal**

For professional services rendered:

Emailed on receipt of complaint; Researched and drafted motion to dismiss [redacted] Emailed on motion to dismiss; Emails to/from Attorney Vasudevan [redacted] Review f [redacted] assemble research materials; emal to Attorney Vasudevan s [redacted] shepardize cited cases, statutes and rules; [redacted] Emailed on motion to dismiss; Conferenced with [redacted] Emailed update on case; Conferenced with [redacted] Telephone call from Attorney Vasudevan [redacted] draft Motion to Extend Deadline to file Responsive Pleading (Assented To); email document to Attorney Vasudevan for review of same; emails to/from Attorney Vasudevan regarding electronic filing matters; Emailed filings; Review, revise, finalize Motion to Extend Deadline to file Responsive Pleading (Assented To); draft and finalize Vasudevan Notice of Appearance; efile Motion to Extend Deadline to File Responsive Pleading (Assented To) and Vasudevan Notice of Appearance; download and save electronically filed documents; emails to/from Attorney Vasudevan regarding same; Emailed [redacted] Emailed on [redacted]

Total fees for this matter	9.30 hrs	$1,498.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**25.90 hrs**	**$5,606.00**
TOTAL EXPENSES FOR THIS BILL		**$23.19**
TOTAL DUE THIS BILL		**$5,629.19**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000

300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479 6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/23/21
Bill number 80131
Billing through 02/28/21

00001 General Ongoing

Total fees for this matter	$424.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$420.50
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$125.00
Total disbursements for this matter	$0.00

00267 [redacted]

Total fees for this matter	$250.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$125.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**5.40 hrs**	**$1,345.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,345.00**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000
300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126
FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/23/21
Bill number 80131
Billing through 02/28/21

00001 General Ongoing

For professional services rendered:

Emailed on public records responses; Call with sped director regarding [redacted] Email with sped director regarding [redacted] Email with sped director [redacted] Review records; Email with sped director [redacted]

Total fees for this matter	1.70 hrs	$424.50

00261 [redacted]

For professional services rendered:

Email with Team; Participate in SC executive session; Attended school committee meeting; Emailed on [redacted]; Emailed on public records request

Total fees for this matter	1.70 hrs	$420.50

00266 [redacted]

For professional services rendered:

Read independent neuropsych evaluation and email with Ms. Whittington; Email Team regarding rescheduling meeting

Total fees for this matter	0.50 hrs	$125.00

00267 [redacted]

For professional services rendered:

Attend Best Interest Determination meeting; Call with sped director; Call with Ms. Smith r[redacted]

Total fees for this matter	1.00 hrs	$250.00

00268 [redacted]

For professional services rendered:

Communicate with sped director regarding i[redacted]; Email with Attorney Dalton to reschedule meeting; Email with parties to reschedule meeting; Email with Team regarding [redacted]

Total fees for this matter	0.50 hrs	$125.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**5.40 hrs**	**$1,345.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,345.00**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479 5000 | 300 CROWN COLONY DRIVE, SUITE 410 P.O. BOX 9126 QUINCY, MA 02269-9126 | FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/28/21
Bill number 80030
Billing through 01/31/21

00001 General Ongoing

Total fees for this matter	$199.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$3,791.50
Total disbursements for this matter	$0.00

00265 [redacted]

Total fees for this matter	$1,750.00
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$25.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$50.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.50 hrs**	**$5,815.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$5,815.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/28/21
Bill number 80030
Billing through 01/31/21

00001 General Ongoing

For professional services rendered:

Email with parent's attorney and Ms. Chase [redacted]; Call with Ms. Macdonald about student [redacted] Emailed Attorney St. Florian on public records request; Email with Ms. Chase r[redacted]

Total fees for this matter	0.80 hrs	$199.00

00261 [redacted]

For professional services rendered:

Emailed Ms. Dorai on public records requests; Email and call with Attorney Vasudevan [redacted] Reviewed s[redacted] Reviewed [redacted] Reviewed and redacted public records responses; Conferenced with Attorney St. Florian; Drafted responses and reviewed drafted responses; Read evaluation reports and email from parent; Emailed Ms. Dorai on public records requests; Emailed Ms. Dorai [redacted]; Conferenced with Ms. Dorai on public records responses; [redacted] Conferenced with Supervisor; Drafted [redacted] Reviewed email on public records responses; Emailed on public records request; Reviewed responses; Conferenced with Ms. Dorai on public records response; [redacted] on public records decisions; Call with sped director; Read [redacted] appeal; Draft letter to BSEA [redacted] Review file; Email parents; Email with Mr. Oteri; Conferenced with Attorney St. Florian [redacted] Revieewed complaint; Email with District regarding [redacted] Emailed on [redacted] Prepare for conference call; Email with sped director; BSEA conference call; Draft letter to BSEA

Total fees for this matter	15.40 hrs	$3,791.50

00265 [redacted]

For professional services rendered:

Review discovery requests; Draft discovery; Email with sped director and Attorney Sankey r[redacted] Preparation for pre-hearing conference; Call with Attorney Sankey to prepare for [redacted] pre-hearing conference; Attend pre-hearing conference and call with sped director; Email with sped director [redacted] Call with Attorney Sankey; Email with sped director and Attorney Sankey [redacted] Draft [redacted] Email with Attorney Sankey r[redacted]

Total fees for this matter	7.00 hrs	$1,750.00

00266 [redacted]

For professional services rendered:

Email with Ms. Whittington regarding postponing annual meeting [redacted]

Total fees for this matter	0.10 hrs	$25.00

00268 [redacted]

For professional services rendered:

Email with Ms. Whittington regarding [redacted] Email with Ms. Whittington and Attorney Dalton [redacted]

Total fees for this matter	0.20 hrs	$50.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.50 hrs**	**$5,815.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$5,815.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000 | 300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126 | FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 01/29/21
Bill number 79686
Billing through 12/31/20

00001 General Ongoing

Total fees for this matter	$546.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$5,320.00
Total disbursements for this matter	$61.21

00265 [redacted]

Total fees for this matter	$900.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$75.00
Total disbursements for this matter	$0.00

00269 [redacted]

Total fees for this matter	$550.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**29.80 hrs**	**$7,391.00**
TOTAL EXPENSES FOR THIS BILL		**$61.21**
TOTAL DUE THIS BILL		**$7,452.21**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000

300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 01/29/21
Bill number 79686
Billing through 12/31/20

00001 General Ongoing

For professional services rendered:

Reviewed [redacted] Email with Ms. Chase [redacted] Call to Attorney Donnelly; Read [redacted] Email with sped director regarding [redacted] Emailed o[redacted]; Email with sped director regarding [redacted] Email with Ms. Macdonald and sped director regarding record [redacted] Emailed [redacted] Email and call with sped director re[redacted]

Total fees for this matter	2.20 hrs	$546.00

00261 [redacted]

For professional services rendered:

Email with sped director; Review discovery requests; Draft letter to BSEA; Call with sped director and Ms. Whittington; Work on [redacted] Responded to [redacted] Work on [redacted] Email with sped director and Ms. Whittington; Emailed [redacted] Work [redacted] Drafted [redacted] all with sped director [redacted] Emailed [redacted] Emailed on public records responses; Review and redact emails and finalize discovery responses; Emailed on public records responses; Drafted [redacted] Emailed Ms. Dorai; Reviewed email response f[redacted] Emailed on public records response; Edited public records responses; Drafted response [redacted] Conferenced with Attorney Puccini; Emailed Ms. Dorai on responses; Emailed on public records responses [redacted] Edited and drafted letters; Reviewed [redacted] Call with sped director; Emailed on public records request responses; Reviewed [redacted] Emailed Supervisor; Drafted [redacted] Read [redacted] Email with District

	Total fees for this matter	21.50 hrs	$5,320.00

Disbursements:

12/28/20	Express Mail - Postage (UPS	$61.21
	Total disbursements for this matter	$61.21

00265 [redacted]

For professional services rendered:

Email with Ms. Whittington regarding next steps [redacted] Read [redacted] Email with District; Draft r[redacted] Email with sped director; BSEA conference call; Call with sped director; Call with Attorney Sankey; Email with sped director; Call with sped director r[redacted]

Total fees for this matter	3.60 hrs	$900.00

00268 [redacted]

For professional services rendered:

Email with Attorney Dalton and Ms. Bryson regarding confirming meeting; Email with Ms. Whittington and Attorney Dalton [redacted]

Total fees for this matter	0.30 hrs	$75.00

00269 [redacted]

For professional services rendered:

Read [redacted]; Call with Ms. Macdonald and call with Attorney Dalton to prepare for 12/03 meeting; Attend Team meeting [redacted]; Edit form [redacted]; Email with Ms. Macdonald; Call with Ms. Macdonald r[redacted] Email with Ms. Macdonald and Attorney Dalton regarding [redacted]; Email with Attorney Dalton regarding [redacted]

Total fees for this matter	2.20 hrs	$550.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**29.80 hrs**	**$7,391.00**
TOTAL EXPENSES FOR THIS BILL		**$61.21**
TOTAL DUE THIS BILL		**$7,452.21**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 12/30/20
Bill number 79423
Billing through 11/30/20

00001 General Ongoing

Total fees for this matter	$175.00
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$49.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$6,750.00
Total disbursements for this matter	$0.00

00265 [redacted]

Total fees for this matter	$650.00
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$200.00
Total disbursements for this matter	$0.00

00267 [redacted]

Total fees for this matter	$325.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter		$425.00
Total disbursements for this matter		$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**34.60 hrs**	**$8,574.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$8,574.00**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 12/30/20
Bill number 79423
Billing through 11/30/20

00001 General Ongoing

For professional services rendered:

Call with sped director regarding [redacted]
Emails with A. St. Florian [redacted] Email with sped director regarding [redacted]

Total fees for this matter	0.70 hrs	$175.00

00242 [redacted]

For professional services rendered:

Reviewed [redacted] Emailed Attorney Kilkelly

Total fees for this matter	0.20 hrs	$49.00

00261 [redacted]

For professional services rendered:

Work on [redacted] Legal research o[redacted] Edited the [redacted]; Emailed [redacted] Review discovery requests; Email with Superintendent and sped director; File Motion to Dismiss; Edited [redacted] Emailed on public records responses; Email correspondence; Draft r[redacted]; Draft letter to BSEA; Reviewed public records response; Emailed on public records responses; Filed with Secretary of State; Email with s[redacted] Emailed on Public Records response; Edited [redacted] Emailed [redacted] Reviewed and

e[redacted]Finalize response [redacted] Finalize closing argument; Drafted [redacted] Emailed on public records responses; Read parents' closing argument; Emailed on public records responses and edited responses; Read n[redacted]Email with superintendent and sped director; Draft r[redacted]Emailed on public records responses; BSEA conference call; Email with sped director and superintendent [redacted]Emailed a[redacted]Reviewed response f[redacted]Conferenced with Supervisor on requests; Conferenced with Ms. Dorai; Drafted r[redacted]Email with Ms. Meyer r[redacted]Call with Attorney Vasudevan [redacted]Responded t[redacted]; Conferenced with Attorney St. Florian; Emailed on public records requests; Read emails between [redacted]Email with Ms. Whittington; Reviewed decision from Supervisor; Emailed Ms. Dorai on records request; Emailed on public records requests

Total fees for this matter	27.30	hrs	$6,750.00

00265 [redacted]

For professional services rendered:

Call with Attorney Sankey regarding tomorrow's meeting; Pre-meeting and attend Team meeting

Total fees for this matter	2.60	hrs	$650.00

00266 [redacted]

For professional services rendered:

Email with Ms. Whittington and attend IEP meeting

Total fees for this matter	0.80	hrs	$200.00

00267 [redacted]

For professional services rendered:

Email with Attorney Chilnick and sped director [redacted]mail with Ms. Smith and Attorney for student [redacted]Attend [redacted] meeting; [redacted]

Total fees for this matter	1.30	hrs	$325.00

00268 [redacted]

For professional services rendered:

Attend annual review meeting; Email and call with Attorney Dalton and Ms. Bryson r [redacted]

Total fees for this matter	1.70 hrs	$425.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**34.60 hrs**	**$8,574.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$8,574.00**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/20/20
Bill number 79065
Billing through 10/31/20

00001 General Ongoing

Total fees for this matter	$1,559.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$122.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$9,633.00
Total disbursements for this matter	$86.06

00264 [redacted]

Total fees for this matter	$375.00
Total disbursements for this matter	$0.00

00265 [redacted]

Total fees for this matter	$75.00
Total disbursements for this matter	$0.00

00267 [redacted]

Total fees for this matter	$200.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$25.00
Total disbursements for this matter	$0.00

00269 [redacted]

Total fees for this matter	$25.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**48.20 hrs**	**$12,015.00**
TOTAL EXPENSES FOR THIS BILL		**$86.06**
TOTAL DUE THIS BILL		**$12,101.06**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/20/20
Bill number 79065
Billing through 10/31/20

00001 General Ongoing

For professional services rendered:

Email with sped director and Attorney Dalton [redacted] Email with Ms. Smith regarding [redacted] Call with Attorney Chilnick; Email with Attorney Dalton and Ms. Mcdonald r[redacted] Emailed Attorney St. Florian o[redacted] Email with sped director and Attorney Dalton regarding [redacted] Emailed on public records appeal; Email with Ms. Macdonald regarding scheduling meeting [redacted] Provided [redacted] Emailed Attorney St. Florian [redacted] Edited [redacted] Email with Superintendent Oteri regarding [redacted] Follow up consultation with Attorney St. Florian [redacted] Email with Ms. Macdonald; Draft [redacted]

Total fees for this matter	6.30 hrs	$1,559.50

00242 [redacted]

For professional services rendered:

Emailed [redacted]; Emailed on extension; Emailed on hearing; Emailed on s[redacted]

Total fees for this matter	0.50 hrs	$122.50

00261 [redacted]

For professional services rendered:

Read n[redacted]st; Email with Team [redacted] Read ruling from BSEA; Read

hearing transcript [redacted] Call with sped director; [redacted] Draft letter to BSEA [redacted] Read email from parents; Email with sped director; Prepare e[redacted] Call with sped director; Email with Ms. Whittington; Read parent emails; Calls with sped director regarding [redacted] Email with parents; Drafted [redacted] Email with hearing officer; Email with sped director; Email with parents and Superintendent; Call with sped director; Review [redacted] Email with Ms. Macdonald; Draft [redacted] BSEA conference call; Work [redacted] Email parties; Call with sped director; Draft response to hearing request; Work on closing argument; Read [redacted] Work o[redacted] Work [redacted] Read transcript; Work [redacted] Email with [redacted] Drafted l[redacted] Work [redacted]; Email with District [redacted] Emailed o[redacted] BSEA conference call; Email with sped director; Work [redacted] Reviewed [redacted] Work [redacted] Read hearing request; [redacted] Emailed on public records responses

	Total fees for this matter	38.60 hrs	$9,633.00

Disbursements:

10/27/20	Express Mail - Postage (UPS)	$86.06
	Total disbursements for this matter	$86.06

00264 [redacted]

For professional services rendered:

Call with Ms. Macdonald; Email with Ms. Presson; Draft s[redacted] Email with Attorney Presson [redacted]

Total fees for this matter	1.50 hrs	$375.00

00265 [redacted]

For professional services rendered:

Call with sped director and email and call with Attorney Sankey

Total fees for this matter	0.30 hrs	$75.00

00267 [redacted]

For professional services rendered:

Attend IEP Team meeting for [redacted]

Total fees for this matter	0.80 hrs	$200.00

00268 [redacted]

For professional services rendered:

Email with Ms. Macdonald and Attorney Dalton [redacted]

Total fees for this matter	0.10 hrs	$25.00

00269 [redacted]

For professional services rendered:

Email with Ms. Macdonald [redacted]

Total fees for this matter	0.10 hrs	$25.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**48.20 hrs**	**$12,015.00**
TOTAL EXPENSES FOR THIS BILL		**$86.06**
TOTAL DUE THIS BILL		**$12,101.06**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/12/20
Bill number 78909
Billing through 07/31/20

00001 General Ongoing

Total fees for this matter	$499.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$98.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$892.50
Total disbursements for this matter	$0.00

00264 [redacted]

Total fees for this matter	$2,355.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**15.60 hrs**	**$3,845.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$3,845.00**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/12/20
Bill number 78909
Billing through 07/31/20

00001 General Ongoing

For professional services rendered:

Email with Superintendent Oteri regarding [redacted] Emailed Attorney St. Florian o[redacted] Email with sped director [redacted] Email with Attorney Presson and sped director regarding [redacted] Call with sped director regarding s[redacted] and r[redacted]t; Email Attorney Presson; Call with Superintendent; Read letter opposing [redacted] Review subpoena; Call Atttorney; Email sped director; Call Attorney r[redacted]; Email with Ms. Boudreau

Total fees for this matter	2.00 hrs	$499.50

00242 [redacted].

For professional services rendered:

Emailed on [redacted] Emailed on [redacted] Emailed on [redacted]t

Total fees for this matter	0.40 hrs	$98.00

00261 [redacted]

For professional services rendered:

Draft letter to BSEA; Call with sped director and Superintendent Oteri [redacted] Email with parent and sped director [redacted] Emailed on public records request; Emailed [redacted] Emailed [redacted] Conferenced [redacted] Email with Attorney Fallon; Draft letter to [redacted] Read parent

letter; Email to Attorney Fallon; Read parent letter a[redacted]; Email with sped director; Email with sped director and parent; Email with parent and sped director regarding upcoming hearing; Email with sped director [redacted]

Total fees for this matter	3.60 hrs	$892.50

00264 [redacted]

For professional services rendered:

Email with sped director and Attorney Sow r[redacted]Drafting and editing [redacted] Email communications with client. Revisions t[redacted] Read response; Email with Attorney Sow; Editing response [redacted] Call with client to discuss matter.

Total fees for this matter	9.60 hrs	$2,355.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**15.60 hrs**	**$3,845.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$3,845.00**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 10/23/20
Bill number 78664
Billing through 09/30/20

00001 General Ongoing

Total fees for this matter	$425.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,100.00
Total disbursements for this matter	$44.31

00264 [redacted]

Total fees for this matter	$450.00
Total disbursements for this matter	$22.80

00265 [redacted]

Total fees for this matter	$100.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**8.30 hrs**	**$2,075.00**
TOTAL EXPENSES FOR THIS BILL		**$67.11**
TOTAL DUE THIS BILL		**$2,142.11**

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FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 10/23/20
Bill number 78664
Billing through 09/30/20

00001 General Ongoing

For professional services rendered:

Call with Attorney Vasudevan [redacted] Email with sped director; Email with Attorney Dalton and Attorney Vasudevan and sped director regarding [redacted] Email with Ms. McDonald r[redacted] Email with Attorney Dalton regarding [redacted]; Email with sped director r[redacted] Review records; Email with District regarding record request [redacted] Call with sped director and Ms. Smith [redacted]

Total fees for this matter	1.70 hrs	$425.00

00261 [redacted]

For professional services rendered:

Read [redacted] t[redacted] Email with Ms. Whittington r[redacted] Telephone conference with sped director r[redacted] Pre-hearing conference and witness preparation meeting; Email with Team r[redacted] Email with sped director; Email with [redacted] Email with parent; BSEA conference call; Read [redacted] Email with Ms. Whittington

Total fees for this matter	4.40 hrs	$1,100.00

Disbursements:

09/22/20	Express Mail - Postage (UPS)	$21.51
09/28/20	Express Mail - Postage (UPS)	$22.80

Total disbursements for this matter		$44.31

00264 [redacted]

For professional services rendered:

Call with sped director re[redacted]Pre-meeting with Team and attend pre-hearing conference; Review file; Draft [redacted]Email with Attorney Presson and sped director [redacted]; Email with Ms. McDonald and Attorney Presson regarding [redacted]; Email with Ms. Mcdonald and Attorney Presson r[redacted]

Total fees for this matter	1.80 hrs	$450.00

Disbursements:

09/28/20	Express Mail - Postage (UPS)	$22.80
	Total disbursements for this matter	$22.80

00265 [redacted].

For professional services rendered:

Email with Ms. Whittington; Call with Attorney Sankey

Total fees for this matter	0.40 hrs	$100.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**8.30 hrs**	**$2,075.00**
TOTAL EXPENSES FOR THIS BILL		**$67.11**
TOTAL DUE THIS BILL		**$2,142.11**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 09/24/20
Bill number 78342
Billing through 08/31/20

00001 General Ongoing

Total fees for this matter	$175.00
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$147.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$11,300.00
Total disbursements for this matter	$151.12

00264 [redacted]

Total fees for this matter	$297.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**47.70 hrs**	**$11,919.50**
TOTAL EXPENSES FOR THIS BILL		**$151.12**
TOTAL DUE THIS BILL		**$12,070.62**

MALD01 78342

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 09/24/20
Bill number 78342
Billing through 08/31/20

00001 General Ongoing

For professional services rendered:

Read email from parent [redacted] and call with Superintendent r[redacted] Research and email o[redacted] with Mr. Concannon; Email with District [redacted]

Total fees for this matter	0.70 hrs	$175.00

00242 [redacted]

For professional services rendered:

Emailed o[redacted] Emailed on [redacted] Emailed o[redacted]

Total fees for this matter	0.60 hrs	$147.00

00261 [redacted]

For professional services rendered:

Hearing preparation w[redacted] Prepare exhibits; Email with sped director; Complete exhibit binder; Review documents; Review [redacted] Witness preparation; Work on e[redacted] Witness [redacted]; BSEA conference call; BSEA conference call; Preparation for call; Work on [redacted] Call with sped director [redacted] Draft [redacted] Hearing preparation; Participate [redacted] Review parent's exhibits; Call with [redacted] Read motions filed by parents; Draft letter to BSEA; Email with sped director; Preparation [redacted] Finish

[redacted]; Read discovery requests; Email with District; Email pr[redacted]Draft [redacted]repare [redacted]Hearing preparation [redacted]BSEA Hearing Day 1 and preparation; BSEA Hearing Day #2; BSEA Hearing Day #3; Work on scheduling conference call; Email with District r[redacted]; Draft [redacted]; Email w[redacted]; Email with Ms. Whittington r[redacted] [redacted] BSEA conference call; Email sped director; Email with sped director; Draft [redacted]

	Total fees for this matter	45.20 hrs	$11,300.00

Disbursements:

08/20/20	Express Mail - Postage (UPS)	$151.12
	Total disbursements for this matter	$151.12

00264 [redacted]

For professional services rendered:

Email with Attorney Sow; BSEA conference call; Email with sped director; Email to Atty St. Florian [redacted] Email with Attorney Presson and sped director [redacted] sped director [redacted]

Total fees for this matter	1.20 hrs	$297.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**47.70 hrs**	**$11,919.50**
TOTAL EXPENSES FOR THIS BILL		**$151.12**
TOTAL DUE THIS BILL		**$12,070.62**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/30/20
Bill number 77844
Billing through 06/24/20

00001 General Ongoing

Total fees for this matter	$98.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,043.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**4.70 hrs**	**$1,141.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,141.50**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/30/20
Bill number 77844
Billing through 06/24/20

00001 General Ongoing

For professional services rendered:

Call with Superintendent r[redacted] Email with sped director regarding request fo[redacted]

Total fees for this matter	0.40 hrs	$98.00

00261 [redacted]

For professional services rendered:

Emailed on public records request; BSEA conference call; Email with sped director; Email with Superintendent Oteri regarding [redacted] Email with Attorney Fallon; Responded on [redacted] Emailed on public records request response; Review emails f[redacted] Call with Attorney Fallon; Email sped director; Read Motion to Compel; Email sped director; Email Attorney Fallon; Reviewed documents i[redacted] Email with sped director; Reviewed information request a[redacted] Emailed on response to records request; Emailed on public records request

Total fees for this matter	4.30 hrs	$1,043.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**4.70 hrs**	**$1,141.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,141.50**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/16/20
Bill number 77566
Billing through 05/31/20

00001 General Ongoing

Total fees for this matter	$416.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$504.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,483.50
Total disbursements for this matter	$0.00

00263 [redacted]

Total fees for this matter	$563.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**12.20 hrs**	**$2,967.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,967.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000

300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/16/20
Bill number 77566
Billing through 05/31/20

00001 General Ongoing

For professional services rendered:

Email with Mr. Wood and Superintendent [redacted] Email with Ms. Whittington and sped director regarding [redacted] Email with sped director re [redacted] Draft letter; Call with Superintendent Oteri [redacted] Draft [redacted]; Email with sped director [redacted] Email with Superintendent [redacted]

Total fees for this matter	1.70 hrs	$416.50

00242 [redacted]

For professional services rendered:

Emailed [redacted] Conferenced with Superintendent Oteri; Emailed Mr. Wood [redacted] emailed family's attorneys; Reviewed [redacted] Drafted [redacted] Emailed Superintendent Oteri o[redacted] Emailed Superintendent Oteri [redacted] Emailed family's [redacted]

Total fees for this matter	2.10 hrs	$504.00

00261 [redacted]

For professional services rendered:

Read parent motion; Email sped director; Email with sped director; Draft r[redacted]

Review file; Reviewed [redacted]; Reviewed r[redacted]Read [redacted] Email with parties to schedule call; Emailed on public records request; Prepare for and participate in BSEA conference call; Drafted [redacted] Read BSEA order; Email with sped director; Emailed on public records request; Email with sped director regarding emails; Emailed on public records request; Email with sped director r[redacted] Emailed on public records request; Conferenced with Superintendent Oteri

Total fees for this matter	6.10 hrs	$1,483.50

00263 [redacted]

For professional services rendered:

Call with Team to plan [redacted] Participate in Team meeting; Review records sent by Ms. Whittington

Total fees for this matter	2.30 hrs	$563.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**12.20 hrs**	**$2,967.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,967.50**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 05/27/20
Bill number 77310
Billing through 04/30/20

00001 General Ongoing

Total fees for this matter	$1,131.00
Total disbursements for this matter	$0.00

00242 [redacted].

Total fees for this matter	$1,074.50
Total disbursements for this matter	$30.85

00248 [redacted]

Total fees for this matter	$122.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$2,958.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.70 hrs**	**$5,286.00**
TOTAL EXPENSES FOR THIS BILL		**$30.85**
TOTAL DUE THIS BILL		**$5,316.85**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 05/27/20
Bill number 77310
Billing through 04/30/20

00001 General Ongoing

For professional services rendered:

Drafted r[redacted] Email with Superintendent Oteri; Email sped director regarding [redacted] Drafted [redacted] Emailed on public records request; Drafted response to public records request; Email with sped director and Attorney Tobin [redacted]; Emailed on public records response; Review s[redacted] Email Superintendent; Conferred with Attorney St. Florian [redacted]

Total fees for this matter	4.70 hrs	$1,131.00

00242 [redacted]

For professional services rendered:

Reviewed [redacted] Reviewed filing and conferred with Attorney Vasudevan re: next steps; Emailed Attorney Sherwood on 9A package; Reviewed materials and Rule 9A, conferred with Ms. Wright and [redacted] w court emergency orders regarding case filing and related procedural matters; [redacted] draft [redacted] convert documents to PDF; electronically file documents with trial court Odyssey filing system; download and save court accepted documents; draft and send email to [redacted] Attorney Sherwood regarding same; Conferred with Ms. Wright and all parties re: filing; Review email rejection notice [redacted] draft correspondence to Attorney Kilkelly [redacted] emails to/from support staff for mailing of same; Emailed [redacted]

	Total fees for this matter	6.30 hrs	$1,074.50

Disbursements:

04/06/20	Filing fees (EastVisa)	$30.85
	Total disbursements for this matter	$30.85

00248 [redacted]

For professional services rendered:

Read court ruling; Email Superintendent Oteri

Total fees for this matter	0.50 hrs	$122.50

00261 [redacted]

For professional services rendered:

Prepare for telephone motion session regarding discovery; Read file; Email with sped director; Call with sped director t[redacted]; Participate in discovery motion session; Review email; Email with sped director; Work o[redacted]raft [redacted]Read letter by parents [redacted] Email with sped director; Drafted r[redacted]; Drafted [redacted]Email with sped director r[redacted]Edited public records response; Read parent response [redacted] Reviewed [redacted] Conferenced with Superintendent Oteri; Emailed Ms. Dorai; Emailed on public records request

Total fees for this matter	12.20 hrs	$2,958.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.70 hrs**	**$5,286.00**
TOTAL EXPENSES FOR THIS BILL		**$30.85**
TOTAL DUE THIS BILL		**$5,316.85**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/29/20
Bill number 77017
Billing through 03/31/20

00001 General Ongoing

Total fees for this matter	$98.00
Total disbursements for this matter	$0.00

00043 [redacted]

Total fees for this matter	$833.00
Total disbursements for this matter	$0.00

00242 [redacted].

Total fees for this matter	$269.50
Total disbursements for this matter	$0.00

00259 [redacted].

Total fees for this matter	$169.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,053.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**10.60 hrs**	**$2,423.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,423.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/29/20
Bill number 77017
Billing through 03/31/20

00001 General Ongoing

For professional services rendered:

Call with Mr. Mastrangelo r[redacted] Call with Mr. Mastrangelo [redacted]
[redacted]r

Total fees for this matter	0.40 hrs	$98.00

00043 [redacted]

For professional services rendered:

Call with Ms. Whittington and spe director; Email with Attorney Mikolajewski and District; Call with Ms. Keene; Email with Attorney Mikolajewski; Email with sped director regarding p[redacted]
[redacted]Draft s[redacted]mail with sped director and Attorney Mikolajewski

Total fees for this matter	3.40 hrs	$833.00

00242 [redacted]

For professional services rendered:

Draft[redacted]draft, p[redacted]; emails to/from and conferences with Attorney Sherwood regarding same; Conferred with Ms. Resnick and reviewed and saved documents; Emailed Ms. Resnick on request for extension; Reviewed email on notice

to Attorney General

Total fees for this matter	1.80 hrs	$269.50

00259 [redacted].

For professional services rendered:

Met with Attorney Sow to review Team meeting; Meeting r[redacted]Email to client [redacted]

Total fees for this matter	0.70 hrs	$169.50

00261 [redacted].

For professional services rendered:

Call with sped director regarding f[redacted] Email with sped director; Call with Mr. Oteri; Read record request; Call with Attorney Rosetti re[redacted]Review file in preparation; Email with [redacted]; Email with parents; Draft [redacted]Email with Attorney Rossetti; Draft letter to BSEA; BSEA conference call; Email with sped director; Email with Attorney Rossetti; Email with Attorney Vasudevan; Read [redacted]

Total fees for this matter	4.30 hrs	$1,053.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**10.60 hrs**	**$2,423.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,423.50**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/28/20
Bill number 76735
Billing through 02/28/20

00001 General Ongoing

Total fees for this matter	$386.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$3,936.00
Total disbursements for this matter	$0.00

00259 [redacted].

Total fees for this matter	$1,080.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,249.50
Total disbursements for this matter	$26.96

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**27.60 hrs**	**$6,652.00**
TOTAL EXPENSES FOR THIS BILL		**$26.96**
TOTAL DUE THIS BILL		**$6,678.96**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/28/20
Bill number 76735
Billing through 02/28/20

00001 General Ongoing

For professional services rendered:

Reviewed [redacted] rafted public records response; Email with Ms. Whittington and Superintendent Oteri r[redacted] Conferenced with Assistant City Solicitor Rossetti; Conferenced with Attorney St. Florian; Call with Superintendent Oteri r[redacted]

Total fees for this matter 1.60 hrs $386.50

00242 [redacted]

For professional services rendered:

Worked [redacted] Researched an[redacted]; Reviewed [redacted] conferred with Attorney Vasudevan; Reviewed [redacted] dited m[redacted] Emailed o[redacted] Conferenced with Superintendent Oteri; Emailed [redacted] Conferred with Attorney Vasudevan [redacted] Reviewed [redacted] emailed Attorney Sherwood; Finalized and sent out a[redacted] Emailed on request [redacted] Emailed [redacted]

Total fees for this matter 16.40 hrs $3,936.00

00259 [redacted]

For professional services rendered:

Email to client re: upcoming meeting and reports.; Email to client re[redacted]

Email to Attorney St. Florian re: special ed meeting; Email to/from client re: special ed meeting [redacted] Reviewed [redacted] Attended Special education meeting [redacted] Reviewed case with client prior to meeting.

Total fees for this matter	4.50 hrs	$1,080.00

00261 [redacted].

For professional services rendered:

Email with sped director [redacted] Review FOIA request and documents; Email Attorney Vasudevan; Email with sped director and parents; BSEA conference call; Email with sped director; Prepare for and attend pre-hearing conference; Draft s[redacted]

Total fees for this matter	5.10 hrs	$1,249.50

Disbursements:

02/26/20	Travel (AES)	$11.00
02/26/20	Travel (AES)	$15.96
	Total disbursements for this matter	$26.96

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**27.60 hrs**	**$6,652.00**
TOTAL EXPENSES FOR THIS BILL		**$26.96**
TOTAL DUE THIS BILL		**$6,678.96**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/26/20
Bill number 76280
Billing through 01/31/20

00001 General Ongoing

Total fees for this matter	$343.00
Total disbursements for this matter	$0.00

00222 [redacted]

Total fees for this matter	$0.00
Total disbursements for this matter	$29.40

00242 [redacted]

Total fees for this matter	$1,771.50
Total disbursements for this matter	$31.33

00255 [redacted]

Total fees for this matter	$147.00
Total disbursements for this matter	$0.00

00256 [redacted]

Total fees for this matter	$49.00
Total disbursements for this matter	$0.00

00259 [redacted]

Total fees for this matter	$24.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter		$833.00
Total disbursements for this matter		$25.28

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**14.80 hrs**	**$3,168.00**
TOTAL EXPENSES FOR THIS BILL		**$86.01**
TOTAL DUE THIS BILL		**$3,254.01**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/26/20
Bill number 76280
Billing through 01/31/20

00001 General Ongoing

For professional services rendered:

Call with Mr. Mastrangelo r[redacted] Call with sped director [redacted] Email Attorney Sow; Call with Principal Mastrangelo [redacted] Call with Superintendent re[redacted] Email with Mr. Concannon [redacted] Email with Ms. Chase [redacted]; Email with Superintendent regarding [redacted]

Total fees for this matter	1.40 hrs	$343.00

00222 [redacted]

Disbursements:

12/20/19	Travel (AES)	$29.40
	Total disbursements for this matter	$29.40

00242 [redacted]

For professional services rendered:

Reviewed [redacted] Emailed on [redacted] Conferred with Superintendent Oteri, Mr. Mastrangelo, and Attorneys Vasudevan and St. Florian re: filings; Emailed [redacted] onferenced with Superintendent Oteri on potential

resolution; Conferenced with Attorney Berry o[redacted] Emailed Attorney Sherwood o[redacted] Emailed Attorney Berry [redacted] Drafted [redacted] Conferred with all parties [redacted] onferred with Attorneys Berry, Kilkelly, and Vasudevan re: [redacted] conferred with Superintendent Oteri [redacted] Emailed Attorney Sherwood on [redacted]; Review, revise, finalize [redacted] draft, photocopy and scan f[redacted] hand filing [redacted] emails to/from and conference with Attorney Sherwood regarding same

Total fees for this matter	9.10 hrs	$1,771.50

Disbursements:

01/27/20	Travel PMR)	$31.33
	Total disbursements for this matter	$31.33

00255 [redacted]

For professional services rendered:

Email with Ms. Brennan; Draft letter to BSEA; Email with sped director; Email with Ms. Brennan [redacted]

Total fees for this matter	0.60 hrs	$147.00

00256 [redacted]

For professional services rendered:

Draft letter to BSEA

Total fees for this matter	0.20 hrs	$49.00

00259 [redacted]

For professional services rendered:

Email with Ms. Boudreau to schedule Team meeting

Total fees for this matter	0.10 hrs	$24.50

00261 [redacted]

For professional services rendered:

Email with sped director a[redacted] regarding discovery; Email with parent r[redacted]; Read Motion to Compel; Email sped director; Respond t[redacted] Review file; Review [redacted] Email with parent regarding attachments; Email with parent

	Total fees for this matter	3.40 hrs	$833.00

Disbursements:

12/11/19	Travel (AES)	$14.28
12/11/19	Travel (AES)	$11.00
	Total disbursements for this matter	$25.28

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**14.80 hrs**	**$3,168.00**
TOTAL EXPENSES FOR THIS BILL		**$86.01**
TOTAL DUE THIS BILL		**$3,254.01**

Privilege Log for FOIA Request 2021-221

Author	Recipient(s)	Date	Subject Matter	Basis for Privilege/Exemption
MHTL	Malden Public Schools	4/23/2021 Bill	Changes to policies, litigation strategy/work product, and records retention	Constitutes attorney-client communication concerning policies, litigation strategy and records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	3/23/2021 Bill	Litigation strategy and public records	Constitutes attorney-client communication concerning litigation strategy and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	2/28/2021 Bill	Litigation strategy and public records	Constitutes attorney-client communication concerning litigation strategy and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	1/29/2021 Bill	Review of policies, Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning review of policies, litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of

Privilege Log for FOIA Request 2021-221

				Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	12/30/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	11/20/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	11/12/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	10/23/20 Bill	Litigation strategy,	Constitutes attorney-client

Privilege Log for FOIA Request 2021-221

			legal advice on individual student matters, and public records	communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	9/24/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	6/30/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	6/16/20 Bill	Policies, Litigation strategy, legal advice on individual student matters, and public	Constitutes attorney-client communication concerning policies, litigation strategy, legal advice on individual student

Privilege Log for FOIA Request 2021-221

			records	matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	6/16/20 Bill	Policies, Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning policies, litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	5/27/20 Bill	Policies, Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning policies, litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	4/29/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc.

Privilege Log for FOIA Request 2021-221

				v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	3/28/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	2/26/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).

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

June 8, 2021

BY E-MAIL

Open Malden
info@openmalden.org

Re: Public Records Request dated May 7, 2021/FOIA Request 2021-0221

Dear Open Malden:

Please find enclosed the records responsive to the request that you submitted on May 7, 2021 (the "Records Request") and for which you provided payment on May 24, 2021. Specifically, you requested the following: "Please provide all billing statements, invoices, purchase orders, and contracts, that are in effect and which are not privileged regarding the law firm Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 P.O. Box 9126 Quincy, MA 02269-9126. For the time period January 1, 2020 through the date you respond with the responsive documents."

To comply with your request, Malden redacted the records as they contained attorney-client privilege as many of the entries in the bills describe discussions 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). Given that these bills relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. The bills must be redacted. "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. The Guide to the Massachusetts Public Records Law states that "[s]egregation and redaction under the attorney-client privilege has also been found to be 'require by law.'"

Beyond attorney-client privilege, the records were subject to other exemptions. In Champa v. Weston Public Schools, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special

education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon Exemption (a) (which protects from disclosure records that are "… specifically or by necessary implication exempted from disclosure by statute," MGL c. 4, § 7(26)(a)).

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, billing statements and invoices between Malden and Murphy, Hesse, Toomey & Lehane ("MHTL") contained personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since MHTL is counseling Malden on the educational services and programming that is providing to students, especially special education students, these records were exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

It took Malden a total of 4.34 hours to search, segregate and redact the records. In accordance with 950 CMR 37.02(2)(m)(1) you were not charged for the first two (2) hours of those services. As a result, since you provided a check for 7.67 hours for $191.75, Malden will provide you a refund of $133.25.

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 Records
Greg Lucey, Malden City Clerk

Mackenzie Nekton

From: Malden Transparency <info@openmalden.com>
Sent: Wednesday, June 9, 2021 12:45 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Dorai, Shirley; kanderson@cityofmalden.org
Subject: Request For Appeal - City of Malden Request# 2021-0221 - Incomplete and Non-Responsive response
Attachments: Mald01 Invoices.PDF; Privelege Log.pdf; SPR 21-221 response_with records.pdf; FOIA Request 2021-0221 Response[95][56].pdf; 2021-0221 Request.pdf; FOIA Request 2021-0179 Response Doc[34].pdf; FOIA Request 2021-0179 Response[79].pdf

Importance: High

Greetings:

On May 7, 2021 the following attached public records request was served upon the City of Malden via their official public records site:

"Please provide all billing statements, invoices, purchase orders, and contracts, that are in effect and which are not privileged regarding the law firm Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 P.O. Box 9126 Quincy, MA 02269-9126.
For the time period January 1, 2020 through the date you respond with the responsive documents.

This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format. If any responsive documents exist in a non-electronic format, please include an estimate of the actual costs to scan the documents and provide them electronically.

Please provide the responsive documents electronically to the email address info@openmalden.com.
This request seeks responsive documents in the format in which they are regularly maintained, including any and all electronic mail metadata. This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of the City of Malden.

Please be aware that under 18 U.S. Code § 2071 - Concealment, removal, or mutilation generally
(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.
(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States
AND
In addition to other remedies provided by law, a violation of the Public Ethics Law shall be grounds to void any state action taken based on the violative act or acts. Additionally, the Commission may issue an order for restitution and a fine in the amount of the economic advantage gained by the violation or $500, whichever is greater. May also, upon

approval of the Attorney General, order payment of additional damages in an amount not to exceed twice the advantage. Maximum damages a violator may be ordered to pay is $25,000, but the commission may bring a civil action if in excess of that amount. Mass. Gen. Laws Ann. ch. 268A, § 9.
Corrupt gifts, offers or promises to influence official acts punished by a fine of no more than $100,000 or by imprisonment not to exceed 10 years, or both. Results in ineligibility to serve in any public office in the state. Mass. Gen. Laws Ann. ch. 268A, § 2.
Other compensation for official duties punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or both. Mass. Gen. Laws Ann. ch. 268A, § 4.
Violations of confidentiality or perjury requirements relating to a commission proceeding punishable by a fine of no more than $10,000, imprisonment for not more than 5 years, or both. Mass. Gen. Laws Ann. ch. 268B, § 7."

On May 21, 2021 the School Department RAO responded (attached).

On May 24, 2021 Open Malden through Bruce Friedman paid the City of Malden $191.75 as required under the School Departments RAO's attached estimate. The email below was sent to memorialize the payment and copied to your office.

On June 8, 2021 the Malden Public Schools RAO responded with the below email and attached response documents.

The City failed to provide any of the requested items except for some billing statements. No invoices, no purchase orders, no contracts. The billing records are also incomplete as they do not appear to include work and detail that has been provided for the same time period in a separate public records request not made by Open Malden or any associated with Open Malden City of Malden Request #2021-0179 (attached).

Wherefore, Open Malden respectfully requests that the Secretary find and Order the City/District/RAO to immediately provide all responsive documents without delay and without further charges.

Regards,

OpenMalden.com

From: Malden Transparency <info@openmalden.com>
Date: Monday, May 24, 2021 at 3:16 PM
To: pre@sec.state.ma.us <pre@sec.state.ma.us>, Puccini, Angela M (SEC) <angela.m.puccini@state.ma.us>
Cc: Greg Lucey <glucey@cityofmalden.org>, Karen Anderson <kanderson@cityofmalden.org>, Dorai, Shirley <sdorai@maldenps.org>
Subject: Re: Public Records Request dated May 7, 2021/FOIA Request 2021-0221

Greetings:

Be it known, that today, May 24, 2021 I personally conveyed a check in the amount of $191.75 and hand delivered same to the Malden Public Schools, personally as Bruce Friedman on behalf of OpenMalden.com 77 Salem Street, Malden, MA. 02148. A school employee was kind enough to deliver it personally to Ms. Dorai. Per the attached estimate, I will be expecting more than 58 pages of billing records from January 1, 2020 through the date responsive documents are received, no later than Monday, June 7, 2021. A complete and accurate privilege log containing any redactions and/or withheld documents to be included per the laws of the Commonwealth.

Kindest Regards,

Bruce Friedman on behalf of

· OpenMalden.com

From: Dorai, Shirley <sdorai@maldenps.org>
Date: Tuesday, June 8, 2021 at 4:06 PM
To: Malden Transparency <info@openmalden.com>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Greg Lucey <glucey@cityofmalden.org>, Karen Anderson <kanderson@cityofmalden.org>, Chan, Benjamin (SEC) <benjamin.chan@state.ma.us>
Subject: Public Records Request dated May 7, 2021/FOIA Request 2021-0221

Good evening,

Please see the attached response documents. 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
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.

direct Requestor Dashboard Communication Change Profile Help

Welcome Open Malden ! [Logout]

Back

Request Details

Requestor Details

First Name	Open	Last Name	Malden
House No.		Street	
City		State	
Zip	____-____	Email	info@openmalden.com
Phone		Organization Name	Open Malden
Mode of Delivery	Email		

Description of Request

Request Number	2021-0221	Department	Not Sure
Request Sent Date	05/07/2021 04:20 PM	Request Received Date	05/07/2021 04:20 PM
Response Due By	05/21/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all billing statements, invoices, purchase orders, and contracts, that are in effect and which are not privileged regarding the law firm Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 P.O. Box 9126 Quincy, MA 02269-9126.

For the time period January 1, 2020 through the date you respond with the responsive documents.

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

Request Documents

No Document.

Response Details

Response

documents exist in a non-electronic format, please include an estimate of the actual costs to scan the documents and provide them electronically.

Please provide the responsive documents electronically to the email address info@openmalden.com.

Response Documents
No Document.

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This request seeks responsive documents in the format in which they are regularly maintained, including any and all electronic mail metadata. This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of the City of Malden.

Please be aware that under 18 U.S. Code § 2071 - Concealment, removal, or mutilation generally

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States

AND

In addition to other remedies provided by law, a violation of the Public Ethics Law shall be grounds to void any state action taken based on the violative act or acts. Additionally, the Commission may issue an order for restitution and a fine in the amount of the economic advantage gained by the violation or $500, whichever is greater. May also, upon approval of the Attorney General, order payment of additional damages in an amount not to exceed twice the advantage. Maximum damages a violator may be ordered to pay is $25,000, but the commission may bring a civil action if in excess of that amount. Mass. Gen. Laws Ann. ch. 268A, § 9.

Corrupt gifts, offers or promises to influence official acts punished by a fine of no more than $100,000 or by imprisonment not to exceed 10 years, or both. Results in ineligibility to serve in any public office in the state. Mass. Gen. Laws Ann. ch. 268A, § 2.

Other compensation for official duties punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or both. Mass. Gen. Laws Ann. ch. 268A, § 4.

Violations of confidentiality or perjury requirements relating to a commission proceeding punishable by a fine of no more than $10,000, imprisonment for not

more than 5 years, or both. Mass. Gen. Laws Ann. ch. 268B, § 7.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000 | CROWN COLONY PLAZA, 300 CROWN COLONY DRIVE, SUITE 410, P.O. BOX 9126, QUINCY, MA 02269-9126 | FAX: (617) 479-6469

REPRINT BILLED DETAIL

MALDEN - SPECIAL EDUCATION
GENERAL ONGOING

1/1/2020 - 4/12/2021

For Professional Services Rendered			Hours
01/10/20	AES	[redacted]	0.30
01/13/20	AES		0.20
01/13/20	AES		0.30
01/23/20	AES		0.20
01/24/20	AES		0.10
01/29/20	AES		0.30
02/06/20	FSC	Reviewed video footage public records request; Drafted public records response	0.70
02/07/20	AES	[redacted]	0.20
02/10/20	FSC	Conferenced with Assistant City Solicitor Rossetti; Conferenced with Attorney St. Florian	0.40
02/12/20	AES	[redacted]	0.30
03/02/20	AES		0.20
03/03/20	AES		0.20
04/05/20	FSC	Drafted response to public records response	0.90
04/06/20	AES	[redacted]	0.20
04/10/20	FSC	Emailed on public records request	0.20
04/10/20	FSC	Drafted response to public records request	1.50
04/13/20	FSC	Drafted response to public records request	1.10

04/15/20	AES	[redacted]	0.10
04/17/20	FSC	Emailed on public records response	0.10
04/30/20	AES	[redacted]	0.30
04/30/20	ELS		0.30
05/01/20	AES		0.10
05/13/20	AES		0.10
05/13/20	AES		0.10
05/14/20	AES		1.00
05/15/20	AES		0.10
05/21/20	AES		0.30
06/09/20	AES		0.30
06/15/20	AES		0.10
07/07/20	FSC		0.10
07/07/20	AES		0.10
07/10/20	AES		0.10
07/14/20	AES		0.20
07/17/20	AES		0.40
07/20/20	AES		0.50
07/27/20	AES		0.30
07/28/20	AES		0.30
08/06/20	AES		0.30
08/27/20	AES		0.20
08/31/20	AES		0.20
09/14/20	AES		0.40
09/21/20	AES		0.10

[redacted]	AES	[redacted]	0.10
09/25/20	AES		0.10
09/29/20	AES		0.50
09/29/20	AES		0.20
09/30/20	AES		0.30
10/01/20	AES		0.10
10/07/20	AES		0.30
10/07/20	AES		0.20
10/12/20	FSC	Emailed Attorney St. Florian on records retention	0.10
10/13/20	AES	[redacted]	0.10
10/21/20	FSC	Emailed on public records appeal	0.30
10/23/20	AES	[redacted]	0.20
10/28/20	MES		0.40
10/28/20	FSC		2.70
10/29/20	AES		0.30
10/29/20	MES		0.60
10/30/20	AES		1.00
11/12/20	AES		0.20
11/18/20	RWT		0.30
11/24/20	AES		0.20
12/02/20	FSC		0.40
12/03/20	AES		0.50
12/11/20	FSC		0.30
12/11/20	AES		0.10
12/21/20	FSC		0.10
12/21/20	AES		0.50

12/22/20	AES	[redacted]	0.30
01/04/21	AES		0.20
01/12/21	AES		0.30
01/19/21	FSC		0.20
01/21/21	AES		0.10
02/08/21	FSC	Emailed on public records responses	0.10
02/11/21	AES	[redacted]	0.30
02/22/21	AES	Email with sped director regarding appeal of public record request	0.20
02/24/21	AES	Email with sped director regarding FOIA appeal; Review records	1.00
02/25/21	AES	[redacted]	0.10
		Total fees for this matter 26.30 hrs	$6,476.50

MATTER SUMMARY:

TOTAL FEES FOR THIS MATTER	26.30 hrs	$6,476.50
TOTAL EXPENSES FOR THIS MATTER		$0.00
TOTAL BILLED FOR THIS MATTER		$6,476.50

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000 | CROWN COLONY PLAZA
300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126 | FAX: (617) 479-6469

REPRINT BILLED DETAIL

MALDEN - SPECIAL EDUCATION

[redacted]

1/1/2020 - 4/12/2021

For Professional Services Rendered			Hours
01/02/20	AES	[redacted]	0.30
01/07/20	AES		0.20
01/27/20	AES		0.50
01/28/20	AES		2.00
01/31/20	AES		0.40
02/03/20	AES		0.10
02/05/20	AES		0.50
02/11/20	AES		0.20
02/12/20	AES		0.30
02/26/20	AES		4.00
03/02/20	AES		0.40
03/03/20	AES	Email with sped director; Call with Mr. Oteri; Read record request	0.40
03/04/20	AES	Call with Attorney Rosetti regarding parent record request; Review file in preparation	0.50
03/16/20	AES	[redacted]	0.20
03/17/20	AES		1.50
03/24/20	AES		0.10
03/26/20	AES		0.80
03/31/20	AES	Email with Attorney Rossetti; Email with Attorney Vasudevan; Read public record letter	0.40

[redacted]

04/08/2C	AES	[redacted]	3.0C
04/09/2C	AES		0.3C
04/10/2C	AES		1.5C
04/13/2C	AES		0.5C
04/15/2C	AES		0.2C
04/22/2C	FSC	Drafted response to public records requests	3.4C
04/23/2C	FSC	Drafted response to public records request	1.2C
04/24/2C	AES	[redacted]	0.2C
04/25/2C	FSC	Edited public records response	1.0C
04/27/2C	FSC	[redacted]	0.5C
04/27/2C	AES		0.3C
04/29/2C	FSC	Emailed on public records request	0.1C
05/12/2C	AES	[redacted]	0.3C
05/13/2C	AES		1.5C
05/14/2C	FSC	Reviewed letter from Secretary of State; Reviewed record retention schedule	0.4C
05/15/2C	FSC	Emailed on public records request	0.1C
05/15/2C	AES	Read parent request for reconsideration regarding FOIA request; Email with parties to schedule call	0.4C
05/21/2C	AES	[redacted]	1.0C
05/22/2C	FSC	Drafted public records responses	1.1C
05/26/2C	FSC	Emailed on public records request	0.2C
05/26/2C	AES	[redacted]	0.1C
05/27/2C	AES		0.2C
05/28/2C	FSC	Emailed on public records request	0.2C
05/29/2C	FSC	Emailed on public records request; Conferenced with Superintendent Oteri	0.2C
05/29/2C	AES	[redacted]	0.4C
06/01/2C	FSC	Emailed on public records request	0.2C
06/02/2C	AES	[redacted]	0.2C
06/02/2C	AES		1.0C

[redacted]

06/04/2C	AES	[redacted]	0.1C
06/04/2C	FSC	Responded on public records request	0.3C
06/05/2C	FSC	Emailed on public records request response	0.2C
06/08/2C	AES	[redacted]	[redacted]
[redacted]		[redacted]	0.3C
06/17/2C	FSC	Reviewed documents in response to records request	0.7C
06/18/2C	AES	[redacted]	0.2C
06/19/2C	FSC	Reviewed information request a[redacted]; Emailed on response to records request	0.5C
06/20/2C	FSC	Emailed on public records request	0.1C
06/23/2C	AES	[redacted]	0.5C
06/25/2C	AES	[redacted]	0.1C
06/26/2C	FSC	Emailed on public records request	0.2C
06/28/2C	FSC	Emailed response to public records request	0.6C
06/30/2C	FSC	Emailed on Public Records law with SEPAC	0.3C
07/01/2C	FSC	Conferenced with SEPAC on request	0.4C
07/08/2C	AES	[redacted]	0.1C
07/09/2C	AES	[redacted]	0.1C
07/17/2C	AES	[redacted]	0.2C
07/20/2C	AES	[redacted]	0.4C
07/27/2C	AES	[redacted]	0.2C
07/29/2C	AES	[redacted]	0.3C
07/30/2C	AES	[redacted]	0.2C
08/04/2C	AES	[redacted]	1.5C
08/05/2C	AES	[redacted]	1.0C
08/06/2C	AES	[redacted]	3.0C
08/07/2C	AES	[redacted]	0.5C
08/10/2C	AES	[redacted]	1.5C
08/11/2C	AES	[redacted]	3.0C

[redacted]

08/12/2C	AES	[redacted]	4.0C
08/13/2C	AES		1.0C
08/14/2C	AES		4.0C
08/17/2C	AES		5.0C
08/18/2C	AES		5.0C
08/20/2C	AES		7.0C
08/21/2C	AES		7.0C
08/25/2C	AES		0.1C
08/26/2C	AES		0.2C
08/27/2C	AES		0.7C
08/28/2C	AES		0.1C
08/31/2C	AES		0.4C
08/31/2C	AES		0.2C
09/08/2C	AES		0.3C
09/09/2C	AES		0.2C
09/17/2C	AES		0.3C
09/21/2C	AES		2.5C
09/22/2C	AES		0.3C
09/29/2C	AES		0.3C
09/30/2C	AES		0.5C
10/05/2C	AES		3.0C
10/06/2C	AES		7.5C
10/07/2C	AES		1.0C
10/08/2C	AES		1.5C
10/09/2C	AES		2.0C

[redacted]

10/11/2C	FSC	Drafted public records response	0.5C
10/13/2C	AES	[redacted]	2.0C
10/14/2C	AES	[redacted]	1.5C
10/15/2C	AES	[redacted]	2.0C
10/16/2C	AES	[redacted]	2.0C
10/19/2C	AES	[redacted]	3.0C
10/20/2C	AES	[redacted]	3.0C
10/21/2C	AES	[redacted]	0.2C
10/22/2C	FSC	Drafted letter response for public records	0.7C
10/23/2C	AES	[redacted]	2.0C
10/25/2C	FSC	Emailed on FOIA request	0.1C
10/26/2C	FSC	Reviewed public records laws	1.6C
10/26/2C	AES	[redacted]	2.0C
10/27/2C	AES	[redacted]	1.5C
10/30/2C	FSC	Emailed on public records responses	0.5C
10/30/2C	AES	[redacted]	1.0C
11/02/2C	AES	[redacted]	2.0C
11/02/2C	FSC	Edited the letters on public records response; Emailed on [redacted]	1.0C
11/03/2C	FSC	Edited public records responses; Emailed on public records responses	0.9C
11/03/2C	AES	[redacted]	1.0C
11/04/2C	AES	[redacted]	2.0C
11/04/2C	FSC	Reviewed public records response; Emailed on public records responses; Filed with Secretary of State	0.5C
11/05/2C	AES	[redacted]	0.2C
11/05/2C	FSC	Emailed on Public Records response; Edited public records response	0.3C
11/06/2C	FSC	Emailed on public records date calculation; Reviewed and emailed on response from Mr. Friedman	0.4C
11/09/2C	AES	[redacted]	1.0C
[redacted]			

11/11/20	FSC	Drafted responses to public records requests	2.90
11/12/20	FSC	Emailed on public records responses	0.50
11/13/20	AES	[redacted]	1.00
11/13/20	FSC	Emailed on public records responses and edited responses	1.20
11/16/20	AES	[redacted]	3.00
11/16/20	FSC	Emailed on public records responses	0.10
11/17/20	AES	[redacted]	1.50
11/17/20	FSC	Emailed and edited public records responses; Reviewed response from Mr. Friedman	0.60
11/18/20	FSC	Conferenced with Supervisor on requests; Conferenced with Ms. Dorai; Drafted response to supervisor and public records	3.20
11/19/20	AES	[redacted]; Call with Attorney Vasudevan regarding record request	0.50
11/19/20	FSC	Responded to public records requests and edited letters; Conferenced with Attorney St. Florian	2.00
11/20/20	FSC	Emailed on public records requests	0.60
11/23/20	FSC	Reviewed decision from Supervisor; Emailed Ms. Dorai on records request	0.20
11/23/20	AES	[redacted]	0.10
11/30/20	FSC	Emailed on public records requests	0.60
12/01/20	AES	[redacted]	0.50
12/02/20	AES	[redacted]	4.00
12/02/20	FSC	Responded to public records requests	1.00
12/03/20	AES	[redacted]	0.80
12/04/20	FSC	Emailed on public records requests	0.30
12/07/20	FSC	Drafted public records responses	2.00
12/07/20	AES	[redacted]	0.80
12/08/20	FSC	Emailed on [redacted]	0.20
12/08/20	AES	[redacted]	0.20
12/09/20	FSC	Emailed on public records responses	0.40
12/10/20	AES	[redacted]	3.00

[redacted]

12/11/20	FSC	Emailed on public records responses	0.40
12/14/20	FSC	Drafted public records responses; Emailed Ms. Dorai; Reviewed email response from Mr. Friedman	1.10
12/15/20	FSC	Emailed on public records response; Edited public records responses	1.10
12/16/20	FSC	Drafted response on timelines and designation of RAO	0.80
12/21/20	FSC	Conferenced with Attorney Puccini; Emailed Ms. Dorai on responses	0.60
12/22/20	FSC	Emailed on public records responses on parent committee; Edited and drafted letters; Reviewed public records decisions	2.00
12/23/20	AES	[redacted]	0.20
12/23/20	FSC	Emailed on public records request responses; Reviewed registry for decisions; Emailed Supervisor; Drafted revised letters	1.10
12/28/20	AES	[redacted]	1.00
01/04/21	FSC	Emailed Ms. Dorai on public records requests	0.20
01/05/21	AES	Email and call with Attorney Vasudevan and review file regarding public record request	0.40
01/05/21	FSC	Reviewed sign in sheets; Reviewed documents for responses	1.60
01/06/21	AES	[redacted]	0.30
01/06/21	FSC	Reviewed and redacted public records responses; Conferenced with Attorney St. Florian; Drafted responses and reviewed drafted responses	3.70
01/07/21	AES	[redacted]	0.50
01/07/21	FSC	Emailed Ms. Dorai on public records requests	0.40
01/08/21	FSC	Emailed Ms. Dorai on time estimate	0.40
01/12/21	FSC	Conferenced with Ms. Dorai on public records responses; Drafted public records responses	1.40
01/13/21	FSC	Conferenced with Supervisor; Drafted responses to public records requests	1.10
01/14/21	FSC	Reviewed email on public records responses	0.20
01/15/21	FSC	Emailed on public records request; Reviewed responses	0.80
01/19/21	FSC	Conferenced with Ms. Dorai on public records response; Drafted public records response	0.90
01/20/21	FSC	Drafted response to Supervisor	0.40
01/23/21	FSC	Emailed on public records decisions	0.10
01/27/21	AES	[redacted]	1.00
01/27/21	FSC	[redacted]	0.40
[redacted]			

01/28/21	AES	[redacted]	0.50
01/28/21	FSC		0.10
01/29/21	AES		1.00
02/01/21	AES		0.80
02/01/21	FSC		0.40
02/24/21	FSC		0.30
02/25/21	FSC	Emailed on public records request	0.20
		Total fees for this matter 193.10 hrs	47,828.50

Disbursements

02/26/20	[redacted]	$11.00
02/26/20		$15.96
08/20/20		$151.12
09/22/20		$21.51
09/28/20		$22.80
10/27/20		$86.06
12/28/20		$61.21
	Total expenses for this matter	$369.66

MATTER SUMMARY:

TOTAL FEES FOR THIS MATTER	193.10 hrs	$47,828.50
TOTAL EXPENSES FOR THIS MATTER		$369.66
TOTAL BILLED FOR THIS MATTER		$48,198.16

[redacted]

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

April 27, 2021

BY E-MAIL

Jadeane Sica
[redacted]

Re: Public Records Request dated April 12, 2021/FOIA 2021-179

Dear Ms. Sica:

We have received the request that you submitted on April 12, 2021 requesting "Copies of all legal bills incurred by the Malden Public Schools in response to the handling of public records requests submitted by the following from 1/1/20-4/12/21.

Bruce Friedman
Amy Friedman
Open Malden."

In terms of your request, the Malden Public Schools ("Malden") had 12 pages that are consistent with your request. Malden has attached those bills. It did redact entries that were not responsive to the request and were related to other matters.

To comply with your request, Malden needed to redact two entries in the record as Murphy, Hesse, Toomey & Lehane is a law firm that represents Malden and those entries contained attorney-client privilege as they described discussions 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). Given that the entries refer to communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege and the contents must be redacted. "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.

Specifically, Malden redacted information from an email exchange between Superintendent Oteri and Ms. Dorai and Attorney Vasudevan on 11/2/20 where Attorney Vasudevan provided advice on language for a response and an entry referencing an email between Ms. Dorai and Attorney Vasudevan on 12/8/20 where Attorney Vasudevan provided advice on a response to a request. This information suffices as the privilege log of what was redacted.

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: Greg Lucey, Records Access Officer

MALDEN PUBLIC SCHOOLS
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John Oteri, M.Ed.
Superintendent of Schools

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

May 21, 2021

BY E-MAIL

Open Malden
info@openmalden.org

Re: Public Records Request dated May 7, 2021/FOIA Request 2021-0221

Dear Open Malden:

We have received the request that you submitted on May 7, 2021 (the "Records Request"). Specifically, you requested the following: "Please provide all billing statements, invoices, purchase orders, and contracts, that are in effect and which are not privileged regarding the law firm Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 P.O. Box 9126 Quincy, MA 02269-9126. For the time period January 1, 2020 through the date you respond with the responsive documents."

In terms of your request, the Malden Public Schools ("Malden") has approximately 58 pages that are consistent with your request.

Please note that you[1] have made similar requests repeatedly and previously never paid the fee for those requests. On October 20, 2020, which was subject to appeal SPR20-2114, you requested: "any and all documentation evidencing payments made to or monies due to the law firm Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 P.O. Box 9126 Quincy, MA 02269-9126 from May of 2013 through the date you answer your this request."

Similarly, in what was SPR20-2505, you requested the actual bills, which was subject to a fee petition that the Supervisor granted in SPR20-2505.

Furthermore, on April 22, 2020, Malden had sought reconsideration from the Secretary of State as he had requested "any billing statements, invoices, purchase orders, contracts, communication which are not privileged and any other documentation regarding the law firm Murphy, Hesse, Toomey & Lehane, …and/or the attorney Alisia St. Florian, Esq. from 2010 through the date you

[1] Mr. Friedman is the individual running Open Malden. It is thus Malden's position that Open Malden and Mr. Friedman are the same requestor.

answer [ ] this request." The Secretary of State upheld the fact that Malden did not have to turn over those records.

To comply with your request, Malden will need to redact the records as they contain attorney-client privilege as many of the entries in the bills describe discussions 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). Given that these bills relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. The bills must be redacted. "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. The Guide to the Massachusetts Public Records Law states that "[s]egregation and redaction under the attorney-client privilege has also been found to be 'require by law.'"

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

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, billing statements and invoices between Malden and Murphy, Hesse, Toomey & Lehane ("MHTL") contain personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since MHTL is counseling Malden on the educational services and programming that is providing to students, especially special education students, these records should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

Therefore to produce these records, Malden provides a fee estimate. If a municipality is required to devote more than two (2) hours of employee time to segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to 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.

Each of the 58 pages must be reviewed as they will contain entries with attorney-client privilege and student record information. Segregation time "includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. On average there are at least three entries per page that are in paragraph format (with paragraphs being over six lines) and headers with names, which have to be reviewed to determine what portions are subject to redaction or withholding. Malden will need five minutes per page given the level of detail, or 290 minutes.

Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material. Again, given the amount of information on each page that will be redacted, as a significant portion of each page will contain attorney-client privilege or student record information and the time to create a privilege log of the redactions for attorney client privilege, Malden estimates another 5 minutes per page to redact and create a privilege log or another 290 minutes.

As a result, Malden estimates a total of 580 minutes or 9.67 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services.

7.67 hours multiplied by $25 per hour yields a fee estimate of $191.75. 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 $191.75.

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 Records
Greg Lucey, Malden City Clerk
Karen Anderson, Records Access Officer

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000

300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/23/21
Bill number 80422
Billing through 03/31/21

00001 General Ongoing

Total fees for this matter	$1,334.50
Total disbursements for this matter	$23.19

00261 [redacted]

Total fees for this matter	$1,523.00
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$400.00
Total disbursements for this matter	$0.00

00268 [redacted].

Total fees for this matter	$850.00
Total disbursements for this matter	$0.00

00270 [redacted] Appeal

Total fees for this matter	$1,498.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**25.90 hrs**	**$5,606.00**
TOTAL EXPENSES FOR THIS BILL		**$23.19**
TOTAL DUE THIS BILL		**$5,629.19**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/23/21
Bill number 80422
Billing through 03/31/21

00001 General Ongoing

For professional services rendered:

Call with sped director regarding Charter School student [redacted]; Email with Attorney Gomes; Call with Attorney Gomes regarding student at [redacted] Email sped director; Review custody documents; Email with sped director and Mr. Concannon; Call with Mr. Gomes [redacted] Email with sped director; Email with Ms. Chase [redacted] Email with law form representing family; Email [redacted] and Ms. Chase; Read letter from parent, and email with sped director [redacted] Emailed o [redacted] Review [redacted] Review of [redacted] Email to client, Pam MacDonald [redacted] Email with sped director [redacted]

Total fees for this matter	5.40 hrs	$1,334.50

Disbursements:

03/03/21	Express Mail - Postage (UPS)	$23.19
	Total disbursements for this matter	$23.19

00261 [redacted]

For professional services rendered:

Emailed on public records responses; Emailed on new public records request; Drafted [redacted] Emailed on public records responses; Emailed [redacted] Reviewed [redacted] Emailed on public records responses; Draft letters to BSEA [redacted] Email

with parents and Hearing Officer regarding upcoming hearing date; Email with parties regarding rescheduling pre-hearing conference; Email with [redacted] Drafted [redacted] Emailed supervisor

Total fees for this matter	6.20 hrs	$1,523.00

00266 [redacted]

For professional services rendered:

Email with Attorney Presson regarding upcoming meeting; Call with Attorney Presson in preparation for Team meeting; Attend Team meeting

Total fees for this matter	1.60 hrs	$400.00

00268 [redacted]

For professional services rendered:

Email with Attorney Dalton [redacted] Call with Ms. Bryson and Ms. Whittington; Read reports; Attend IEP Team meeting; Email from Attorney Dalton [redacted] Email and call with Team; Email with Attorney Dalton [redacted]

Total fees for this matter	3.40 hrs	$850.00

00270 [redacted] **Appeal**

For professional services rendered:

Emailed on receipt of complaint; Researched and drafted motion to dismiss [redacted] Emailed on motion to dismiss; Emails to/from Attorney Vasudevan [redacted] Review f [redacted] assemble research materials; emal to Attorney Vasudevan s [redacted] shepardize cited cases, statutes and rules; [redacted] Emailed on motion to dismiss; Conferenced with [redacted] Emailed update on case; Conferenced with [redacted] Telephone call from Attorney Vasudevan [redacted] draft Motion to Extend Deadline to file Responsive Pleading (Assented To); email document to Attorney Vasudevan for review of same; emails to/from Attorney Vasudevan regarding electronic filing matters; Emailed filings; Review, revise, finalize Motion to Extend Deadline to file Responsive Pleading (Assented To); draft and finalize Vasudevan Notice of Appearance; efile Motion to Extend Deadline to File Responsive Pleading (Assented To) and Vasudevan Notice of Appearance; download and save electronically filed documents; emails to/from Attorney Vasudevan regarding same; Emailed [redacted] Emailed on [redacted]

Total fees for this matter	9.30 hrs	$1,498.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**25.90 hrs**	**$5,606.00**
TOTAL EXPENSES FOR THIS BILL		**$23.19**
TOTAL DUE THIS BILL		**$5,629.19**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000 | 300 CROWN COLONY DRIVE, SUITE 410 P.O. BOX 9126 QUINCY, MA 02269-9126 | FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/23/21
Bill number 80131
Billing through 02/28/21

00001 General Ongoing

Total fees for this matter	$424.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$420.50
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$125.00
Total disbursements for this matter	$0.00

00267 [redacted]

Total fees for this matter	$250.00
Total disbursements for this matter	$0.00

00268 [redacted].

Total fees for this matter	$125.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**5.40 hrs**	**$1,345.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,345.00**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/23/21
Bill number 80131
Billing through 02/28/21

00001 General Ongoing

For professional services rendered:

Emailed on public records responses; Call with sped director regarding [redacted] Email with sped director regarding [redacted] Email with sped director [redacted] Review records; Email with sped director [redacted]

Total fees for this matter	1.70 hrs	$424.50

00261 [redacted]

For professional services rendered:

Email with Team; Participate in SC executive session; Attended school committee meeting; Emailed on [redacted]; Emailed on public records request

Total fees for this matter	1.70 hrs	$420.50

00266 [redacted]

For professional services rendered:

Read independent neuropsych evaluation and email with Ms. Whittington; Email Team regarding rescheduling meeting

Total fees for this matter	0.50 hrs	$125.00

00267 [redacted]

For professional services rendered:

Attend Best Interest Determination meeting; Call with sped director; Call with Ms. Smith r[redacted]

Total fees for this matter	1.00 hrs	$250.00

00268 [redacted]

For professional services rendered:

Communicate with sped director regarding i[redacted]; Email with Attorney Dalton to reschedule meeting; Email with parties to reschedule meeting; Email with Team regarding [redacted]

Total fees for this matter	0.50 hrs	$125.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**5.40 hrs**	**$1,345.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,345.00**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/28/21
Bill number 80030
Billing through 01/31/21

00001 General Ongoing

Total fees for this matter	$199.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$3,791.50
Total disbursements for this matter	$0.00

00265 [redacted]

Total fees for this matter	$1,750.00
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$25.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$50.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.50 hrs**	**$5,815.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$5,815.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/28/21
Bill number 80030
Billing through 01/31/21

00001 General Ongoing

For professional services rendered:

Email with parent's attorney and Ms. Chase [redacted]; Call with Ms. Macdonald about student [redacted] Emailed Attorney St. Florian on public records request; Email with Ms. Chase r[redacted]

Total fees for this matter	0.80 hrs	$199.00

00261 [redacted]

For professional services rendered:

Emailed Ms. Dorai on public records requests; Email and call with Attorney Vasudevan [redacted] Reviewed s[redacted] Reviewed [redacted] Reviewed and redacted public records responses; Conferenced with Attorney St. Florian; Drafted responses and reviewed drafted responses; Read evaluation reports and email from parent; Emailed Ms. Dorai on public records requests; Emailed Ms. Dorai [redacted]; Conferenced with Ms. Dorai on public records responses; [redacted] Conferenced with Supervisor; Drafted [redacted] Reviewed email on public records responses; Emailed on public records request; Reviewed responses; Conferenced with Ms. Dorai on public records response; [redacted] on public records decisions; Call with sped director; Read [redacted] appeal; Draft letter to BSEA [redacted] Review file; Email parents; Email with Mr. Oteri; Conferenced with Attorney St. Florian [redacted] Revieewed complaint; Email with District regarding [redacted] Emailed on [redacted] Prepare for conference call; Email with sped director; BSEA conference call; Draft letter to BSEA

Total fees for this matter	15.40 hrs	$3,791.50

00265 [redacted]

For professional services rendered:

Review discovery requests; Draft discovery; Email with sped director and Attorney Sankey r[redacted] Preparation for pre-hearing conference; Call with Attorney Sankey to prepare for [redacted] pre-hearing conference; Attend pre-hearing conference and call with sped director; Email with sped director [redacted] Call with Attorney Sankey; Email with sped director and Attorney Sankey [redacted] Draft [redacted] Email with Attorney Sankey r[redacted]

Total fees for this matter	7.00 hrs	$1,750.00

00266 [redacted]

For professional services rendered:

Email with Ms. Whittington regarding postponing annual meeting [redacted]

Total fees for this matter	0.10 hrs	$25.00

00268 [redacted]

For professional services rendered:

Email with Ms. Whittington regarding [redacted] Email with Ms. Whittington and Attorney Dalton [redacted]

Total fees for this matter	0.20 hrs	$50.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.50 hrs**	**$5,815.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$5,815.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 01/29/21
Bill number 79686
Billing through 12/31/20

00001 General Ongoing

Total fees for this matter	$546.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$5,320.00
Total disbursements for this matter	$61.21

00265 [redacted]

Total fees for this matter	$900.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$75.00
Total disbursements for this matter	$0.00

00269 [redacted]

Total fees for this matter	$550.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**29.80 hrs**	**$7,391.00**
TOTAL EXPENSES FOR THIS BILL		**$61.21**
TOTAL DUE THIS BILL		**$7,452.21**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 01/29/21
Bill number 79686
Billing through 12/31/20

00001 General Ongoing

For professional services rendered:

Reviewed [redacted] Email with Ms. Chase [redacted] Call to Attorney Donnelly; Read [redacted] Email with sped director regarding [redacted] Emailed o[redacted]; Email with sped director regarding [redacted] Email with Ms. Macdonald and sped director regarding record [redacted] Emailed [redacted] Email and call with sped director re[redacted]

Total fees for this matter	2.20 hrs	$546.00

00261 [redacted]

For professional services rendered:

Email with sped director; Review discovery requests; Draft letter to BSEA; Call with sped director and Ms. Whittington; Work on [redacted] Responded to [redacted] Work on [redacted] Email with sped director and Ms. Whittington; Emailed [redacted] Work [redacted] Drafted [redacted] all with sped director [redacted] Emailed [redacted] Emailed on public records responses; Review and redact emails and finalize discovery responses; Emailed on public records responses; Drafted [redacted] Emailed Ms. Dorai; Reviewed email response f[redacted] Emailed on public records response; Edited public records responses; Drafted response [redacted] Conferenced with Attorney Puccini; Emailed Ms. Dorai on responses; Emailed on public records responses [redacted] Edited and drafted letters; Reviewed [redacted] Call with sped director; Emailed on public records request responses; Reviewed [redacted] Emailed Supervisor; Drafted [redacted] Read [redacted] Email with District

	Total fees for this matter	21.50 hrs	$5,320.00

Disbursements:

12/28/20	Express Mail - Postage (UPS	$61.21
	Total disbursements for this matter	$61.21

00265 [redacted]

For professional services rendered:

Email with Ms. Whittington regarding next steps [redacted] Read [redacted] Email with District; Draft r[redacted] Email with sped director; BSEA conference call; Call with sped director; Call with Attorney Sankey; Email with sped director; Call with sped director r[redacted]

Total fees for this matter	3.60 hrs	$900.00

00268 [redacted]

For professional services rendered:

Email with Attorney Dalton and Ms. Bryson regarding confirming meeting; Email with Ms. Whittington and Attorney Dalton [redacted]

Total fees for this matter	0.30 hrs	$75.00

00269 [redacted]

For professional services rendered:

Read [redacted]; Call with Ms. Macdonald and call with Attorney Dalton to prepare for 12/03 meeting; Attend Team meeting [redacted]; Edit form [redacted]; Email with Ms. Macdonald; Call with Ms. Macdonald r[redacted] Email with Ms. Macdonald and Attorney Dalton regarding [redacted]; Email with Attorney Dalton regarding [redacted]

Total fees for this matter	2.20 hrs	$550.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**29.80 hrs**	**$7,391.00**
TOTAL EXPENSES FOR THIS BILL		**$61.21**
TOTAL DUE THIS BILL		**$7,452.21**

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Attorneys at Law

TEL: (617) 479-5000 | 300 CROWN COLONY DRIVE, SUITE 410 P.O. BOX 9126 QUINCY, MA 02269-9126 | FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 12/30/20
Bill number 79423
Billing through 11/30/20

00001 General Ongoing

Total fees for this matter	$175.00
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$49.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$6,750.00
Total disbursements for this matter	$0.00

00265 [redacted]

Total fees for this matter	$650.00
Total disbursements for this matter	$0.00

00266 [redacted]

Total fees for this matter	$200.00
Total disbursements for this matter	$0.00

00267 [redacted]

Total fees for this matter	$325.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$425.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**34.60 hrs**	**$8,574.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$8,574.00**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 12/30/20
Bill number 79423
Billing through 11/30/20

00001 General Ongoing

For professional services rendered:

Call with sped director regarding [redacted]
Emails with A. St. Florian [redacted] Email with sped director regarding [redacted]

Total fees for this matter	0.70 hrs	$175.00

00242 [redacted]

For professional services rendered:

Reviewed [redacted] Emailed Attorney Kilkelly

Total fees for this matter	0.20 hrs	$49.00

00261 [redacted]

For professional services rendered:

Work on [redacted] Legal research o[redacted] Edited the [redacted]; Emailed [redacted] Review discovery requests; Email with Superintendent and sped director; File Motion to Dismiss; Edited [redacted] Emailed on public records responses; Email correspondence; Draft r[redacted]; Draft letter to BSEA; Reviewed public records response; Emailed on public records responses; Filed with Secretary of State; Email with s[redacted] Emailed on Public Records response; Edited [redacted] Emailed [redacted] Reviewed and

e[redacted]Finalize response [redacted] Finalize closing argument; Drafted [redacted] Emailed on public records responses; Read parents' closing argument; Emailed on public records responses and edited responses; Read n[redacted] [redacted]Email with superintendent and sped director; Draft r[redacted]Emailed on public records responses; BSEA conference call; Email with sped director and superintendent [redacted] [redacted]Emailed a[redacted]Reviewed response f[redacted] Conferenced with Supervisor on requests; Conferenced with Ms. Dorai; Drafted r[redacted] [redacted]Email with Ms. Meyer r[redacted]Call with Attorney Vasudevan [redacted]Responded t[redacted]; Conferenced with Attorney St. Florian; Emailed on public records requests; Read emails between [redacted] [redacted]Email with Ms. Whittington; Reviewed decision from Supervisor; Emailed Ms. Dorai on records request; Emailed on public records requests

Total fees for this matter	27.30	hrs	$6,750.00

00265 [redacted]

For professional services rendered:

Call with Attorney Sankey regarding tomorrow's meeting; Pre-meeting and attend Team meeting

Total fees for this matter	2.60	hrs	$650.00

00266 [redacted]

For professional services rendered:

Email with Ms. Whittington and attend IEP meeting

Total fees for this matter	0.80	hrs	$200.00

00267 [redacted]

For professional services rendered:

Email with Attorney Chilnick and sped director [redacted]mail with Ms. Smith and Attorney for student [redacted]Attend [redacted] meeting; [redacted]

Total fees for this matter	1.30	hrs	$325.00

00268 [redacted]

For professional services rendered:

Attend annual review meeting; Email and call with Attorney Dalton and Ms. Bryson r[redacted]			
Total fees for this matter		1.70 hrs	$425.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**34.60 hrs**	**$8,574.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$8,574.00**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/20/20
Bill number 79065
Billing through 10/31/20

00001 General Ongoing

Total fees for this matter	$1,559.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$122.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$9,633.00
Total disbursements for this matter	$86.06

00264 [redacted]

Total fees for this matter	$375.00
Total disbursements for this matter	$0.00

00265 [redacted]

Total fees for this matter	$75.00
Total disbursements for this matter	$0.00

00267 [redacted]

Total fees for this matter	$200.00
Total disbursements for this matter	$0.00

00268 [redacted]

Total fees for this matter	$25.00
Total disbursements for this matter	$0.00

00269 [redacted]

Total fees for this matter	$25.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**48.20 hrs**	**$12,015.00**
TOTAL EXPENSES FOR THIS BILL		**$86.06**
TOTAL DUE THIS BILL		**$12,101.06**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/20/20
Bill number 79065
Billing through 10/31/20

00001 General Ongoing

For professional services rendered:

Email with sped director and Attorney Dalton [redacted] Email with Ms. Smith regarding [redacted] Call with Attorney Chilnick; Email with Attorney Dalton and Ms. Mcdonald r[redacted] Emailed Attorney St. Florian o[redacted] Email with sped director and Attorney Dalton regarding [redacted] Emailed on public records appeal; Email with Ms. Macdonald regarding scheduling meeting [redacted] Provided [redacted] Emailed Attorney St. Florian [redacted] Edited [redacted] Email with Superintendent Oteri regarding [redacted] Follow up consultation with Attorney St. Florian [redacted] Email with Ms. Macdonald; Draft [redacted]

Total fees for this matter 6.30 hrs $1,559.50

00242 [redacted]

For professional services rendered:

Emailed [redacted]; Emailed on extension; Emailed on hearing; Emailed on s[redacted]

Total fees for this matter 0.50 hrs $122.50

00261 [redacted]

For professional services rendered:

Read n[redacted]st; Email with Team [redacted] Read ruling from BSEA; Read

hearing transcript [redacted] Call with sped director; [redacted] Draft letter to BSEA [redacted] Read email from parents; Email with sped director; Prepare e[redacted] Call with sped director; Email with Ms. Whittington; Read parent emails; Calls with sped director regarding [redacted] Email with parents; Drafted [redacted] Email with hearing officer; Email with sped director; Email with parents and Superintendent; Call with sped director; Review [redacted] Email with Ms. Macdonald; Draft [redacted] BSEA conference call; Work [redacted] Email parties; Call with sped director; Draft response to hearing request; Work on closing argument; Read [redacted] Work o[redacted] Work [redacted] Read transcript; Work [redacted] Email with [redacted] Drafted l[redacted] Work [redacted]; Email with District [redacted] Emailed o[redacted] BSEA conference call; Email with sped director; Work [redacted] Reviewed [redacted] Work [redacted] Read hearing request; [redacted] Emailed on public records responses

	Total fees for this matter	38.60 hrs	$9,633.00

Disbursements:

10/27/20	Express Mail - Postage (UPS)	$86.06
	Total disbursements for this matter	$86.06

00264 [redacted]

For professional services rendered:

Call with Ms. Macdonald; Email with Ms. Presson; Draft s[redacted] Email with Attorney Presson [redacted]

Total fees for this matter	1.50 hrs	$375.00

00265 [redacted]

For professional services rendered:

Call with sped director and email and call with Attorney Sankey

Total fees for this matter	0.30 hrs	$75.00

00267 [redacted]

For professional services rendered:

Attend IEP Team meeting for [redacted]

Total fees for this matter	0.80 hrs	$200.00

00268 [redacted]

For professional services rendered:

Email with Ms. Macdonald and Attorney Dalton [redacted]

Total fees for this matter	0.10 hrs	$25.00

00269 [redacted]

For professional services rendered:

Email with Ms. Macdonald [redacted]

Total fees for this matter	0.10 hrs	$25.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**48.20 hrs**	**$12,015.00**
TOTAL EXPENSES FOR THIS BILL		**$86.06**
TOTAL DUE THIS BILL		**$12,101.06**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/12/20
Bill number 78909
Billing through 07/31/20

00001 General Ongoing

Total fees for this matter	$499.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$98.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$892.50
Total disbursements for this matter	$0.00

00264 [redacted]

Total fees for this matter	$2,355.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**15.60 hrs**	**$3,845.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$3,845.00**

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Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 11/12/20
Bill number 78909
Billing through 07/31/20

00001 General Ongoing

For professional services rendered:

Email with Superintendent Oteri regarding [redacted] Emailed Attorney St. Florian o[redacted] Email with sped director [redacted] Email with Attorney Presson and sped director regarding [redacted] Call with sped director regarding s[redacted] and r[redacted]t; Email Attorney Presson; Call with Superintendent; Read letter opposing [redacted] Review subpoena; Call Atttorney; Email sped director; Call Attorney r[redacted]; Email with Ms. Boudreau

Total fees for this matter	2.00 hrs	$499.50

00242 [redacted].

For professional services rendered:

Emailed on [redacted] Emailed on [redacted] Emailed on [redacted]t

Total fees for this matter	0.40 hrs	$98.00

00261 [redacted]

For professional services rendered:

Draft letter to BSEA; Call with sped director and Superintendent Oteri [redacted] Email with parent and sped director [redacted] Emailed on public records request; Emailed [redacted] Emailed [redacted] Conferenced [redacted] Email with Attorney Fallon; Draft letter to [redacted] Read parent

letter; Email to Attorney Fallon; Read parent letter a[redacted]; Email with sped director; Email with sped director and parent; Email with parent and sped director regarding upcoming hearing; Email with sped director [redacted]

Total fees for this matter	3.60 hrs	$892.50

00264 [redacted]

For professional services rendered:

Email with sped director and Attorney Sow r[redacted]Drafting and editing [redacted] Email communications with client. Revisions t[redacted] Read response; Email with Attorney Sow; Editing response [redacted] Call with client to discuss matter.

Total fees for this matter	9.60 hrs	$2,355.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**15.60 hrs**	**$3,845.00**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$3,845.00**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 10/23/20
Bill number 78664
Billing through 09/30/20

00001 General Ongoing

Total fees for this matter	$425.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,100.00
Total disbursements for this matter	$44.31

00264 [redacted]

Total fees for this matter	$450.00
Total disbursements for this matter	$22.80

00265 [redacted]

Total fees for this matter	$100.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**8.30 hrs**	**$2,075.00**
TOTAL EXPENSES FOR THIS BILL		**$67.11**
TOTAL DUE THIS BILL		**$2,142.11**

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FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 10/23/20
Bill number 78664
Billing through 09/30/20

00001 General Ongoing

For professional services rendered:

Call with Attorney Vasudevan [redacted] Email with sped director; Email with Attorney Dalton and Attorney Vasudevan and sped director regarding [redacted] Email with Ms. McDonald r [redacted] Email with Attorney Dalton regarding [redacted]; Email with sped director r [redacted] Review records; Email with District regarding record request [redacted] Call with sped director and Ms. Smith [redacted]

Total fees for this matter	1.70 hrs	$425.00

00261 [redacted]

For professional services rendered:

Read [redacted] t[redacted] Email with Ms. Whittington r[redacted] Telephone conference with sped director r[redacted] Pre-hearing conference and witness preparation meeting; Email with Team r[redacted] Email with sped director; Email with [redacted] Email with parent; BSEA conference call; Read [redacted] Email with Ms. Whittington

Total fees for this matter	4.40 hrs	$1,100.00

Disbursements:

09/22/20	Express Mail - Postage (UPS)	$21.51
09/28/20	Express Mail - Postage (UPS)	$22.80

Total disbursements for this matter		$44.31

00264 [redacted]

For professional services rendered:

Call with sped director re[redacted]Pre-meeting with Team and attend pre-hearing conference; Review file; Draft [redacted]Email with Attorney Presson and sped director [redacted]; Email with Ms. McDonald and Attorney Presson regarding [redacted]; Email with Ms. Mcdonald and Attorney Presson r[redacted]

Total fees for this matter	1.80 hrs	$450.00

Disbursements:

09/28/20	Express Mail - Postage (UPS)	$22.80
	Total disbursements for this matter	$22.80

00265 [redacted].

For professional services rendered:

Email with Ms. Whittington; Call with Attorney Sankey

Total fees for this matter	0.40 hrs	$100.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**8.30 hrs**	**$2,075.00**
TOTAL EXPENSES FOR THIS BILL		**$67.11**
TOTAL DUE THIS BILL		**$2,142.11**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 09/24/20
Bill number 78342
Billing through 08/31/20

00001 General Ongoing

Total fees for this matter	$175.00
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$147.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$11,300.00
Total disbursements for this matter	$151.12

00264 [redacted]

Total fees for this matter	$297.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**47.70 hrs**	**$11,919.50**
TOTAL EXPENSES FOR THIS BILL		**$151.12**
TOTAL DUE THIS BILL		**$12,070.62**

MALD01 78342

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 09/24/20
Bill number 78342
Billing through 08/31/20

00001 General Ongoing

For professional services rendered:

Read email from parent [redacted] and call with Superintendent r[redacted] Research and email o[redacted] with Mr. Concannon; Email with District [redacted]

Total fees for this matter	0.70 hrs	$175.00

00242 [redacted]

For professional services rendered:

Emailed o[redacted] Emailed on [redacted] Emailed o[redacted]

Total fees for this matter	0.60 hrs	$147.00

00261 [redacted]

For professional services rendered:

Hearing preparation w[redacted] Prepare exhibits; Email with sped director; Complete exhibit binder; Review [redacted] Witness preparation; Work on e[redacted] Witness [redacted]; BSEA conference call; BSEA conference call; Preparation for call; Work on [redacted] Call with sped director [redacted] Draft [redacted] Hearing preparation; Participate [redacted] Review parent's exhibits; Call with [redacted] Read motions filed by parents; Draft letter to BSEA; Email with sped director; Preparation [redacted] Finish

[redacted]; Read discovery requests; Email with District; Email pr[redacted]Draft [redacted]repare [redacted]Hearing preparation [redacted]BSEA Hearing Day 1 and preparation; BSEA Hearing Day #2; BSEA Hearing Day #3; Work on scheduling conference call; Email with District r[redacted]; Draft [redacted]; Email w[redacted]; Email with Ms. Whittington r[redacted] BSEA conference call; Email sped director; Email with sped director; Draft [redacted]

	Total fees for this matter	45.20 hrs	$11,300.00

Disbursements:

08/20/20	Express Mail - Postage (UPS)	$151.12
	Total disbursements for this matter	$151.12

00264 [redacted]

For professional services rendered:

Email with Attorney Sow; BSEA conference call; Email with sped director; Email to Atty St. Florian [redacted] Email with Attorney Presson and sped director [redacted] sped director [redacted]

Total fees for this matter	1.20 hrs	$297.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**47.70 hrs**	**$11,919.50**
TOTAL EXPENSES FOR THIS BILL		**$151.12**
TOTAL DUE THIS BILL		**$12,070.62**

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/30/20
Bill number 77844
Billing through 06/24/20

00001 General Ongoing

Total fees for this matter	$98.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,043.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**4.70 hrs**	**$1,141.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,141.50**

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/30/20
Bill number 77844
Billing through 06/24/20

00001 General Ongoing

For professional services rendered:

Call with Superintendent r[redacted] Email with sped director regarding request fo[redacted]

Total fees for this matter	0.40 hrs	$98.00

00261 [redacted]

For professional services rendered:

Emailed on public records request; BSEA conference call; Email with sped director; Email with Superintendent Oteri regarding [redacted] Email with Attorney Fallon; Responded on [redacted] Emailed on public records request response; Review emails f[redacted] Call with Attorney Fallon; Email sped director; Read Motion to Compel; Email sped director; Email Attorney Fallon; Reviewed documents i[redacted] Email with sped director; Reviewed information request a[redacted] Emailed on response to records request; Emailed on public records request

Total fees for this matter	4.30 hrs	$1,043.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**4.70 hrs**	**$1,141.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$1,141.50**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/16/20
Bill number 77566
Billing through 05/31/20

00001 General Ongoing

Total fees for this matter	$416.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$504.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,483.50
Total disbursements for this matter	$0.00

00263 [redacted]

Total fees for this matter	$563.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**12.20 hrs**	**$2,967.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,967.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

TEL: (617) 479-5000

300 CROWN COLONY DRIVE, SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 06/16/20
Bill number 77566
Billing through 05/31/20

00001 General Ongoing

For professional services rendered:

Email with Mr. Wood and Superintendent [redacted] Email with Ms. Whittington and sped director regarding [redacted] Email with sped director re [redacted] Draft letter; Call with Superintendent Oteri [redacted] Draft [redacted]; Email with sped director [redacted] Email with Superintendent [redacted]

Total fees for this matter	1.70 hrs	$416.50

00242 [redacted]

For professional services rendered:

Emailed [redacted] Conferenced with Superintendent Oteri; Emailed Mr. Wood [redacted] emailed family's attorneys; Reviewed [redacted] Drafted [redacted] Emailed Superintendent Oteri o[redacted] Emailed Superintendent Oteri [redacted] Emailed family's [redacted]

Total fees for this matter	2.10 hrs	$504.00

00261 [redacted]

For professional services rendered:

Read parent motion; Email sped director; Email with sped director; Draft r[redacted]

Review file; Reviewed [redacted]; Reviewed r[redacted]Read [redacted] Email with parties to schedule call; Emailed on public records request; Prepare for and participate in BSEA conference call; Drafted [redacted] Read BSEA order; Email with sped director; Emailed on public records request; Email with sped director regarding emails; Emailed on public records request; Email with sped director r[redacted] Emailed on public records request; Conferenced with Superintendent Oteri

Total fees for this matter	6.10 hrs	$1,483.50

00263 [redacted]

For professional services rendered:

Call with Team to plan [redacted] Participate in Team meeting; Review records sent by Ms. Whittington

Total fees for this matter	2.30 hrs	$563.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**12.20 hrs**	**$2,967.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,967.50**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 05/27/20
Bill number 77310
Billing through 04/30/20

00001 General Ongoing

Total fees for this matter	$1,131.00
Total disbursements for this matter	$0.00

00242 [redacted].

Total fees for this matter	$1,074.50
Total disbursements for this matter	$30.85

00248 [redacted]

Total fees for this matter	$122.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$2,958.00
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.70 hrs**	**$5,286.00**
TOTAL EXPENSES FOR THIS BILL		**$30.85**
TOTAL DUE THIS BILL		**$5,316.85**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 05/27/20
Bill number 77310
Billing through 04/30/20

00001 General Ongoing

For professional services rendered:

Drafted r[redacted] Email with Superintendent Oteri; Email sped director regarding [redacted] Drafted [redacted] Emailed on public records request; Drafted response to public records request; Email with sped director and Attorney Tobin [redacted]; Emailed on public records response; Review s[redacted] Email Superintendent; Conferred with Attorney St. Florian [redacted]

Total fees for this matter	4.70 hrs	$1,131.00

00242 [redacted].

For professional services rendered:

Reviewed [redacted] Reviewed filing and conferred with Attorney Vasudevan re: next steps; Emailed Attorney Sherwood on 9A package; Reviewed materials and Rule 9A, conferred with Ms. Wright and [redacted] w court emergency orders regarding case filing and related procedural matters; [redacted] draft [redacted] convert documents to PDF; electronically file documents with trial court Odyssey filing system; download and save court accepted documents; draft and send email to [redacted] Attorney Sherwood regarding same; Conferred with Ms. Wright and all parties re: filing; Review email rejection notice [redacted] draft correspondence to Attorney Kilkelly [redacted] emails to/from support staff for mailing of same; Emailed [redacted]

	Total fees for this matter	6.30 hrs	$1,074.50

Disbursements:

04/06/20	Filing fees (EastVisa)	$30.85
	Total disbursements for this matter	$30.85

00248 [redacted]

For professional services rendered:

Read court ruling; Email Superintendent Oteri

Total fees for this matter	0.50 hrs	$122.50

00261 [redacted].

For professional services rendered:

Prepare for telephone motion session regarding discovery; Read file; Email with sped director; Call with sped director t[redacted]; Participate in discovery motion session; Review email; Email with sped director; Work o[redacted]raft [redacted]Read letter by parents [redacted] Email with sped director; Drafted r[redacted]; Drafted [redacted]Email with sped director r[redacted]Edited public records response; Read parent response [redacted] Reviewed [redacted] Conferenced with Superintendent Oteri; Emailed Ms. Dorai; Emailed on public records request

Total fees for this matter	12.20 hrs	$2,958.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**23.70 hrs**	**$5,286.00**
TOTAL EXPENSES FOR THIS BILL		**$30.85**
TOTAL DUE THIS BILL		**$5,316.85**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/29/20
Bill number 77017
Billing through 03/31/20

00001 General Ongoing

Total fees for this matter	$98.00
Total disbursements for this matter	$0.00

00043 [redacted]

Total fees for this matter	$833.00
Total disbursements for this matter	$0.00

00242 [redacted].

Total fees for this matter	$269.50
Total disbursements for this matter	$0.00

00259 [redacted].

Total fees for this matter	$169.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,053.50
Total disbursements for this matter	$0.00

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**10.60 hrs**	**$2,423.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,423.50**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

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FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 04/29/20
Bill number 77017
Billing through 03/31/20

00001 General Ongoing

For professional services rendered:

Call with Mr. Mastrangelo r[redacted] Call with Mr. Mastrangelo [redacted]
[redacted]r

Total fees for this matter 0.40 hrs $98.00

00043 [redacted]

For professional services rendered:

Call with Ms. Whittington and spe director; Email with Attorney Mikolajewski and District; Call with Ms. Keene; Email with Attorney Mikolajewski; Email with sped director regarding p[redacted]
[redacted]Draft s[redacted]mail with sped director and Attorney Mikolajewski

Total fees for this matter 3.40 hrs $833.00

00242 [redacted]

For professional services rendered:

Draft[redacted]
[redacted]draft, p[redacted]; emails to/from and conferences with Attorney Sherwood regarding same; Conferred with Ms. Resnick and reviewed and saved documents; Emailed Ms. Resnick on request for extension; Reviewed email on notice

to Attorney General

Total fees for this matter	1.80 hrs	$269.50

00259 [redacted].

For professional services rendered:

Met with Attorney Sow to review Team meeting; Meeting r[redacted]Email to client [redacted]

Total fees for this matter	0.70 hrs	$169.50

00261 [redacted].

For professional services rendered:

Call with sped director regarding f[redacted] Email with sped director; Call with Mr. Oteri; Read record request; Call with Attorney Rosetti re[redacted]Review file in preparation; Email with [redacted]; Email with parents; Draft [redacted]Email with Attorney Rossetti; Draft letter to BSEA; BSEA conference call; Email with sped director; Email with Attorney Rossetti; Email with Attorney Vasudevan; Read [redacted]

Total fees for this matter	4.30 hrs	$1,053.50

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**10.60 hrs**	**$2,423.50**
TOTAL EXPENSES FOR THIS BILL		**$0.00**
TOTAL DUE THIS BILL		**$2,423.50**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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FAX: (617) 479-6469

Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/28/20
Bill number 76735
Billing through 02/28/20

00001 General Ongoing

Total fees for this matter	$386.50
Total disbursements for this matter	$0.00

00242 [redacted]

Total fees for this matter	$3,936.00
Total disbursements for this matter	$0.00

00259 [redacted].

Total fees for this matter	$1,080.00
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$1,249.50
Total disbursements for this matter	$26.96

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**27.60 hrs**	**$6,652.00**
TOTAL EXPENSES FOR THIS BILL		**$26.96**
TOTAL DUE THIS BILL		**$6,678.96**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 03/28/20
Bill number 76735
Billing through 02/28/20

00001 General Ongoing

For professional services rendered:

Reviewed [redacted] rafted public records response; Email with Ms. Whittington and Superintendent Oteri r[redacted] Conferenced with Assistant City Solicitor Rossetti; Conferenced with Attorney St. Florian; Call with Superintendent Oteri r[redacted]

Total fees for this matter 1.60 hrs $386.50

00242 [redacted]

For professional services rendered:

Worked [redacted] Researched an[redacted]; Reviewed [redacted] conferred with Attorney Vasudevan; Reviewed [redacted] dited m[redacted] Emailed o[redacted] Conferenced with Superintendent Oteri; Emailed [redacted] Conferred with Attorney Vasudevan [redacted] Reviewed [redacted] emailed Attorney Sherwood; Finalized and sent out a[redacted] Emailed on request [redacted] Emailed [redacted]

Total fees for this matter 16.40 hrs $3,936.00

00259 [redacted]

For professional services rendered:

Email to client re: upcoming meeting and reports.; Email to client re[redacted];

Email to Attorney St. Florian re: special ed meeting; Email to/from client re: special ed meeting [redacted] Reviewed [redacted] Attended Special education meeting [redacted] Reviewed case with client prior to meeting.

Total fees for this matter	4.50 hrs	$1,080.00

00261 [redacted].

For professional services rendered:

Email with sped director [redacted] Review FOIA request and documents; Email Attorney Vasudevan; Email with sped director and parents; BSEA conference call; Email with sped director; Prepare for and attend pre-hearing conference; Draft s[redacted]

Total fees for this matter	5.10 hrs	$1,249.50

Disbursements:

02/26/20	Travel (AES)	$11.00
02/26/20	Travel (AES)	$15.96
	Total disbursements for this matter	$26.96

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**27.60 hrs**	**$6,652.00**
TOTAL EXPENSES FOR THIS BILL		**$26.96**
TOTAL DUE THIS BILL		**$6,678.96**

Effective July 1, 2020, our hourly rates will increase by $5.00/hour for both partners and associates. Paralegal rates will remain the same.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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Billing Summary

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/26/20
Bill number 76280
Billing through 01/31/20

00001 General Ongoing

Total fees for this matter	$343.00
Total disbursements for this matter	$0.00

00222 [redacted]

Total fees for this matter	$0.00
Total disbursements for this matter	$29.40

00242 [redacted]

Total fees for this matter	$1,771.50
Total disbursements for this matter	$31.33

00255 [redacted]

Total fees for this matter	$147.00
Total disbursements for this matter	$0.00

00256 [redacted].

Total fees for this matter	$49.00
Total disbursements for this matter	$0.00

00259 [redacted]

Total fees for this matter	$24.50
Total disbursements for this matter	$0.00

00261 [redacted]

Total fees for this matter	$833.00
Total disbursements for this matter	$25.28

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**14.80 hrs**	**$3,168.00**
TOTAL EXPENSES FOR THIS BILL		**$86.01**
TOTAL DUE THIS BILL		**$3,254.01**

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Attorneys at Law

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QUINCY, MA 02269-9126

FAX: (617) 479-6469

Michael Wood
Assistant Superintendent, Student Services
Malden Public Schools
77 Salem Street
P.O. # 166998
Malden, MA 02148

Bill date 02/26/20
Bill number 76280
Billing through 01/31/20

00001 General Ongoing

For professional services rendered:

Call with Mr. Mastrangelo r[redacted] Call with sped director [redacted] Email Attorney Sow; Call with Principal Mastrangelo [redacted] Call with Superintendent re[redacted] Email with Mr. Concannon [redacted] Email with Ms. Chase [redacted]; Email with Superintendent regarding [redacted]

Total fees for this matter	1.40 hrs	$343.00

00222 [redacted]

Disbursements:

12/20/19	Travel (AES)	$29.40
	Total disbursements for this matter	$29.40

00242 [redacted]

For professional services rendered:

Reviewed [redacted] Emailed on [redacted] Conferred with Superintendent Oteri, Mr. Mastrangelo, and Attorneys Vasudevan and St. Florian re: filings; Emailed [redacted] onferenced with Superintendent Oteri on potential

resolution; Conferenced with Attorney Berry o[redacted] Emailed Attorney Sherwood o[redacted] Emailed Attorney Berry [redacted] Drafted [redacted] Conferred with all parties [redacted] onferred with Attorneys Berry, Kilkelly, and Vasudevan re: [redacted] conferred with Superintendent Oteri [redacted] Emailed Attorney Sherwood on [redacted]; Review, revise, finalize [redacted] draft, photocopy and scan f[redacted] hand filing [redacted] emails to/from and conference with Attorney Sherwood regarding same

Total fees for this matter	9.10 hrs	$1,771.50

Disbursements:

01/27/20	Travel PMR)	$31.33
	Total disbursements for this matter	$31.33

00255 [redacted]

For professional services rendered:

Email with Ms. Brennan; Draft letter to BSEA; Email with sped director; Email with Ms. Brennan [redacted]

Total fees for this matter	0.60 hrs	$147.00

00256 [redacted]

For professional services rendered:

Draft letter to BSEA

Total fees for this matter	0.20 hrs	$49.00

00259 [redacted]

For professional services rendered:

Email with Ms. Boudreau to schedule Team meeting

Total fees for this matter	0.10 hrs	$24.50

00261 [redacted]

For professional services rendered:

Email with sped director a[redacted] regarding discovery; Email with parent r[redacted]; Read Motion to Compel; Email sped director; Respond t[redacted] Review file; Review [redacted] Email with parent regarding attachments; Email with parent

	Total fees for this matter	3.40 hrs	$833.00

Disbursements:

12/11/19	Travel (AES)	$14.28
12/11/19	Travel (AES)	$11.00
	Total disbursements for this matter	$25.28

INVOICE SUMMARY:

TOTAL FEES FOR THIS BILL	**14.80 hrs**	**$3,168.00**
TOTAL EXPENSES FOR THIS BILL		**$86.01**
TOTAL DUE THIS BILL		**$3,254.01**

Privilege Log for FOIA Request 2021-221

Author	Recipient(s)	Date	Subject Matter	Basis for Privilege/Exemption
MHTL	Malden Public Schools	4/23/2021 Bill	Changes to policies, litigation strategy/work product, and records retention	Constitutes attorney-client communication concerning policies, litigation strategy and records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	3/23/2021 Bill	Litigation strategy and public records	Constitutes attorney-client communication concerning litigation strategy and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	2/28/2021 Bill	Litigation strategy and public records	Constitutes attorney-client communication concerning litigation strategy and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	1/29/2021 Bill	Review of policies, Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning review of policies, litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of

Privilege Log for FOIA Request 2021-221

				Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	12/30/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	11/20/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	11/12/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	10/23/20 Bill	Litigation strategy,	Constitutes attorney-client

			legal advice on individual student matters, and public records	communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	9/24/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	6/30/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	6/16/20 Bill	Policies, Litigation strategy, legal advice on individual student matters, and public	Constitutes attorney-client communication concerning policies, litigation strategy, legal advice on individual student

Privilege Log for FOIA Request 2021-221

			records	matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	6/16/20 Bill	Policies, Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning policies, litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	5/27/20 Bill	Policies, Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning policies, litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	4/29/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc.

Privilege Log for FOIA Request 2021-221

				v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	3/28/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).
MHTL	Malden Public Schools	2/26/20 Bill	Litigation strategy, legal advice on individual student matters, and public records	Constitutes attorney-client communication concerning litigation strategy, legal advice on individual student matters, and public records. Suffolk Construction Co., Inc. v. Division of Capital Asset Management, Inc. v. Division of Capital Asset Management, 449 Mass. 444, 450-451 (2007).

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

June 8, 2021

BY E-MAIL

Open Malden
info@openmalden.org

Re: Public Records Request dated May 7, 2021/FOIA Request 2021-0221

Dear Open Malden:

Please find enclosed the records responsive to the request that you submitted on May 7, 2021 (the "Records Request") and for which you provided payment on May 24, 2021. Specifically, you requested the following: "Please provide all billing statements, invoices, purchase orders, and contracts, that are in effect and which are not privileged regarding the law firm Murphy, Hesse, Toomey & Lehane, LLP, 300 Crown Colony Drive, Suite 410 P.O. Box 9126 Quincy, MA 02269-9126. For the time period January 1, 2020 through the date you respond with the responsive documents."

To comply with your request, Malden redacted the records as they contained attorney-client privilege as many of the entries in the bills describe discussions 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). Given that these bills relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. The bills must be redacted. "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. The Guide to the Massachusetts Public Records Law states that "[s]egregation and redaction under the attorney-client privilege has also been found to be 'require by law.'"

Beyond attorney-client privilege, the records were subject to other exemptions. In Champa v. Weston Public Schools, 473 Mass. 86 (2015), the Supreme Judicial Court held that a settlement agreement, between a public school district and the parents of a child who required special

education services at an out-of-district private institution, was not subject to disclosure under the Public Records Law based upon Exemption (a) (which protects from disclosure records that are "… specifically or by necessary implication exempted from disclosure by statute," MGL c. 4, § 7(26)(a)).

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, billing statements and invoices between Malden and Murphy, Hesse, Toomey & Lehane ("MHTL") contained personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since MHTL is counseling Malden on the educational services and programming that is providing to students, especially special education students, these records were exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

It took Malden a total of 4.34 hours to search, segregate and redact the records. In accordance with 950 CMR 37.02(2)(m)(1) you were not charged for the first two (2) hours of those services. As a result, since you provided a check for 7.67 hours for $191.75, Malden will provide you a refund of $133.25.

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 Records
Greg Lucey, Malden City Clerk

Mackenzie Nekton

From: Bruce Friedman [redacted]
Sent: Monday, June 21, 2021 2:19 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; kanderson@cityofmalden.org
Subject: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination
Attachments: spr211199.pdf; spr211042.pdf; 2021-0067 Request.pdf; SPR 1042 Payment.pdf; SPR21-1199.pdf; Payment email 5-11-21.pdf

Importance: High

Greetings:

On February 24, 2021 the following attached verbatim request was served upon the City of Malden via their official public records request site: "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."

On March 10, 2021, a response and fee estimate was received. SPR 21/1042 was opened as a result the determination was rendered and is attached hereto.

On May 11, 2021 the attached email and proof of payment was sent (attached).

On May 12, 2021 SPR21/1199 was opened as a result of the City seeking a time extension (attached).

On May 18, 2021 SPR21/1199 was determined and is attached. This decision gave the City of Malden a 30 day extension for the following public records requests:

- **2021-0067 – Filed 2-25-2021**
- **2021-0107 – Filed 3-11-2021**
- **2021-0201 – Filed 4-26-2021**

The extension for 2021-0067 would effectively allow the City to respond on May 14, 2021. (2-25-2021 + 25 business days = 4-1-2021 + 30 business days extension = 5-14-2021).

It is Now June 21 and eighty (80) business days have passed since the request was filed.

Wherefore, I respectfully request that the Secretary Order the City of Malden to comply with the Orders of SPR21/1199 and provide the responsive documents immediately.

I also respectfully request that the Secretary contemplate this lack of response in concert with the myriad of other current lack of responses and this lack of compliance along with the lack of compliance with other current Orders of the Secretary in this determination and in all other relief sought against the City and by the City in the future.

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.

Request Number 2021-0067

Request Details

Request Submitted	2/25/2021 8:30:00 AM
Requester Name	Bruce Friedman
Requested Department	School
Request Content	**Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.**
Request Document Attachment	No request document found for this request.

Response Details

Response Date	3/10/2021 3:21:56 PM
Response Department	School
Response Content	Breakdown of estimated fees have been sent to requestor. Please be advised that if you object to this response, you have the right to petition the Commonwealth of Massachusetts Supervisor of Public Records. Your written appeal petition must be made within 90 calendar days of the date of this response, and must specify the nature of your objections to this response, and include a copy of your electronic request with all header information including the time, date, subject, sender and recipient email address, and a copy of this written response, and sent to the following address: Supervisor of Records Division of Public Records Office of the Secretary of the Commonwealth One Ashburton Place, Room 1719 Boston, MA 02108 or; pre@sec.state.ma.us Electronic communication is strongly encouraged and is the preferred method of correspondence.
Response Document Attachment	No response document found for this request.

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Subject: Re: SPR21/1042 Determination
Date: Tuesday, May 11, 2021 at 12:16:22 PM Eastern Daylight Time
From: Bruce Friedman
To: pre@sec.state.ma.us
CC: kanderson@cityofmalden.org, Kathryn M. Fallon, Greg Lucey, sdorai@maldenps.org
Attachments: SPR 1042 Payment.pdf, spr211042.pdf

Greetings:

Be it known, that today, May 11, 2021 I personally conveyed a check in the amount of $1661.50 and hand delivered same to the Malden Public Schools @ 77 Salem Street, Malden, MA. 02148. Steve at the front security desk took the package and indicated that Ms. Dorai would have the package before the end of the day.

I will be expecting the documents to be released ASAP.

Kindest Regards,

- Bruce Friedman

From: Robertson, Jack (SEC) <jack.robertson@state.ma.us>
Date: Friday, May 7, 2021 at 11:21 AM
To: Dorai, Shirley <sdorai@maldenps.org>, fvasudevan@mhtl.com <fvasudevan@mhtl.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman
[redacted]
Subject: SPR21/1042 Determination

Good Morning,

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

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

Thank you,

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

[redacted]

Fidelity®Cash Management Account

[redacted]
80-568/1012

3/11/21
Date

Pay to the Order of Malden Public Schools $ 1661.50

One thousand Six hundred Sixty-one dollars & 50/100 Dollars

Photo Safe Deposit®

Fidelity INVESTMENTS UMB Bank, N.A. Kansas City, MO

For Estimate 2021-0067

[redacted]

Help

Welcome Bruce Friedman ! [Logout]

Back

Requestor Details

Requestor Details

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

Description of Request

Request Number	2021-0067	Department	School
Request Sent Date	02/24/2021 08:32 PM	Request Received Date	02/25/2021 08:30 AM
Response Due By	03/16/2021	Response Sent On	03/10/2021 03:21 PM

Request Detail: Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.

Request Documents

No Document.

Response Details

Response: Breakdown of estimated fees have been sent to requestor.

Please be advised that if you object to this response, you have the right to petition the Commonwealth of Massachusetts Supervisor of Public Records. Your written appeal petition must be made within 90 calendar days of the date of this response, and must specify the nature of your objections to this response, and include a copy of your electronic request with all header information including the time, date, subject, sender and recipient email address, and a copy of this written response, and sent to

Boylan, Kassandra (SEC)

From:	Dorai, Shirley <sdorai@maldenps.org>
Sent:	Wednesday, May 12, 2021 3:56 PM
To:	SEC-DL-PREWEB
Cc:	Greg Lucey; Karen Anderson; Bruce Friedman; Malden Transparency; Felicia S. Vasudevan
Subject:	Petition for Extension of Time to Respond
Attachments:	FOIA Request 2021-0067, 0107 and 207 Time Petition.pdf

Dear Supervisor Murray,

Please see the attached petition. 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

May 12, 2021

VIA EMAIL ONLY
pre@sec.state.ma.us
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
ATTN: Rebecca Murray, Supervisor of Records

RE: Petition for Extension of Time to Respond

Dear Supervisor Murray:

This is a petition on behalf of Malden concerning the three record requests, detailed below, from Mr. Friedman/OpenMalden, received on February 25, 2021, March 11, 2021 and April 26, 2021 respectively.

Specifically, there were the following requests:

1) FOIA Request 2021-0067 dated 2/25/2021 - Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.

2) FOIA Request 2021-0107 dated 3/11/2021 - Please provide all emails where five or more of the following people at any Malden Public Schools email address: Gary Christenson, Michael Drummey, Robert S. McCarthy Jr., Jennifer M. Spadafora, Leonard Iovino, Adam Weldai, Joseph Gray, Michelle Luong, John Froio appear in one or more of the of the following email fields;
From:
To:
Cc:

Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.

3) FOIA Request: 2021-0207 dated 4/26/2021 - Request Detail: Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
And where the Business Manager, Toni Mertz is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. Thisrequest specifically seeks the email header information, all fields of the email, the body of the email, This request specifically seeks the email header information, allfields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format. Please provide the responsive documents electronically to the email address info@openmalden.com.

The first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost.

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

Malden has estimated that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing.

Malden hereby petitions for an extension of time to respond to Mr. Friedman's/Open Malden's public records requests. Given that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension. Pursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt payment for the work, to response to these requests. Malden's demonstration of good cause is based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents in immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce.

Responding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time.

Thank you for your consideration of this Petition. Please do not hesitate to contact me with any questions or to discuss further.

Sincerely,
Shirley Dorai
School Department

cc: Greg Lucey, Records Access Officer, City of Malden
Karen Anderson, Records Access Officer, City of Malden
Bruce Friedman/Open Malden, Requestor
Felicia Vasudevan, Attorney for Malden

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 7, 2021
SPR21/1042

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 (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 25, 2021, Mr. Friedman requested "… any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request … in the electronic form which they are regularly maintained and must include all email metadata."

Previous Determinations

The requested records were the subject of previous determinations. See SPR21/0589 Determination of the Supervisor of Records (March 17, 2021); SPR21/0718 Determination of the Supervisor of Records (April 6, 2021). In my April 6th determination, I found the School's fee estimate has not explained with specificity why the indicated amount of time is necessary for producing the requested records. The City was ordered to provide Mr. Friedman with a revised response, in a manner consistent with the order, the Public Records Law and its Regulations. The School provided said response on April 20, 2021. Unsatisfied with the School's response, Mr. Friedman petitioned this office and this appeal, SPR21/1042, was opened as a result.

The Public Records Law

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

Fee Estimate – Municipalities

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

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

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4). Petitions relating to fees must be submitted to the Supervisor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

The School's April 20th response

In its April 20th response, the School indicates it "had to conduct a search with each school committee member in the 'from,' line and at least one school committee member in the 'to,' line. There is no other way to narrow down the information requested. The search generated 1,785 emails. Malden is not certain what percentage of the emails are responsive to the request."

The School further explains, "…each email must be reviewed to determine whether it is responsive. Malden has no way to automate the search. Malden spent three hours locating the emails. Malden took a sample of ten emails. It took 20 minutes to review the ten emails to

determine which ones are responsive to the request, as some of the emails had multiple emails in a chain." The School states "[s]pecifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes"

The School explains "Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 3570 minutes or 59.5 hours to search these records. Thus, Malden estimates a total of 62.5 hours to search the records."

The School indicates "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 178.5 minutes or 2.98 hours…Malden estimates another 1 minute for redactions based on that email or another 178.5 or 2.98 hours. As a result, Malden estimates a total of 68.46 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 66.46 multiplied by $25 per hour yields a fee estimate of $1,661.50."

In its response, the School suggests that Mr. Friedman ". . . could potentially reduce this estimate if [he] provided a specific person for the 'to' and 'from,' boxes of the email search." In light of the School's response, I encourage Mr. Friedman and the City to communicate in order to facilitate producing records efficiently and affordably. Mr. Friedman may wish to narrow the parameters or include applicable time periods or factors to enable the search to be processed. G. L. c. 66, § l0(a)(i). The City must use its knowledge of the records to facilitate providing any responsive records. G. L. c. 66, § l0(a)(vii) (an agency or municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably). Please be advised the School received approval to charge for segregation and redaction, to the extent the responsive records contain the exempt information. See SPR21/0589 Determination of the Supervisor of Records (March 17, 2021).

Conclusion

Accordingly, I will consider this administrative appeal closed. If issues remain after further communication, Mr. Friedman may file an appeal.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia Vasudevan, Esq.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 18, 2021
SPR21/1199

Shirley Dorai
Executive Assistant to the Superintendent
School Committee Clerk
Malden Public Schools
77 Salem Street, Room H104
Malden, MA 02148

Dear Ms. Dorai:

I have received your petition on behalf of the Malden Public Schools (School) seeking an extension of time to produce records. G. L. c. 66, § 10(c). As required by law, it is my understanding that the School furnished a copy of this petition to the requestor. Id. Specifically, Open Malden submitted the following three requests:

- FOIA Request 2021-0067 dated 2/25/2021 – "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."

- FOIA Request 2021-0107 dated 3/11/2021 – "Please provide all emails where five or more of the following [named individuals] appear in one or more of the of the following email fields; From:, To:, Cc:, Bcc:. For the time period January 1, 2020 through the date you respond with the responsive documents."

- FOIA Request: 2021-0207 dated 4/26/2021 – "Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields; From:, To:, Cc:, Bcc:. And where the Business Manager… is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents."

Petition for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a

single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

> (i) the need to search for, collect, segregate or examine records;
> (ii) the scope of redaction required to prevent unlawful disclosure;
> (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
> (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
> (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
> (vi) the public interest served by expeditious disclosure.
>
> G. L. c. 66, § 10(c).

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

Current Petition

In its May 12, 2021 petition, the School requests "[p]ursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute… based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents [is] immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce." Further, "[r]esponding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time."

The School indicates "[t]he first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost."

The School estimates "… that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing."

The School explains that "[g]iven that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension."

I find that in light of the capacity of the School to produce the request without the extension, the potential scope of redactions, as well as efforts undertaken by the School in fulfilling the requests, the School has established good cause to permit an extension of time. See G. L. c. 66, § 10(c)(i)-(iv). I hereby grant the School an extension of 30 business days to furnish copies of records responsive to Open Malden's requests. See G. L. c. 66, § 10(c). To the extent possible, the School must provide responsive records on a rolling basis.

Conclusion

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

Please note, Open Malden has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Malden Transparency
Greg Lucey
Karen Anderson
Felicia Vasudevan, Esq.

Mackenzie Nekton

From: Bruce Friedman [redacted] >
Sent: Monday, June 21, 2021 2:37 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; kanderson@cityofmalden.org
Subject: Request for Appeal - City of Malden #2021-0107 A.K.A. SPR21/0742 and SPR 21/1043 and SPR21/1199 Determination
Attachments: Payment email 5-11-21.pdf; SPR21-1199.pdf; spr211199.pdf; 2021-0107 Request 2.pdf; FOIA Request 2021-0107 Response.pdf; SPR21-1043[6].pdf; spr211043.pdf; SPR 1043 Payment.pdf; Payment email 5-11-21.pdf

Importance: High

From: Bruce Friedman [redacted] >
Date: Monday, June 21, 2021 at 2:19 PM
To: pre@sec.state.ma.us <pre@sec.state.ma.us>, angela.m.puccini@state.ma.us <angela.m.puccini@state.ma.us>
Cc: sdorai@maldenps.org <sdorai@maldenps.org>, kanderson@cityofmalden.org <kanderson@cityofmalden.org>
Subject: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination

Greetings:

On March 11, 2021 the following attached verbatim request was served upon the City of Malden via their official public records request site: "Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s)

folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

On March 25, 2021, a response and fee estimate was received.

SPR 21/1043 was opened as a result the determination was rendered and is attached hereto.

On May 11, 2021 the attached email and proof of payment was sent (attached).

On May 12, 2021 SPR21/1199 was opened as a result of the City seeking a time extension (attached).

On May 18, 2021 SPR21/1199 was determined and is attached. This decision gave the City of Malden a 30 day extension for the following public records requests:

- **2021-0067 – Filed 2-25-2021**
- **2021-0107 – Filed 3-11-2021**
- **2021-0201 – Filed 4-26-2021**

The extension for 2021-0107 would effectively allow the City to respond on June 2, 2021. (3-15-2021 + 25 business days = 4-20-2021 + 30 business days extension = 6-2-2021).

It is Now June 21 and sixty-eight (68) business days have passed since the request was filed.

Wherefore, I respectfully request that the Secretary Order the City of Malden to comply with the Orders of SPR21/1199 and provide the responsive documents immediately.

I also respectfully request that the Secretary contemplate this lack of response in concert with the myriad of other current lack of responses and this lack of compliance along with the lack of compliance with other current Orders of the Secretary in this determination and in all other relief sought against the City and by the City in the future.

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.

direct Requestor Dashboard Communication Change Profile Help

Welcome Bruce Friedman ! [*Logout*]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the

Request Documents

No Document

Response Details

Response

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

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

March 25, 2021

BY E-MAIL

Bruce Friedman
[redacted]

Re: Public Records Request dated March 11, 2021/FOIA Request 2021-0107

Dear Mr. Friedman:

We have received the request that you submitted on March 11, 2021, but was received in our office on March 12, 2021 (the "Records Request"). Specifically, you requested the following:

> Please provide all emails where five or more of the following people at any Malden Public Schools email address:
> Gary Christenson,
> Michael Drummey,
> Robert S. McCarthy Jr.,
> Jennifer M. Spadafora,
> Leonard Iovino,
> Adam Weldai,
> Joseph Gray,
> Michelle Luong,
> John Froio,
> appear in one or more of the of the following email fields;
> From:
> To:
> Cc:
> Bcc:
> For the time period January 1, 2020 through the date you respond with the responsive documents.

In terms of your request, the Malden Public Schools ("Malden") had to conduct a search with each school committee member in the "from," line and at least one school committee

member in the "to," line. There is no other way to narrow down the information requested. The search generated 602 emails. Malden is not certain what percentage of the emails are responsive to the request.

To comply with your request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden. 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). Given that some emails will relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. They must be redacted. "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. I have asked the Supervisor of Public Records to allow me to charge a fee to redact for attorney-client privilege.

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

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, some of the emails from school committee members contain personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since some of these emails relate to the educational services and programming that Malden is providing to students, these records should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

Finally, these emails require redactions in accordance with the exemption set for at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:

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

In terms of the 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).

In accordance with the exemption, Malden needs to redact information on the emails such as information on employees that relates to performance or complaints, and personal information and contact information for families, such as information about a family's personal circumstances. Families and employees have a privacy interest to that information and the public interest does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. As a result, I have asked the Supervisor of Public Records to allow me to charge a fee to redact under this exemption.

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.

Search time includes the time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record. Malden had previously for Request 2021-67, which is the same request, but a limited time period, took a sample of ten emails. It took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in

a chain. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records.

Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C). Segregation time "includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. It took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour.

Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material. Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour.

As a result, Malden estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50. 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 $502.50.

You could potentially reduce this estimate if you provided a specific person for the "to" and "from," boxes of the email search.

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 Records
Greg Lucey, Malden City Clerk

Subject: FW: SPR21/1043 Determination
Date: Tuesday, May 11, 2021 at 12:18:21 PM Eastern Daylight Time
From: Bruce Friedman
To: pre@sec.state.ma.us, Puccini, Angela M (SEC)
CC: Greg Lucey, sdorai@maldenps.org, Kathryn M. Fallon, kanderson@cityofmalden.org, sdorai@maldenps.org
Priority: High
Attachments: SPR 1043 Payment.pdf, spr211043.pdf

Greetings:

Be it known, that today, May 11, 2021 I personally conveyed a check in the amount of $502.50 and hand delivered same to the Malden Public Schools @ 77 Salem Street, Malden, MA. 02148. Steve at the front security desk took the package and indicated that Ms. Dorai would have the package before the end of the day.

I will be expecting the documents to be released ASAP.

Kindest Regards,

- Bruce Friedman

From: Robertson, Jack (SEC) <jack.robertson@state.ma.us>
Date: Friday, May 7, 2021 at 12:41 PM
To: Dorai, Shirley <sdorai@maldenps.org>, fvasudevan@mhtl.com <fvasudevan@mhtl.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman [redacted]>
Subject: SPR21/1043 Determination

Good Afternoon,

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

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

Thank you,

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

[redacted]

Fidelity®Cash Management Account

[redacted]

5/11/21
Date

Pay to the Order of Malden Public Schools $ 502.50

Five hundred Two dollars $ 50/100 Dollars

Photo Safe Deposit® Details on back

Fidelity INVESTMENTS UMB Bank, N.A. Kansas City, MO

For Estimate 2021-0107

[redacted]

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the

Request Documents

No Documents

Response Details

Response

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 23, 2021
SPR21/1043

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, Manza Arthur, 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,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Ms. Shirley Dorai
Ms. Felicia S. Vasudevan, Esq.

Chan, Benjamin (SEC)

From: Bruce Friedman [redacted] >
Sent: Thursday, April 22, 2021 9:32 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: Greg Lucey; sdorai@maldenps.org; Kathryn M. Fallon
Subject: Request for Additional Appeal City of Malden Request # 2021-0107 A.K.A SPR 21/0838
Attachments: FOIA Request 2021-0107 Response Revised.pdf; 2021-0107 Request.pdf; spr210838.pdf

Importance: High

Greetings:

On March 11, 2021, the attached verbatim Public Records request was served upon the Malden Public Schools/City of Malden via their official portal: "Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

SPR 21/0838 was opened as a result, the decision rendered on April 15, 2021 is attached.

On April 20, 2021, the RAO responded with the attached response and email below:

In an effort to solve the immediate problem, I the requestor propose the following solutions:

I will receive all 602 identified emails and sort through them myself.
I will receive all emails from the accounts of all the School Committee members (the only persons listed in the request) for the time period in the original request and sort through them myself.

If neither of the above solutions are acceptable, the RAO should be ordered by your office to release all 602 responsive records to this request, without delay, and without fees or charges for the following reasons:

The City/School District and RAO have specific and heavy burdens to meet:

An RAO may not recover fees associated with record organization.

The RAO is attempting to charge for 1204 minutes or 20.1 hours for **search**: Search Time is defined as "The time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record." The search is complete, the RAO has identified 602 emails. The RAO/City/School District cannot and should be barred from assessing any charges for search.

The remainder of the time sought by the City is for segregation, the RAO is claiming 1 minute per email; "Malden thus estimates another 60.2 minutes or 1 hour"; and for possible redactions at 1 minute per email; "Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour". The total allowable estimate is therefore 120.4 minutes. As the RAO/City/School District cannot charge for the first 2 hours (120 Minutes), there should be NO charge for the production of all 602 responsive emails.

Therefore ask you order the RAO to release all 602 emails without delay, without charge and if any records are withheld, or redacted, a privilege log be created and provided so that any such redactions or withholding can be properly challenged through the appellate process.

Kindest Regards,

Bruce Friedman

From: Dorai, Shirley <sdorai@maldenps.org>
Date: Tuesday, April 20, 2021 at 2:54 PM
To: Bruce Friedman [redacted]
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Greg Lucey <glucey@cityofmalden.org>
Subject: Public Records Request dated March 11, 2021/FOIA Request 2021-107/SPR21-838

Dear Mr. Friedman,

Please see the attached response document. 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
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

April 20, 2021

BY E-MAIL

Bruce Friedman
[redacted]

Re: Public Records Request dated March 11, 2021/FOIA Request 2021-107/SPR21 838

Dear Mr. Friedman:

We have received the request that you submitted on March 11, 2021, but was received in our office on March 12, 2021 (the "Records Request"). Specifically, you requested the following:

> Please provide all emails where five or more of the following people at any Malden Public Schools email address:
> Gary Christenson,
> Michael Drummey,
> Robert S. McCarthy Jr.,
> Jennifer M. Spadafora,
> Leonard Iovino,
> Adam Weldai,
> Joseph Gray,
> Michelle Luong,
> John Froio,
> appear in one or more of the of the following email fields;
> From:
> To:
> Cc:
> Bcc:
> For the time period January 1, 2020 through the date you respond with the responsive documents.

I am providing you a revised response in accordance with SPR21-838. In terms of your request, the Malden Public Schools ("Malden") had to conduct a search with each school committee member in the "from," line and at least one school committee member in the "to," line. There is no other way to narrow down the information requested. The search generated 602 emails. Malden is not certain what percentage of the emails are responsive to the request.

To comply with your request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden. 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). Given that some emails will relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. They must be redacted. "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. The Supervisor of Public Records has allowed me to charge a fee to redact for attorney-client privilege.

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

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district"s receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, some of the emails from school committee members contain personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since some of these emails relate to the educational services and programming that Malden is providing to students, these records should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

Finally, these emails require redactions in accordance with the exemption set for at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:

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

In terms of the 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).

In accordance with the exemption, Malden needs to redact information on the emails such as information on employees that relates to performance or complaints, and personal information and contact information for families, such as information about a family‟s personal circumstances. Families and employees have a privacy interest to that information and the public interest does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. The Supervisor of Public Records has allowed me to charge a fee to redact under this exemption.

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.

Search time includes the time needed to locate and identify a public record. Although Malden could narrow down the email search, by conducting a search with each school committee member in the "from," line and at least one school committee member in the "to," line, these records are not completely responsive to your request for emails where there is more than a majority of the school committee members present on the email. As a result, each email must be

reviewed to determine whether it is responsive. Malden has no way to automate the search. Malden took a sample of ten emails. It took 20 minutes to review the ten emails to determine which ones are responsive to the request, as some of the emails had multiple emails in a chain. Specifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes

Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records.

Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C). Segregation time "includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. It took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour.

Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material. Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour.

As a result, Malden estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.5. 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 compiled until we receive a check in the amount of $502.50.

You could potentially reduce this estimate if you provided a specific person for the "to" and "from," boxes of the email search.

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 Records
Greg Lucey, Malden City Clerk

foiadirect | Requestor Dashboard | Communication | Change Profile | Help

Welcome Bruce Friedman ! [*Logout*]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:

Request Documents

No Document

Response Details

Response

For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format.

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

April 15, 2021
SPR21/0838

Shirley Dorai
Malden Public Schools
110 Pleasant Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the Malden Public Schools (School/Malden) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 11, 2021, Bruce Friedman requested emails from identified individuals "[f]or the time period January 1, 2020 through the date you respond with the responsive documents."

Previous petition

This request was the subject of a previous fee petition. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021). Please refer to the determination in SPR21/0742 for analysis of this issue. The School provided a fee estimate on March 25, 2021. Objecting to the fees, Mr. Friedman petitioned this office and this appeal, SPR21/0838, was opened as a result.

Fee estimate – municipalities

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

Municipalities may not assess a fee for the first (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 of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The School's March 25th estimate

In its March 25, 2021 fee estimate, the School indicates that its search generated a total of 602 email records. The School states, "[e]ach email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C)."

The School explains that with a sample of 10 emails, "[it] took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in a chain. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records." The School also states that "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour. . . . Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour." The School indicated that although the hourly rate of the lowest paid employee capable of producing the records exceeds $25.00, it would calculate its hourly rate at $25.

As a result, the School ". . . estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50."

Based on the School's response, it is unclear why the School requires 20 minutes to review 10 emails to determine if they are responsive to the request. Particularly, it is not certain how many of the email samples have multiple items in the email chain to require 20 minutes of review. The School must clarify this issue.

In its estimate, the School suggested that Mr. Friedman could potentially reduce this estimate if he could provide ". . . a specific person for the 'to' and 'from,' boxes of the email search." This office encourages Mr. Friedman and the School to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (a municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the municipality to produce records sought more efficiently and affordably). Mr. Friedman may wish to narrow his request.

Open Meeting Law

In his appeal petition, Mr. Friedman raises certain issues regarding the Open Meeting

Law that are beyond the purview of the Public Records Law. Mr. Friedman states, ". . . [t[here is no attorney-client privilege exception to the Open Meeting Law." Mr. Friedman is advised that any issues concerning the Open Meeting Law is within the authority of the Office of the Attorney General (AGO) and not this office. Mr. Friedman may wish to contact the AGO if he seeks a determination on this matter. See G. L. c. 30A, § 23.

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 1, 2021
SPR21/0838

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

Dear Bruce Friedman:

I have received your letter appealing the response of the Malden Public Schools to your request for records.

I have directed a member of my staff, Manza Arthur, 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,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Shirley Dorai

Boylan, Kassandra (SEC)

From: Bruce Friedman [redacted]
Sent: Thursday, April 1, 2021 2:40 PM
To: SEC-DL-PREWEB; Puccini, Angela (SEC)
Cc: sdorai@maldenps.org; Greg Lucey; Kathryn M. Fallon
Subject: Appeal of Response City of Malden # 2021-0107 A.K.A. SPR 21/0742
Attachments: exhibit 3 - OML 2019-140.pdf; 2017-Guide-with-ed-materials-revised-1-30-18.pdf; exhibit 4 - SPR21-0464.pdf; google_privacy_policy_en_us.pdf; google_terms_of_service_en.pdf; MX Record maldenpsorg.pdf; exhibit 1 original request 2021-0107.pdf; exhibit 2 - Fee Petition 2021-0107.pdf

Importance: High

Greetings:

I am hereby appealing the response (attached hereto as exhibit #2) of the Malden Public Schools received on March 25, 2021, and presented to your office as a fee petition under SPR 21/0589.

On March 11, 2021 I served the following verbatim request (attached hereto as exhibit #1) upon the Malden Public Schools RAO via the Official FOIA website: "Please provide all emails where five or more of the following people at any Malden Public
Schools email address:

Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,

appear in one or more of the of the following email fields;

From:
To:
Cc:
Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format."

The facts regarding this request are as follows:

1. The request specifically and only seeks electronic mail (email).
2. The request specifically and only seeks email from the accounts of elected officials, operating in their official capacity as members of the Malden Public Schools School Committee.
3. The request specifically and only seeks email where the elected officials are communicating with a simple majority or quorum of School Committee members, including sub-committees.
4. The entire Malden Public Schools School Committee members (excluding the Chair who is also the Mayor) are up for re-election in 2021.
5. The City of Malden has a significant history of violating Open Meetings Laws as determined by the Attorney General of the Commonwealth.
6. This request is extremely time sensitive and urgent as the Candidates for School Committee are currently announcing their intentions to run or re-run for office during the pendency of this request. These records could significantly affect the outcome of the election.

In an effort to solve the immediate problem, I the requestor propose the following solutions:

1. I will receive all 602 identified emails and sort through them myself to exclude any emails that do not constitute a quorum or simple majority of the Committee as a whole or any sub-committee.
2. I will receive all emails from the accounts of all the School Committee members for the time period in the original request and exclude any emails that do not constitute a quorum or simple majority of the Committee as a whole or any sub-committee myself.

If neither of the above solutions are acceptable, the RAO should be ordered by your office to release all 602 responsive records to this request, without delay, and without fees or charges for the following reasons:

The City/School District and RAO have specific and heavy burdens to meet:

The fees requested are incorrect, abusive and without any legal merit. In determining the RAO's ability to charge fees for this public records request, your office must examine, weigh and undertake the following: "In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. Id."

1. The public interest herein is to allow inspection of records which are publicly unavailable through any other means besides this request as of today.
2. The public interest is served by allowing the voters to determine if the School Committee is deliberating in secret or in public as required by the Commonwealth's Open Meetings Laws during an election year, and as these records may or may not influence decisions regarding School Committee Member retention.
3. The public interest is served by allowing members of the public to refer potential Open Meetings Law violations to the Attorney General for a determination if evidence of deliberating the School Committee's business with a quorum of School Committee members through email is found in the responses to this public records request.
4. The public interest is served because responsive records will be published publicly via https://openmalden.com as this appeal currently is.
5. The City as a whole and the School District specifically have an abhorrent record with your office, the public and many public records requestors for subverting public records requests. The RAO in this case uses the fee process to create a financial firewall to prevent access to this request and many others. This financial firewall has a chilling effect on requestors behavior seeking public records, and the fees requested in the instant case could not be borne by the average citizen of Malden.

6. This request is extremely time sensitive and urgent as the Candidates for School Committee are currently announcing their intentions to run or re-run for office during the pendency of this request. These records could significantly affect the outcome of the election.
7. The secrecy of the documents responsive to these requests should only be allowed in the most extreme of circumstances, where the risks posed by public exposure clearly outweighs the rights of the public.
8. The public has the right to scrutinize the work product of our elected officials.
9. The RAO wants the requestor to pay for time to read every email, to protect disclosure of potentially damaging communications.
10. The fees are not properly calculated.
11. The RAO failed to produce the sample set of documents, the single record identified and deemed responsive (which ironically was not identified as protected), and/or any privilege log for the sample set.
12. The Sample set pulled is statistically not relevant. 61 emails (10%) is the minimum sample set required to be statistically relevant.

The RAO is only seeking attorney-client privilege in their response (exhibit #2) using the following verbiage :"The City is filing this request only to the extent that some of the redactions encompass attorney-client privilege and under Exemption (c). It is not seeking approval for redactions subject to student records law as outlined in its fee estimate."

The RAO cannot charge, segregate or redact from the responsive records for the following reasons:

1. An RAO may not recover fees associated with record organization.
2. The RAO has not even validated that any exemption does in fact apply. No records were provided, no privilege log was provided, no evidence of attorney-client privilege was provided, just words "To comply with the request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden." The operative word used in their response is expect. They ***expect*** that ***some*** of the emails might be exempted by attorney-client privilege, without contemplating any of the legal requirements. They failed to provide any examples.
3. There is no attorney-client privilege exception to the Open Meeting Law per the following AGO decision OML 2019-140 (exhibit #3):
    a. The determination is unmistakable: "Therefore, communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during a valid executive session." "However, there is no attorney-client privilege exception to the Open Meeting Law. Quite to the contrary, the Supreme Judicial Court has ruled that the Open Meeting Law constitutes a "statutory public waiver of any possible privilege of the public client in meetings of governmental bodies except in the narrow circumstances stated in the [Open Meeting Law]. " District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 634 (1985).
    b. My request was VERY specific: "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."
    c. I have also hereto attached the current and operative AGO OML guide and definitions for your reference. In this please find the following:

        "These four questions will help determine whether a communication constitutes a meeting subject to the law:
        1) is the communication between or among members of a public body;
        2) if so, does the communication constitute a deliberation;
        3) does the communication involve a matter within the body's jurisdiction; and

4) if so, does the communication fall within an exception listed in the law?"

d. "The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction."
e. "To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law."
f. "Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds."
g. "The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction." The law does not specifically define "jurisdiction." As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body's members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body."
h. "There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting)."

4. The specific responsive emails I requested are either non-deliberative, and as a result could not possibly infringe on any of the exemptions posed by the RAO/City because they were not about any matter of public business on which a quorum of the public body may make a decision or recommendation, thus no need for any of the exemptions cited by the RAO/City and/or Ms. Vasudevan, OR the email communications were in fact a matter of public business on which a quorum of the public body may make a decision or recommendation and they violated the Open Meetings Law and as such are not afforded any of the protections of privilege cited by the RAO/City and/or Ms. Vasudevan. Either way, the responsive emails sought could not possibly qualify for the exemptions sought, thus the RAO is barred from charging for search, segregation and redaction.
5. The City/School District/RAO does not enjoy attorney client privilege regarding the current request.
    a. The City/District/RAO incorrectly assume that, regardless of content all communications to and from the Legal Department and or the "attorney for Malden" are privileged and

confidential. Further, no privilege log was provided. This scenario is very similar to another decision released from the Secretary's office this week, SPR21/0464 (exhibit #4) which is hereto attached.

b. In its March 10th response, the City/District/RAO has claimed that the communications to and from the Legal Department/attorney for Malden are privileged and confidential under the common law attorney-client privilege as recognized by Suffolk Constr. Co., Inc. v. DCAM, 449 Mass. 444 (2008).
c. There is an implicit assumption 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." Brossard v. University of Massachusetts, 9 Mass. L. Rep. 471 (1998), referencing Judge Rotenberg Educ. Center, Inc., v. Comm'r of the Dept. of Mental Retardation (No. 1), 424 Mass. 430 (1997).
d. The issue of whether this privilege extends to governmental entities was discussed in the affirmative by the Massachusetts Supreme Judicial Court (Court). Suffolk Constr. Co., Inc., 449 Mass. 444. The Court found that the privilege applies in the public realm. The Supervisor has the authority to determine whether records may be withheld as privileged. See Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 414 Mass. 609, 614-615 (1993).
e. The Court affirmed the "general rule" that when matters are "communicated by a client to his attorney, in professional confidence, the attorney shall not be at any time afterwards called upon or permitted to disclose in testimony." Suffolk Constr. Co., Inc., 449 Mass. at 448, quoting Foster v. Hall, 12 Pick. 89, 93 (1831). The Court, however, admonished that a governmental entity has the burden of proving the existence of the attorney-client privilege. Id. The Court requires governmental custodians to satisfy a three-step test to claim not only that an attorney client relationship exists, but that, with respect to the privileged materials: (1) 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) the communications were made in confidence; and (3) the privilege as to these communications has not been waived.
f. Suffolk Constr. Co., 449 Mass. 450, fn9, citing Matter of the Reorganization of Elec. Mut. Liab. Ins. Co. Ltd. (Bermuda), 425 Mass. 419, 421 (1997); see also Hanover Ins. Co. v. Rapo & 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).
g. The City/District/RAO have failed the second and third prongs of their burden, the Malden Public Schools does not enjoy privilege, because the privilege has been summarily waived. The City/School District/RAO has failed to properly secure its electronic mail and its electronic mail system from third persons who are not providing professional legal services to the City/District/RAO, nor are they reasonably necessary for the transmission of the communication. The Malden Public Schools uses google mail, and/or gmail for all email addressed to @maldenps.org, which is the email responsive to this request and response/fee request. The attached MX record will validate this.
h. In Massachusetts a communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made to obtain or provide professional legal services to the client, and those reasonably necessary for the transmission of the communication.
i. See also: Commissioner of Revenue v. Comcast Corp. , 453 Mass. 293 (2009), and DaRosa v. City of New Bedford , 471 Mass. 446 (2015). In general, "information contained within a communication need not itself be confidential for the communication to be deemed privileged; rather the communication must be made in confidence—that is, with the expectation that the communication will not be divulged." Commissioner of Revenue v. Comcast Corp., 453 Mass. at 305. Thus, "[c]ommunications between an attorney and his client are not privileged, though made privately, if it is understood that the information communicated is to be conveyed to others." Peters v. Wallach , 366 Mass. 622, 627 (1975).

j. Google Mail requires users of their system to read and agree to the attached Google Terms of Service (Hereinafter "GToS") and the attached Google Privacy Policy.
k. In the attached GToS and Privacy Policy, under the "Things you create or provide to us" heading you will find: "We also collect the content you create, upload, or receive from others when using our services. This includes things like ***email you write and receive***, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos."
l. In the attached GToS and Privacy Policy under the heading "Permission to use your content" section the following is stated: "Your Content" is defined by Google as: "Things that you write, upload, submit, store, send, receive, or share with Google using our services, such as: Docs, Sheets, and Slides you create - blog posts you upload through Blogger - reviews you submit through Maps - videos you store in Drive - ***emails you send and receive*** - pictures you share with friends through Photos - travel itineraries that you share with Google. This is publicly available at: https://policies.google.com/terms#footnote-your-content
m. In the attached GToS and Privacy Policy under the heading "Rights" section the following is stated: "Rights ***This license allows Google to: host, reproduce, distribute, communicate, and use your content*** — for example, to save your content on our systems and make it accessible from anywhere you go publish, publicly perform, or publicly display your content, if you've made it visible to others modify and create derivative works based on your content, such as reformatting or translating it sublicense these rights to: other users to allow the services to work as designed, such as enabling you to share photos with people you choose our contractors…"
n. 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, "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). No privilege log has been provided.
o. In the attached GToS and Privacy Policy, under the "When Google shares your information" heading you will find: "With domain administrators If you're a student or work for an organization that uses Google services, your domain administrator and resellers who manage your account will have access to your Google Account. They may be able to access and retain information stored in your account, like your email…"
p. The School District has not and cannot demonstrate the expertise, personnel, or that they are able to exercise the proper controls, processes and that they have documented procedures to administer a proper separation of duties and least permission required policy. With unknown permissions, with no viable separation of duties, with no least permission required practice, there is no producible chain of custody nor can the City/District/RAO prove that privilege was not waived inadvertently or intentionally through the interactions granted by whomever has access, including Google.
q. In there is nothing confidential or private about the City/District/RAO's maldenps.org email and email system. By the very usage of google mail they have knowingly and willingly waived privilege because their email is exposed to and viewed by anonymous third parties through license and use of the system.

6. The RAO states "Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C).", This is Segregation, not search.
7. The RAO states that it will take 20 minutes to review each email, by reading each email ("Malden spent three hours locating the emails. Malden took a sample of ten emails. It took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in a chain."). The emails do not need to be read to determine if they are responsive. There are 602 emails where the sender is a member of the public body and is emailing at least one other member of the public body. Then she says that one of 10 from a sample produced a single responsive email, this took

20 minutes. All that is required to search for responsive records, even if it is a manual process is to read the remaining fields in the header of the email, To:, Cc:, Bcc: (we already have the From: field). If the sum of people in these fields are members of the specific group of nine total people representing the public body are a simple majority of the body, the record is responsive, if not, it is not.

8. I myself am an industry expert on email and email systems with over 25 experience. I have also consulted with several other industry experts all of whom believe a standard query can be electronically prepared and applied to reduce the entire email set into only responsive documents with about 30-45 minutes of preparation, validation and testing. However, they all stated that if they were forced to manually search the To:, Cc:, and Bcc: fields for a quorum, it would take less than 2 seconds per email on average. 2 X 602 = 1204 / 60 = 20 minutes.

Therefore ask you order the RAO to release all 602 emails without delay, without charge and if any records are withheld, or redacted, a privilege log be created and provided so that any such redactions or withholding can be properly challenged and overcome.

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.

foiadirect | Requestor Dashboard | Communication | Change Profile | Help

Welcome Bruce Friedman ! [*Logout*]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0107	Department	School
Request Sent Date	03/11/2021 10:15 PM	Request Received Date	03/15/2021 08:30 AM
Response Due By	03/31/2021	Response Sent On	[Not Yet Sent]

Request Detail

Please provide all emails where five or more of the following people at any Malden Public Schools email address:
Gary Christenson,
Michael Drummey,
Robert S. McCarthy Jr.,
Jennifer M. Spadafora,
Leonard Iovino,
Adam Weldai,
Joseph Gray,
Michelle Luong,
John Froio,
appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:

Request Documents

No Document

Response Details

Response

For the time period January 1, 2020 through the date you respond with the responsive documents.
This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. This request specifically seeks the email header information, all fields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format.

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

March 25, 2021

BY E-MAIL

Bruce Friedman
[redacted]

Re: Public Records Request dated March 11, 2021/FOIA Request 2021-0107

Dear Mr. Friedman:

We have received the request that you submitted on March 11, 2021, but was received in our office on March 12, 2021 (the "Records Request"). Specifically, you requested the following:

> Please provide all emails where five or more of the following people at any Malden Public Schools email address:
> Gary Christenson,
> Michael Drummey,
> Robert S. McCarthy Jr.,
> Jennifer M. Spadafora,
> Leonard Iovino,
> Adam Weldai,
> Joseph Gray,
> Michelle Luong,
> John Froio,
> appear in one or more of the of the following email fields;
> From:
> To:
> Cc:
> Bcc:
> For the time period January 1, 2020 through the date you respond with the responsive documents.

In terms of your request, the Malden Public Schools ("Malden") had to conduct a search with each school committee member in the "from," line and at least one school committee

member in the "to," line. There is no other way to narrow down the information requested. The search generated 602 emails. Malden is not certain what percentage of the emails are responsive to the request.

To comply with your request, Malden will need to redact the records as it expects that some of the emails will be school committee members soliciting advice from the attorney for Malden. 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). Given that some emails will relay communications between Malden and its attorneys, these communications were not shared with the public and were shared in confidence, there was no waiver of the privilege. They must be redacted. "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. I have asked the Supervisor of Public Records to allow me to charge a fee to redact for attorney-client privilege.

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

The SJC in Champa relied upon state and federal regulations mandating confidentiality of student/education records; ruled that the settlement agreement was an education record; and likewise noted, in footnote 8 of the case, that the school district's receipt of federal funds was conditioned on non-disclosure of education records. Accordingly, the settlement agreement was not a public record based upon Exemption (a). While Exemptions (a) 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.

Like the agreement at issue in Champa, some of the emails from school committee members contain personal identifying information of public school students who enjoy mandated confidentiality; indeed, such documents, if released, would reveal the identities, disabilities and information on their educational programming. Further, since some of these emails relate to the educational services and programming that Malden is providing to students, these records should be deemed exempted from Public Records Law disclosure under Exemption (a) because, as supported by Champa, state and federal regulations compel Malden to protect educational records from disclosure.

Finally, these emails require redactions in accordance with the exemption set for at G.L. c. 4, § 7(26)(c). Exemption (c), commonly referred to as the privacy exemption applies to:

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

In terms of the 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).

In accordance with the exemption, Malden needs to redact information on the emails such as information on employees that relates to performance or complaints, and personal information and contact information for families, such as information about a family's personal circumstances. Families and employees have a privacy interest to that information and the public interest does not outweigh the privacy interest because this information would not shed light on whether government officials are carrying out their duties in a law-abiding and efficient manner. As a result, I have asked the Supervisor of Public Records to allow me to charge a fee to redact under this exemption.

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.

Search time includes the time needed to locate and identify, pull from the files, copy and re-shelve or refile a public record. However, it shall not include the time expended to create the original record. Malden had previously for Request 2021-67, which is the same request, but a limited time period, took a sample of ten emails. It took 20 minutes to review the emails to determine which ones are responsive to the request, as some of the emails had multiple emails in

a chain. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records.

Out of the sample, one of the ten emails was responsive. Each email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C). Segregation time "includes the time used to review records to determine what portions are subject to redaction or withholding under G. L. c. 4, § 7(26) or other legally applicable privileges. It took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour.

Redaction time includes the time to delete, or otherwise remove that part of a public record that is exempt from disclosure under G. L. c. 4, § 7(26) or other legally applicable privileges from non-exempt material. Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour.

As a result, Malden estimates a total of 22.1 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50. 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 $502.50.

You could potentially reduce this estimate if you provided a specific person for the "to" and "from," boxes of the email search.

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 Records
Greg Lucey, Malden City Clerk

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

November 5, 2019

OML 2019 – 140

Kathryn Fallon, Esq.
Malden City Solicitor
City of Malden Legal Department
110 Pleasant Street, 3rd Floor
Malden, MA 02148

RE: Open Meeting Law Complaint

Dear Attorney Fallon:

This office received a complaint from Brian DeLacey on December 4, 2018, alleging that the Malden City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on September 21, 2018, and you responded on behalf of the Council by letter dated October 10, 2018. In his complaint, Mr. DeLacey alleges that a City Councilor deliberated outside of a public meeting via an email he sent to a quorum of the Council about a matter before the Council.[1]

We appreciate the patience and cooperation of the parties during this investigation. Following our review, we find that City Councilor Matheson violated the Open Meeting Law by deliberating outside of a public meeting. In reaching a determination, we reviewed the complaint, including the email at issue which was sent to us by the Complainant on April 5, 2019, the Council's response and the request for further review. In addition, we spoke with you by phone on September 16, 2019.

FACTS

We find the facts as follows. The Council is an eleven-member public body. Thus, any six members constitute a quorum.[2] On September 13, 2018, Councilor John Matheson sent an email to Malden Assistant Solicitor John McNaught and copied City Solicitor Fallon, eight City Councilors, an administrative assistant and the public representative on the Malden Hospital Site Development Committee.

[1] We decline to review any allegations made in the request for further review. Our office does not conduct broad audits of public bodies and will address only allegations made in an Open Meeting Law complaint in order to give public bodies a chance to address those allegations. See OML Declination 4-22-15; OML Declination 8-25-2015.
[2] For the purposes of the Open Meeting Law, a quorum is a simple majority of the members of a public body. G.L. c. 30A, § 18.

In the email in question, Councilor Matheson thanked Assistant Solicitor McNaught for his work on resolving a previous Open Meeting Law complaint that Mr. DeLacey had filed against the Malden Hospital Site Development Committee. Councilor Matheson went on to explain that he thought the previous complaint had been filed "with the intention of harassment" because he believed that Mr. DeLacey had a pattern "over the years" of "mak[ing] a request of someone with the intention of trapping the person who attempts to help him, like a game of gotcha." Councilor Matheson went on to recommend that the Council "comply strictly to the requirements of the open meeting law, without any additional courtesies, such as uploading committee minutes online, which can then be used to generate additional [Open Meeting Law] complaints. It is unfortunate that it has come to this, but necessary."

DISCUSSION

I. City Councilor Matheson violated the Open Meeting Law by deliberating outside of a public meeting via a September 13, 2018, email.

The purpose of the Open Meeting Law is "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." See Dist. Attorney for N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 563 (2009); Ghiglione v. School Comm. of Southbridge, 376 Mass. 70, 72 (1978). Accordingly, the law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. In relevant part, a "'meeting' is defined as a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines deliberation as "an oral or written communication through any medium, *including electronic mail*, between or among a quorum of a public body on any public business within its jurisdiction[.]" G.L. c. 30A, § 18 (emphasis added).

Here, we find that Councilor Matheson engaged in impermissible deliberation outside of a public meeting when he sent the September 13, 2018, email to eight other members of the Council, thereby reaching more than a quorum of the Council. The Council argues that the email was not deliberation because Councilor Matheson had not "intended for the quorum to deliberate." We find this argument unavailing. The mere act of sending such a communication to a quorum of other members is itself deliberation. The Open Meeting Law does not carve out an exception to the definition of "deliberation" for discussions that do not result in a decision or vote. OML 2019-120.[3] Furthermore, the expression of an opinion by one public body member on matters within the body's jurisdiction to a quorum of a public body is considered a deliberation, even if no other public body member responds. OML 2016-104; OML 2015-33; OML 2012-73.

The Council further asserts that any discussion of the first Open Meeting Law complaint in the email was not an issue "under consideration" of the Council because a response had already been sent to the first complaint. This argument also misconstrues the legal standard of deliberation, which includes "any public business within [the public body's] jurisdiction," regardless of timeframe. Furthermore, we find that the discussion of how Council meeting minutes should be handled in order to prevent future complaints was clearly a matter of public business within the jurisdiction of the Council, thereby satisfying that element of the standard.

[3] All previous determinations issued by the Division can be found on the Attorney General's website: https://www.mass.gov/the-open-meeting-law.

For these reasons, we find that the September 13, 2018, email constituted deliberation, and was impermissible outside of a properly noticed meeting under the Open Meeting Law.

II. Regardless of whether the September 13, 2018, email was privileged under the attorney-client privilege, it must be released to cure the Open Meeting Law violation.

The Council argues that the email was exempt from the requirements of the Open Meeting Law under the attorney-client privilege doctrine as enunciated by the Supreme Judicial Court in Suffolk Construction v. Division of Capital Asset Mgt., a case construing the Public Records Law. 449 Mass. 444 (2007). Our office does not quarrel with the right of the Council or its members to consult with counsel. See OML 2011-27. However, there is no attorney-client privilege exception to the Open Meeting Law. Quite to the contrary, the Supreme Judicial Court has ruled that the Open Meeting Law constitutes a "statutory public waiver of any possible privilege of the public client in meetings of governmental bodies except in the narrow circumstances stated in the [Open Meeting Law]." District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 634 (1985).

The Appeals Court recently confirmed that this rule remains in effect, notwithstanding the Supreme Judicial Court's 2007 decision in Suffolk Construction. Revere Retirement Bd. v. Attorney General, 93 Mass. App. Ct. 1117 (2018) (Rule 1:28 Decision) (Further Appellate Review denied Sep. 13, 2018). Therefore, communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during a valid executive session. See District Attorney for the Plymouth Dist. v. Selectmen of Middleborough, 395 Mass. 629, 632-634 (1985); see also; OML 2018-139; OML 2017-72. A discussion between a quorum of public body members and counsel may be held in executive session, outside of the view of the public, only if the communication falls within one of the enumerated executive session purposes. Id. The attorney-client privilege itself is not an explicitly enumerated basis for executive session, nor is there an implied executive session purpose for attorney-client communications. See Id.; G.L. c. 30A, § 21(a).

Where, as here, impermissible deliberation has taken place via email, our usual remedy is to order the release of the email communications to the public. See OML 2019-75; OML 2017-199; OML 2015-33; OML 2012-63; OML 2011-14. We need not analyze whether the September 13, 2018, email would fall within the scope of the attorney-client privilege in another context. Here, the Open Meeting Law constituted a "waiver of any possible privilege," District Attorney for the Plymouth Dist., 395 Mass. at 634, and the email communication constituted a deliberation that should have occurred only at a properly posted public meeting in the first instance. Therefore, we order that the Council publicly release the email within 30 days from receipt of this determination by disclosing it at a public meeting of the Council and listing it in the minutes. See OML 2017-72; OML 2015-10.

CONCLUSION

For the reasons stated above, we find that City Councilor Matheson violated the Open Meeting Law by deliberating outside of a public meeting. We commend the Committee for its subsequent efforts to ensure that all members are educated about the requirements of the Open Meeting Law and its stated commitment to comply with those requirements in the future.

We order the Council's immediate and future compliance with the Open Meeting Law and caution the Council that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law. We also order that the Council release to the public, within 30 days following its receipt of this determination, the September 13, 2018, email referenced in this letter.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Council. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,

Sarah Chase
Assistant Attorney General
Division of Open Government

cc: Brian DeLacey
Malden City Council

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

March 9, 2021
SPR21/0464

Gregory Lucey
Records Access Officer
City of Malden
110 Pleasant Street
Malden, MA 02148

Dear Mr. Lucey:

I have received the petition of Ryan O'Malley appealing the response of the City of Malden (City) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 3, 2021, Mr. O'Malley requested certain communications between December 30, 2020 and February 3, 2021.

The City provided a February 23, 2021 response which included some records; however, the City withheld certain communications, stating, "[t]he [City's] Legal Department serves as legal counsel on behalf of the City and therefore communications to and from the Legal Department are privileged and confidential. Public records responsive to your request are enclosed herewith."

As a result of the City's February 23rd response to withhold communications under the attorney-client privilege, Mr. O'Malley petitioned the Supervisor of Records (Supervisor), and this appeal was opened.

In his petition, Mr. O'Malley asserts, "[t]he City incorrectly assumes that, regardless of content all 'communications to and from the Legal Department are privileged and confidential.'" Further, Mr. O'Malley asserts, "[t]he City incorrectly assumes that private and/or personal advice provided to a specific councilor or councilors on non-legal matter[s] that are not before the City, is as privileged as legal advice provided to the full City Council related to an actual legal matter before the City." Additionally, Mr. O'Malley states that no privilege log was provided.

Common law attorney-client privilege

In its February 23, 2021 response, the City has claimed that the communications to and from the Legal Department are privileged and confidential under the common law attorney-client privilege as recognized by Suffolk Constr. Co., Inc. v. DCAM, 449 Mass. 444 (2008).

There is an implicit assumption 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." Brossard v. University of Massachusetts, 9 Mass. L. Rep. 471 (1998), referencing Judge Rotenberg Educ. Center, Inc., v. Comm'r of the Dept. of Mental Retardation (No. 1), 424 Mass. 430 (1997).

The issue of whether this privilege extends to governmental entities was discussed in the affirmative by the Massachusetts Supreme Judicial Court (Court). Suffolk Constr. Co., Inc., 449 Mass. 444. The Court found that the privilege applies in the public realm. The Supervisor has the authority to determine whether records may be withheld as privileged. See Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 414 Mass. 609, 614-615 (1993).

The Court affirmed the "general rule" that when matters are "communicated by a client to his attorney, in professional confidence, the attorney shall not be at any time afterwards called upon or permitted to disclose in testimony." Suffolk Constr. Co., Inc., 449 Mass. at 448, *quoting* Foster v. Hall, 12 Pick. 89, 93 (1831). The Court, however, admonished that a governmental entity has the burden of proving the existence of the attorney-client privilege. Id. The Court requires governmental custodians to satisfy a three-step test to claim not only that an attorney-client relationship exists, but that, with respect to the privileged materials:

(1) 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) the communications were made in confidence; and

(3) the privilege as to these communications has not been waived.

Suffolk Constr. Co., 449 Mass. 450, fn 9, citing Matter of the Reorganization of Elec. Mut. Liab. Ins. Co. Ltd. (Bermuda), 425 Mass. 419, 421 (1997); see also Hanover Ins. Co. v. Rapo & 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).

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, "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).

The City did not provide a privilege log in compliance with the law. See Suffolk, 449 Mass. 450, fn 9; see also G. L. c. 66, § 10A(a).

Records Management

It is also Mr. O'Malley's assertion that the City's Solicitor is using a private email address to conduct official City business. Mr. O'Malley asserts, "[t]here is no way of knowing if all public records are being retained properly."

The City is advised that a custodian of records has an affirmative duty to maintain, secure, and preserve governmental records throughout the records life cycle. As such, safeguards must be instituted by the City to ensure that all records are retained in accordance with both applicable law as well as the retention schedules promulgated by this office. See G. L. c. 66, § 8; G. L. c. 66, § 13 and G. L. c. 66, § 15.

Conclusion

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

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Ryan O'Malley
Kathryn M. Fallon, Esq., *City Solicitor*

GOOGLE PRIVACY POLICY

When you use our services, you're trusting us with your information. We understand this is a big responsibility and work hard to protect your information and put you in control.

This Privacy Policy is meant to help you understand what information we collect, why we collect it, and how you can update, manage, export, and delete your information.

Privacy Checkup

Looking to change your privacy settings?

Take the Privacy Checkup

Effective February 4, 2021

Archived versions

We build a range of services that help millions of people daily to explore and interact with the world in new ways. Our services include:

- Google apps, sites, and devices, like Search, YouTube, and Google Home
- Platforms like the Chrome browser and Android operating system
- Products that are integrated into third-party apps and sites, like ads and embedded Google Maps

You can use our services in a variety of ways to manage your privacy. For example, you can sign up for a Google Account if you want to create and manage content like emails and photos, or see more relevant search results. And you can use many Google services when you're signed out or without creating an account at all, like searching on Google or watching YouTube videos. You can also choose to browse the web privately using Chrome in Incognito mode. And across our services, you can adjust your privacy settings to control what we collect and how your information is used.

To help explain things as clearly as possible, we've added examples, explanatory videos, and definitions for key terms. And if you have any questions about this Privacy Policy, you can contact us.

INFORMATION GOOGLE COLLECTS

We want you to understand the types of information we collect as you use our services

We collect information to provide better services to all our users — from figuring out basic stuff like which language you speak, to more complex things like which ads you'll find most useful, the people who matter most to you online, or which YouTube videos you might like. The information Google collects, and how that information is used, depends on how you use our services and how you manage your privacy controls.

When you're not signed in to a Google Account, we store the information we collect with unique identifiers tied to the browser, application, or device you're using. This helps us do things like maintain your language preferences across browsing sessions.

When you're signed in, we also collect information that we store with your Google Account, which we treat as personal information.

Things you create or provide to us

When you create a Google Account, you provide us with personal information that includes your name and a password. You can also choose to add a phone number or payment information to your account. Even if you aren't signed in to a Google Account, you might choose to provide us with information — like an email address to receive updates about our services.

We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos.

Information we collect as you use our services

Your apps, browsers & devices

We collect information about the apps, browsers, and devices you use to access Google services, which helps us provide features like automatic product updates and dimming your screen if your battery runs low.

The information we collect includes unique identifiers, browser type and settings, device type and settings, operating system, mobile network information including carrier name and phone number, and application version number. We also collect information about the interaction of your apps, browsers, and devices with our services, including IP address, crash reports, system activity, and the date, time, and referrer URL of your request.

We collect this information when a Google service on your device contacts our servers — for example, when you install an app from the Play Store or when a service checks for automatic updates. If you're using an Android device with Google apps, your device periodically contacts Google servers to provide information about your device and connection to our services. This information includes things like your device type, carrier name, crash reports, and which apps you've installed.

Your activity

We collect information about your activity in our services, which we use to do things like recommend a YouTube video you might like. The activity information we collect may include:

- Terms you search for
- Videos you watch
- Views and interactions with content and ads
- Voice and audio information when you use audio features
- Purchase activity
- People with whom you communicate or share content
- Activity on third-party sites and apps that use our services
- Chrome browsing history you've synced with your Google Account

If you use our services to make and receive calls or send and receive messages, we may collect call and message log information like your phone number, calling-party number, receiving-party number, forwarding numbers, sender and recipient email address, time and date of calls and messages, duration of calls, routing information, and types and volumes of calls and messages.

You can visit your Google Account to find and manage activity information that's saved in your account.

Go to Google Account

Your location information

We collect information about your location when you use our services, which helps us offer features like driving directions for your weekend getaway or showtimes for movies playing near you.

Your location can be determined with varying degrees of accuracy by:

- GPS
- IP address
- Sensor data from your device
- Information about things near your device, such as Wi-Fi access points, cell towers, and Bluetooth-enabled devices

The types of location data we collect depend in part on your device and account settings. For example, you can turn your Android device's location on or off using the device's settings app. You can also turn on Location History if you want to create a private map of where you go with your signed-in devices.

In some circumstances, Google also collects information about you from publicly accessible sources. For example, if your name appears in your local newspaper, Google's Search engine may index that article and display it to other people if they search for your name. We may also collect information about you from trusted partners, including marketing partners who provide us with information about potential customers of our business services, and security partners who provide us with information to protect against abuse. We also receive information from advertisers to provide advertising and research services on their behalf.

We use various technologies to collect and store information, including cookies, pixel tags, local storage, such as browser web storage or application data caches, databases, and server logs.

We use data to build better services

We use the information we collect from all our services for the following purposes:

Provide our services

We use your information to deliver our services, like processing the terms you search for in order to return results or helping you share content by suggesting recipients from your contacts.

Maintain & improve our services

We also use your information to ensure our services are working as intended, such as tracking outages or troubleshooting issues that you report to us. And we use your information to make improvements to our services — for example, understanding which search terms are most frequently misspelled helps us improve spell-check features used across our services.

Develop new services

We use the information we collect in existing services to help us develop new ones. For example, understanding how people organized their photos in Picasa, Google's first photos app, helped us design and launch Google Photos.

Provide personalized services, including content and ads

We use the information we collect to customize our services for you, including providing recommendations, personalized content, and customized search results. For example, Security Checkup provides security tips adapted to how you use Google products. And Google Play uses information like apps you've already installed and videos you've watched on YouTube to suggest new apps you might like.

Depending on your settings, we may also show you personalized ads based on your interests. For example, if you search for "mountain bikes," you may see an ad for sports equipment when you're

browsing a site that shows ads served by Google. You can control what information we use to show you ads by visiting your ad settings.

- We don't show you personalized ads based on sensitive categories, such as race, religion, sexual orientation, or health.
- We don't share information that personally identifies you with advertisers, such as your name or email, unless you ask us to. For example, if you see an ad for a nearby flower shop and select the "tap to call" button, we'll connect your call and may share your phone number with the flower shop.

Go to Ad Settings

Measure performance

We use data for analytics and measurement to understand how our services are used. For example, we analyze data about your visits to our sites to do things like optimize product design. And we also use data about the ads you interact with to help advertisers understand the performance of their ad campaigns. We use a variety of tools to do this, including Google Analytics. When you visit sites that use Google Analytics, a Google Analytics customer may choose to enable Google to link information about your activity from that site with activity from other sites that use our ad services.

Communicate with you

We use information we collect, like your email address, to interact with you directly. For example, we may send you a notification if we detect suspicious activity, like an attempt to sign in to your Google Account from an unusual location. Or we may let you know about upcoming changes or improvements to our services. And if you contact Google, we'll keep a record of your request in order to help solve any issues you might be facing.

Protect Google, our users, and the public

We use information to help improve the safety and reliability of our services. This includes detecting, preventing, and responding to fraud, abuse, security risks, and technical issues that could harm Google, our users, or the public.

We use different technologies to process your information for these purposes. We use automated systems that analyze your content to provide you with things like customized search results, personalized ads, or other features tailored to how you use our services. And we analyze your content to help us detect abuse such as spam, malware, and illegal content. We also use algorithms to recognize patterns in data. For example, Google Translate helps people communicate across languages by detecting common language patterns in phrases you ask it to translate.

We may combine the information we collect among our services and across your devices for the purposes described above. For example, if you watch videos of guitar players on YouTube, you might see an ad for guitar lessons on a site that uses our ad products. Depending on your account settings, your activity on other sites and apps may be associated with your personal information in order to improve Google's services and the ads delivered by Google.

If other users already have your email address or other information that identifies you, we may show them your publicly visible Google Account information, such as your name and photo. This helps people identify an email coming from you, for example.

We'll ask for your consent before using your information for a purpose that isn't covered in this Privacy Policy.

YOUR PRIVACY CONTROLS

You have choices regarding the information we collect and how it's used

This section describes key controls for managing your privacy across our services. You can also visit the Privacy Checkup, which provides an opportunity to review and adjust important privacy settings. In addition to these tools, we also offer specific privacy settings in our products — you can learn more in our Product Privacy Guide.

Go to Privacy Checkup

Managing, reviewing, and updating your information

When you're signed in, you can always review and update information by visiting the services you use. For example, Photos and Drive are both designed to help you manage specific types of content you've saved with Google.

We also built a place for you to review and control information saved in your Google Account. Your Google Account includes:

Privacy controls

Activity Controls

Decide what types of activity you'd like saved in your account. For example, you can turn on Location History if you want traffic predictions for your daily commute, or you can save your YouTube Watch History to get better video suggestions.

Go to Activity Controls

Ad settings

Manage your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads. You can modify your interests, choose whether your personal information is used to make ads more relevant to you, and turn on or off certain advertising services.

Go to Ad Settings

About you

Control what others see about you across Google services.

Go to About You

Shared endorsements

Choose whether your name and photo appear next to your activity, like reviews and recommendations, that appear in ads.

Go to Shared Endorsements

Ways to review & update your information

My Activity

My Activity allows you to review and control data that's created when you use Google services, like searches you've done or your visits to Google Play. You can browse by date and by topic, and delete part or all of your activity.

Go to My Activity

Google Dashboard

Google Dashboard allows you to manage information associated with specific products.

Go to Dashboard

Your personal information

Manage your contact information, such as your name, email, and phone number.

Go to Personal Info

When you're signed out, you can manage information associated with your browser or device, including:

- Signed-out search personalization: Choose whether your search activity is used to offer you more relevant results and recommendations.
- YouTube settings: Pause and delete your YouTube Search History and your YouTube Watch History.
- Ad Settings: Manage your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads.

Exporting, removing & deleting your information

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.

Export your data

You can also request to remove content from specific Google services based on applicable law.

To delete your information, you can:

- Delete your content from specific Google services
- Search for and then delete specific items from your account using My Activity
- Delete specific Google products, including your information associated with those products
- Delete your entire Google Account

Delete your information

And finally, Inactive Account Manager allows you to give someone else access to parts of your Google Account in case you're unexpectedly unable to use your account.

There are other ways to control the information Google collects whether or not you're signed in to a Google Account, including:

- Browser settings: For example, you can configure your browser to indicate when Google has set a cookie in your browser. You can also configure your browser to block all cookies from a specific domain or all domains. But remember that our services rely on cookies to function properly, for things like remembering your language preferences.
- Device-level settings: Your device may have controls that determine what information we collect. For example, you can modify location settings on your Android device.

SHARING YOUR INFORMATION

When you share your information

Many of our services let you share information with other people, and you have control over how you share. For example, you can share videos on YouTube publicly or you can decide to keep your videos private. Remember, when you share information publicly, your content may become accessible through search engines, including Google Search.

When you're signed in and interact with some Google services, like leaving comments on a YouTube video or reviewing an app in Play, your name and photo appear next to your activity. We may also display this information in ads depending on your Shared endorsements setting.

When Google shares your information

We do not share your personal information with companies, organizations, or individuals outside of Google except in the following cases:

With your consent

We'll share personal information outside of Google when we have your consent. For example, if you use Google Home to make a reservation through a booking service, we'll get your permission before sharing your name or phone number with the restaurant. We'll ask for your explicit consent to share any sensitive personal information.

With domain administrators

If you're a student or work for an organization that uses Google services, your domain administrator and resellers who manage your account will have access to your Google Account. They may be able to:

- Access and retain information stored in your account, like your email
- View statistics regarding your account, like how many apps you install
- Change your account password
- Suspend or terminate your account access
- Receive your account information in order to satisfy applicable law, regulation, legal process, or enforceable governmental request

- Restrict your ability to delete or edit your information or your privacy settings

For external processing

We provide personal information to our affiliates and other trusted businesses or persons to process it for us, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures. For example, we use service providers to help us with customer support.

For legal reasons

We will share personal information outside of Google if we have a good-faith belief that access, use, preservation, or disclosure of the information is reasonably necessary to:

- Meet any applicable law, regulation, legal process, or enforceable governmental request. We share information about the number and type of requests we receive from governments in our Transparency Report.
- Enforce applicable Terms of Service, including investigation of potential violations.
- Detect, prevent, or otherwise address fraud, security, or technical issues.
- Protect against harm to the rights, property or safety of Google, our users, or the public as required or permitted by law.

We may share non-personally identifiable information publicly and with our partners — like publishers, advertisers, developers, or rights holders. For example, we share information publicly to show trends about the general use of our services. We also allow specific partners to collect information from your browser or device for advertising and measurement purposes using their own cookies or similar technologies.

If Google is involved in a merger, acquisition, or sale of assets, we'll continue to ensure the confidentiality of your personal information and give affected users notice before personal information is transferred or becomes subject to a different privacy policy.

KEEPING YOUR INFORMATION SECURE

We build security into our services to protect your information

All Google products are built with strong security features that continuously protect your information. The insights we gain from maintaining our services help us detect and automatically block security threats from ever reaching you. And if we do detect something risky that we think you should know about, we'll notify you and help guide you through steps to stay better protected.

We work hard to protect you and Google from unauthorized access, alteration, disclosure, or destruction of information we hold, including:

- We use encryption to keep your data private while in transit
- We offer a range of security features, like Safe Browsing, Security Checkup, and 2 Step Verification to help you protect your account
- We review our information collection, storage, and processing practices, including physical security measures, to prevent unauthorized access to our systems
- We restrict access to personal information to Google employees, contractors, and agents who need that information in order to process it. Anyone with this access is subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.

EXPORTING & DELETING YOUR INFORMATION

You can export a copy of your information or delete it from your Google Account at any time

You can export a copy of content in your Google Account if you want to back it up or use it with a service outside of Google.

Export your data

To delete your information, you can:

- Delete your content from specific Google services
- Search for and then delete specific items from your account using My Activity
- Delete specific Google products, including your information associated with those products
- Delete your entire Google Account

Delete your information

RETAINING YOUR INFORMATION

We retain the data we collect for different periods of time depending on what it is, how we use it, and how you configure your settings:

- Some data you can delete whenever you like, such as the content you create or upload. You can also delete activity information saved in your account, or choose to have it deleted automatically after a set period of time.
- Other data is deleted or anonymized automatically after a set period of time, such as advertising data in server logs.
- We keep some data until you delete your Google Account, such as information about how often you use our services.
- And some data we retain for longer periods of time when necessary for legitimate business or legal purposes, such as security, fraud and abuse prevention, or financial record-keeping.

When you delete data, we follow a deletion process to make sure that your data is safely and completely removed from our servers or retained only in anonymized form. We try to ensure that our services protect information from accidental or malicious deletion. Because of this, there may be delays between when you delete something and when copies are deleted from our active and backup systems.

You can read more about Google's data retention periods, including how long it takes us to delete your information.

We regularly review this Privacy Policy and make sure that we process your information in ways that comply with it.

Data transfers

We maintain servers around the world and your information may be processed on servers located outside of the country where you live. Data protection laws vary among countries, with some providing more protection than others. Regardless of where your information is processed, we apply the same protections described in this policy. We also comply with certain legal frameworks relating to the transfer of data.

When we receive formal written complaints, we respond by contacting the person who made the complaint. We work with the appropriate regulatory authorities, including local data protection authorities, to resolve any complaints regarding the transfer of your data that we cannot resolve with you directly.

California requirements

The California Consumer Privacy Act (CCPA) requires specific disclosures for California residents.

This Privacy Policy is designed to help you understand how Google handles your information:

- We explain the categories of information Google collects and the sources of that information in Information Google collects.
- We explain how Google uses information in Why Google collects data.
- We explain when Google may share information in Sharing your information. Google does not sell your personal information.

The CCPA also provides the right to request information about how Google collects, uses, and discloses your personal information. And it gives you the right to access your information and request that Google delete that information. Finally, the CCPA provides the right to not be discriminated against for exercising your privacy rights.

We describe the choices you have to manage your privacy and data across Google's services in Your privacy controls. You can exercise your rights by using these controls, which allow you to access, review, update and delete your information, as well as export and download a copy of it. When you use them, we'll validate your request by verifying that you're signed in to your Google Account. If you have questions or requests related to your rights under the CCPA, you (or your authorized agent) can also contact Google.

The CCPA requires a description of data practices using specific categories. This table uses these categories to organize the information in this Privacy Policy.

Categories of personal information we collect

Identifiers such as your name, phone number, and address, as well as unique identifiers tied to the browser, application, or device you're using.

Demographic information, such as your age, gender and language.

Commercial information such as your payment information and a history of purchases you make on Google's services.

Biometric information if you choose to provide it, such as fingerprints in Google's product development studies.

Internet, network, and other activity information such as your search terms; views and interactions with content and ads; Chrome browsing history you've synced with your Google Account; information about the interaction of your apps, browsers, and devices with our services (like IP address, crash reports, and system activity); and activity on third-party sites and apps that use our services. You can review and control activity data stored in your Google Account in My Activity.

Geolocation data, such as may be determined by GPS, IP address, and other data from sensors on or around your device, depending in part on your device and account settings. Learn more about Google's use of location information.

Audio, electronic, visual and similar information, such as voice and audio information when you use audio features.

Professional, employment, and education information, such as information you provide or that is maintained through an organization using Google services at which you study or work.

Other information you create or provide, such as the content you create, upload, or receive (like photos and videos or emails, docs and spreadsheets). Google Dashboard allows you to manage information associated with specific products.

Inferences drawn from the above, like your ads interest categories.

Business purposes for which information may be used or disclosed

Protecting against security threats, abuse, and illegal activity: Google uses and may disclose information to detect, prevent and respond to security incidents, and for protecting against other malicious, deceptive, fraudulent, or illegal activity. For example, to protect our services, Google may receive or disclose information about IP addresses that malicious actors have compromised.

Auditing and measurement: Google uses information for analytics and measurement to understand how our services are used, as well as to fulfill obligations to our partners like publishers, advertisers, developers, or rights holders. We may disclose non-personally identifiable information publicly and with these partners, including for auditing purposes.

Maintaining our services: Google uses information to ensure our services are working as intended, such as tracking outages or troubleshooting bugs and other issues that you report to us.

Research and development: Google uses information to improve our services and to develop new products, features and technologies that benefit our users and the public. For example, we use publicly available information to help train Google's language models and build features like Google Translate.

Use of service providers: Google shares information with service providers to perform services on our behalf, in compliance with our Privacy Policy and other appropriate confidentiality and security measures. For example, we may rely on service providers to help provide customer support.

Advertising: Google processes information, including online identifiers and information about your interactions with advertisements, to provide advertising. This keeps Google's services and many of the websites and services you use free of charge. You can control what information we use to show you ads by visiting your ad settings.

Legal reasons: Google also uses information to satisfy applicable laws or regulations, and discloses information in response to legal process or enforceable government requests, including to law enforcement. We provide information about the number and type of requests we receive from governments in our Transparency Report.

Parties with whom information may be shared

Other people with whom you choose to share your information, like docs or photos, and videos or comments on YouTube.

Third parties to whom you consent to sharing your information, such as services that integrate with Google's services. You can review and manage third party apps and sites with access to data in your Google Account.

Service providers, trusted businesses or persons that process information on Google's behalf, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures.

Domain administrators, if you work or study at an organization that uses Google services.

Law enforcement or other third parties, for the legal reasons described in Sharing your information.

ABOUT THIS POLICY

When this policy applies

This Privacy Policy applies to all of the services offered by Google LLC and its affiliates, including YouTube, Android, and services offered on third-party sites, such as advertising services. This Privacy Policy doesn't apply to services that have separate privacy policies that do not incorporate this Privacy Policy.

This Privacy Policy doesn't apply to:

- The information practices of other companies and organizations that advertise our services
- Services offered by other companies or individuals, including products or sites that may include Google services, be displayed to you in search results, or be linked from our services

Changes to this policy

We change this Privacy Policy from time to time. We will not reduce your rights under this Privacy Policy without your explicit consent. We always indicate the date the last changes were published and we offer access to archived versions for your review. If changes are significant, we'll provide a more prominent notice (including, for certain services, email notification of Privacy Policy changes).

RELATED PRIVACY PRACTICES

Specific Google services

The following privacy notices provide additional information about some Google services:

- Chrome & the Chrome Operating System
- Payments
- Fiber
- Google Fi
- G Suite for Education
- Read Along
- YouTube Kids
- Google Accounts Managed with Family Link, for Children under 13 (or applicable age in your country)
- Voice and Audio Collection from Children's Features on the Google Assistant

If you're a member of an organization that uses Google Workspace or Google Cloud Platform, learn how these services collect and use your personal information in the Google Cloud Privacy Notice.

Other useful resources

The following links highlight useful resources for you to learn more about our practices and privacy settings.

- Your Google Account is home to many of the settings you can use to manage your account
- Privacy Checkup guides you through key privacy settings for your Google Account
- Google's safety center helps you learn more about our built-in security, privacy controls, and tools to help set digital ground rules for your family online
- Privacy & Terms provides more context regarding this Privacy Policy and our Terms of Service
- Technologies includes more information about:
    - How Google uses cookies
    - Technologies used for Advertising
    - How Google uses pattern recognition to recognize things like faces in photos
    - How Google uses information from sites or apps that use our services

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Key terms

Affiliates

An affiliate is an entity that belongs to the Google group of companies, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, Google Payment Corp, and Google Dialer Inc. Learn more about the companies providing business services in the EU.

Algorithm

A process or set of rules followed by a computer in performing problem-solving operations.

Application data cache

An application data cache is a data repository on a device. It can, for example, enable a web application to run without an internet connection and improve the performance of the application by enabling faster loading of content.

Browser web storage

Browser web storage enables websites to store data in a browser on a device. When used in "local storage" mode, it enables data to be stored across sessions. This makes data retrievable even after a browser has been closed and reopened. One technology that facilitates web storage is HTML 5.

Cookies

A cookie is a small file containing a string of characters that is sent to your computer when you visit a website. When you visit the site again, the cookie allows that site to recognize your browser. Cookies may store user preferences and other information. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. However, some website features or services may not function properly without cookies. Learn more about how Google uses cookies and how Google uses data, including cookies, when you use our partners' sites or apps.

Device

A device is a computer that can be used to access Google services. For example, desktop computers, tablets, smart speakers, and smartphones are all considered devices.

Google Account

You may access some of our services by signing up for a Google Account and providing us with some personal information (typically your name, email address, and a password). This account information is used to authenticate you when you access Google services and protect your account from unauthorized access by others. You can edit or delete your account at any time through your Google Account settings.

IP address

Every device connected to the Internet is assigned a number known as an Internet protocol (IP) address. These numbers are usually assigned in geographic blocks. An IP address can often be used to identify the location from which a device is connecting to the Internet.

Non-personally identifiable information

This is information that is recorded about users so that it no longer reflects or references an individually-identifiable user.

Personal information

This is information that you provide to us which personally identifies you, such as your name, email address, or billing information, or other data that can be reasonably linked to such information by Google, such as information we associate with your Google Account.

Pixel tag

A pixel tag is a type of technology placed on a website or within the body of an email for the purpose of tracking certain activity, such as views of a website or when an email is opened. Pixel tags are often used in combination with cookies.

Referrer URL

A Referrer URL (Uniform Resource Locator) is information transmitted to a destination webpage by a web browser, typically when you click a link to that page. The Referrer URL contains the URL of the last webpage the browser visited.

Sensitive personal information

This is a particular category of personal information relating to topics such as confidential medical facts, racial or ethnic origins, political or religious beliefs, or sexuality.

Server logs

Like most websites, our servers automatically record the page requests made when you visit our sites. These “server logs” typically include your web request, Internet Protocol address, browser type, browser language, the date and time of your request, and one or more cookies that may uniquely identify your browser.

A typical log entry for a search for “cars” looks like this:

```
123.45.67.89 - 25/Mar/2003 10:15:32 -
http://www.google.com/search?q=cars -
Firefox 1.0.7; Windows NT 5.1 -
740674ce2123e969
```

- `123.45.67.89` is the Internet Protocol address assigned to the user by the user’s ISP. Depending on the user’s service, a different address may be assigned to the user by their service provider each time they connect to the Internet.
- `25/Mar/2003 10:15:32` is the date and time of the query.
- `http://www.google.com/search?q=cars` is the requested URL, including the search query.
- `Firefox 1.0.7; Windows NT 5.1` is the browser and operating system being used.
- `740674ce2123a969` is the unique cookie ID assigned to this particular computer the first time it visited Google. (Cookies can be deleted by users. If the user has deleted the cookie from the computer since the last time they’ve visited Google, then it will be the unique cookie ID assigned to their device the next time they visit Google from that particular device).

Unique identifiers

A unique identifier is a string of characters that can be used to uniquely identify a browser, app, or device. Different identifiers vary in how permanent they are, whether they can be reset by users, and how they can be accessed.

Unique identifiers can be used for various purposes, including security and fraud detection, syncing services such as your email inbox, remembering your preferences, and providing personalized advertising. For example, unique identifiers stored in cookies help sites display content in your browser in your preferred language. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. Learn more about how Google uses cookies.

On other platforms besides browsers, unique identifiers are used to recognize a specific device or app on that device. For example, a unique identifier such as the Advertising ID is used to provide relevant advertising on Android devices, and can be managed in your device’s settings. Unique identifiers may also be incorporated into a device by its manufacturer (sometimes called a universally unique ID or UUID), such as the IMEI-number of a mobile phone. For example, a device’s unique identifier can be used to customize our service to your device or analyze device issues related to our services.

Additional Context

ads you'll find most useful

For example, if you watch videos about baking on YouTube, you may see more ads that relate to baking as you browse the web. We also may use your IP address to determine your approximate location, so that we can serve you ads for a nearby pizza delivery service if you search for "pizza." Learn more about Google ads and why you may see particular ads.

advertising and research services on their behalf

For example, advertisers may upload data from their loyalty-card programs so that they can better understand the performance of their ad campaigns. We only provide aggregated reports to advertisers that don't reveal information about individual people.

Android device with Google apps

Android devices with Google apps include devices sold by Google or one of our partners and include phones, cameras, vehicles, wearables, and televisions. These devices use Google Play Services and other pre-installed apps that include services like Gmail, Maps, your phone's camera and phone dialer, text-to-speech conversion, keyboard input, and security features.

combine the information we collect

Some examples of how we combine the information we collect include:

- When you're signed in to your Google Account and search on Google, you can see search results from the public web, along with relevant information from the content you have in other Google products, like Gmail or Google Calendar. This can include things like the status of your upcoming flights, restaurant, and hotel reservations, or your photos. Learn more
- If you have communicated with someone via Gmail and want to add them to a Google Doc or an event in Google Calendar, Google makes it easy to do so by autocompleting their email address when you start to type in their name. This feature makes it easier to share things with people you know. Learn more

- The Google app can use data that you have stored in other Google products to show you personalized content, depending on your settings. For example, if you have searches stored in your Web & App Activity, the Google app can show you news articles and other information about your interests, like sports scores, based your activity. Learn more

- If you link your Google Account to your Google Home, you can manage your information and get things done through the Google Assistant. For example, you can add events to your Google Calendar or get your schedule for the day, ask for status updates on your upcoming flight, or send information like driving directions to your phone. Learn more

customized search results

For example, when you're signed in to your Google Account and have the Web & App Activity control enabled, you can get more relevant search results that are based on your previous searches and activity from other Google services. You can learn more here. You may also get customized search results even when you're signed out. If you don't want this level of search customization, you can search and browse privately or turn off signed-out search personalization.

deliver our services

Examples of how we use your information to deliver our services include:

- We use the IP address assigned to your device to send you the data you requested, such as loading a YouTube video

- We use unique identifiers stored in cookies on your device to help us authenticate you as the person who should have access to your Google Account

- Photos and videos you upload to Google Photos are used to help you create albums, animations, and other creations that you can share. Learn more

- A flight confirmation email you receive may be used to create a "check-in" button that appears in your Gmail

- When you purchase services or physical goods from us, you may provide us information like your shipping address or delivery instructions. We use this information for things like processing, fulfilling, and delivering your order, and to provide support in connection with the product or service you purchase.

detect abuse

When we detect spam, malware, illegal content, and other forms of abuse on our systems in violation of our policies, we may disable your account or take other appropriate action. In certain circumstances, we may also report the violation to appropriate authorities.

devices

For example, we can use information from your devices to help you decide which device you'd like to use to install an app or view a movie you buy from Google Play. We also use this information to help protect your account.

ensure and improve

For example, we analyze how people interact with advertising to improve the performance of our ads.

ensure our services are working as intended

For example, we continuously monitor our systems to look for problems. And if we find something wrong with a specific feature, reviewing activity information collected before the problem started allows us to fix things more quickly.

Information about things near your device

If you use Google's Location services on Android, we can improve the performance of apps that rely on your location, like Google Maps. If you use Google's Location services, your device sends information to Google about its location, sensors (like accelerometer), and nearby cell towers and Wi-Fi access points (like MAC address and signal strength). All these things help to determine your location. You can use your device settings to enable Google Location services. Learn more

legal process, or enforceable governmental request

Like other technology and communications companies, Google regularly receives requests from governments and courts around the world to disclose user data. Respect for the privacy and security of

data you store with Google underpins our approach to complying with these legal requests. Our legal team reviews each and every request, regardless of type, and we frequently push back when a request appears to be overly broad or doesn't follow the correct process. Learn more in our Transparency Report.

make improvements

For example, we use cookies to analyze how people interact with our services. And that analysis can help us build better products. For example, it may help us discover that it's taking people too long to complete a certain task or that they have trouble finishing steps at all. We can then redesign that feature and improve the product for everyone.

may link information

Google Analytics relies on first-party cookies, which means the cookies are set by the Google Analytics customer. Using our systems, data generated through Google Analytics can be linked by the Google Analytics customer and by Google to third-party cookies that are related to visits to other websites. For example, an advertiser may want to use its Google Analytics data to create more relevant ads, or to further analyze its traffic. Learn more

partner with Google

There are over 2 million non-Google websites and apps that partner with Google to show ads. Learn more

payment information

For example, if you add a credit card or other payment method to your Google Account, you can use it to buy things across our services, like apps in the Play Store. We may also ask for other information, like a business tax ID, to help process your payment. In some cases, we may also need to verify your identity and may ask you for information to do this.

We may also use payment information to verify that you meet age requirements, if, for example, you enter an incorrect birthday indicating you're not old enough to have a Google Account. Learn more

personalized ads

You may also see personalized ads based on information from the advertiser. If you shopped on an advertiser's website, for example, they can use that visit information to show you ads. Learn more

phone number

If you add your phone number to your account, it can be used for different purposes across Google services, depending on your settings. For example, your phone number can be used to help you access your account if you forget your password, help people find and connect with you, and make the ads you see more relevant to you. Learn more

protect against abuse

For example, information about security threats can help us notify you if we think your account has been compromised (at which point we can help you take steps to protect your account).

publicly accessible sources

For example, we may collect information that's publicly available online or from other public sources to help train Google's language models and build features like Google Translate.

rely on cookies to function properly

For example, we use a cookie called 'lbcs' that makes it possible for you to open many Google Docs in one browser. Blocking this cookie would prevent Google Docs from working as expected. Learn more

safety and reliability

Some examples of how we use your information to help keep our services safe and reliable include:

- Collecting and analyzing IP addresses and cookie data to protect against automated abuse. This abuse takes many forms, such as sending spam to Gmail users, stealing money from advertisers by fraudulently clicking on ads, or censoring content by launching a Distributed Denial of Service (DDoS) attack.

- The “last account activity” feature in Gmail can help you find out if and when someone accessed your email without your knowledge. This feature shows you information about recent activity in Gmail, such as the IP addresses that accessed your mail, the associated location, and the date and time of access. Learn more

sensitive categories

When showing you personalized ads, we use topics that we think might be of interest to you based on your activity. For example, you may see ads for things like "Cooking and Recipes" or "Air Travel.” We don’t use topics or show personalized ads based on sensitive categories like race, religion, sexual orientation, or health. And we require the same from advertisers that use our services.

Sensor data from your device

Your device may have sensors that can be used to better understand your location and movement. For example, an accelerometer can be used to determine your speed and a gyroscope to figure out your direction of travel.

servers around the world

For example, we operate data centers located around the world to help keep our products continuously available for users.

services to make and receive calls or send and receive messages

Examples of these services include:

- Google Voice, for making and receiving calls, sending text messages, and managing voicemail
- Google Meet, for making and receiving video calls
- Gmail, for sending and receiving emails
- Google Chat, for sending and receiving messages
- Google Duo, for making and receiving video calls and sending and receiving messages

- Google Fi, for a phone plan

show trends

When lots of people start searching for something, it can provide useful information about particular trends at that time. Google Trends samples Google web searches to estimate the popularity of searches over a certain period of time and shares those results publicly in aggregated terms. Learn more

specific Google services

For example, you can delete your blog from Blogger or a Google Site you own from Google Sites. You can also delete reviews you've left on apps, games, and other content in the Play Store.

specific partners

For example, we allow YouTube creators and advertisers to work with measurement companies to learn about the audience of their YouTube videos or ads, using cookies or similar technologies. Another example is merchants on our shopping pages, who use cookies to understand how many different people see their product listings. Learn more about these partners and how they use your information.

synced with your Google Account

Your Chrome browsing history is only saved to your account if you've enabled Chrome synchronization with your Google Account. Learn more

the people who matter most to you online

For example, when you type an address in the To, Cc, or Bcc field of an email you're composing, Gmail will suggest addresses based on the people you contact most frequently.

third parties

For example, we process your information to report use statistics to rights holders about how their content was used in our services. We may also process your information if people search for your name

and we display search results for sites containing publicly available information about you.

Views and interactions with content and ads

For example, we collect information about views and interactions with ads so we can provide aggregated reports to advertisers, like telling them whether we served their ad on a page and whether the ad was likely seen by a viewer. We may also measure other interactions, such as how you move your mouse over an ad or if you interact with the page on which the ad appears.

your activity on other sites and apps

This activity might come from your use of Google services, like from syncing your account with Chrome or your visits to sites and apps that partner with Google. Many websites and apps partner with Google to improve their content and services. For example, a website might use our advertising services (like AdSense) or analytics tools (like Google Analytics), or it might embed other content (such as videos from YouTube). These services may share information about your activity with Google and, depending on your account settings and the products in use (for instance, when a partner uses Google Analytics in conjunction with our advertising services), this data may be associated with your personal information.

Learn more about how Google uses data when you use our partners' sites or apps.

GOOGLE TERMS OF SERVICE

Effective March 31, 2020

Archived versions

What's covered in these terms

We know it's tempting to skip these Terms of Service, but it's important to establish what you can expect from us as you use Google services, and what we expect from you.

These Terms of Service reflect the way Google's business works, the laws that apply to our company, and certain things we've always believed to be true. As a result, these Terms of Service help define Google's relationship with you as you interact with our services. For example, these terms include the following topic headings:

- What you can expect from us, which describes how we provide and develop our services
- What we expect from you, which establishes certain rules for using our services
- Content in Google services, which describes the intellectual property rights to the content you find in our services — whether that content belongs to you, Google, or others
- In case of problems or disagreements, which describes other legal rights you have, and what to expect in case someone violates these terms

Understanding these terms is important because, by using our services, you're agreeing to these terms.

Besides these terms, we also publish a Privacy Policy. Although it's not part of these terms, we encourage you to read it to better understand how you can update, manage, export, and delete your information.

Service provider

Google services are provided by, and you're contracting with:

Google LLC
organized under the laws of the State of Delaware, USA, and operating under the laws of the USA

1600 Amphitheatre Parkway
Mountain View, California 94043
USA

Age requirements

If you're under the age required to manage your own Google Account, you must have your parent or legal guardian's permission to use a Google Account. Please have your parent or legal guardian read these terms with you.

If you're a parent or legal guardian, and you allow your child to use the services, then these terms apply to you and you're responsible for your child's activity on the services.

Some Google services have additional age requirements as described in their service-specific additional terms and policies.

Your relationship with Google

These terms help define the relationship between you and Google. Broadly speaking, we give you permission to use our services if you agree to follow these terms, which reflect how Google's business works and how we earn money. When we speak of "Google," "we," "us," and "our," we mean Google LLC and its affiliates.

What you can expect from us

Provide a broad range of useful services

We provide a broad range of services that are subject to these terms, including:

- apps and sites (like Search and Maps)

- platforms (like Google Play)
- integrated services (like Maps embedded in other companies' apps or sites)
- devices (like Google Home)

Our services are designed to work together, making it easier for you to move from one activity to the next. For example, Maps can remind you to leave for an appointment that appears in your Google Calendar.

Improve Google services

We're constantly developing new technologies and features to improve our services. For example, we invest in artificial intelligence that uses machine learning to detect and block spam and malware, and to provide you with innovative features, like simultaneous translations. As part of this continual improvement, we sometimes add or remove features and functionalities, increase or decrease limits to our services, and start offering new services or stop offering old ones.

If we make material changes that negatively impact your use of our services or if we stop offering a service, we'll provide you with reasonable advance notice and an opportunity to export your content from your Google Account using Google Takeout, except in urgent situations such as preventing abuse, responding to legal requirements, or addressing security and operability issues.

What we expect from you

Follow these terms and service-specific additional terms

The permission we give you to use our services continues as long as you meet your responsibilities in:

- **these terms**
- **service-specific additional terms**, which could, for example, include things like additional age requirements

We also make various policies, help centers, and other resources available to you to answer common questions and to set expectations about using our services. These resources include our Privacy Policy, Copyright Help Center, Safety Center, and other pages accessible from our policies site.

Although we give you permission to use our services, we retain any intellectual property rights we have in the services.

Respect others

Many of our services allow you to interact with others. We want to maintain a respectful environment for everyone, which means you must follow these basic rules of conduct:

- comply with applicable laws, including export control, sanctions, and human trafficking laws
- respect the rights of others, including privacy and intellectual property rights
- don't abuse or harm others or yourself (or threaten or encourage such abuse or harm) — for example, by misleading, defrauding, defaming, bullying, harassing, or stalking others
- don't abuse, harm, interfere with, or disrupt the services

Our service-specific additional terms and policies provide additional details about appropriate conduct that everyone using those services must follow. If you find that others aren't following these rules, many of our services allow you to report abuse. If we act on a report of abuse, we also provide a fair process as described in the Taking action in case of problems section.

Permission to use your content

Some of our services are designed to let you upload, submit, store, send, receive, or share your content. You have no obligation to provide any content to our services and you're free to choose the content that you want to provide. If you choose to upload or share content, please make sure you have the necessary rights to do so and that the content is lawful.

License

Your content remains yours, which means that you retain any intellectual property rights that you have in your content. For example, you have intellectual property rights in the creative content you make, such as reviews you write. Or you may have the right to share someone else's creative content if they've given you their permission.

We need your permission if your intellectual property rights restrict our use of your content. You provide Google with that permission through this license.

What's covered

This license covers your content if that content is protected by intellectual property rights.

What's not covered

- This license doesn't affect your privacy rights — it's only about your intellectual property rights
- This license doesn't cover these types of content:
  - publicly-available factual information that you provide, such as corrections to the address of a local business. That information doesn't require a license because it's considered common knowledge that everyone's free to use.
  - feedback that you offer, such as suggestions to improve our services. Feedback is covered in the Service-related communications section below.

Scope

This license is:

- worldwide, which means it's valid anywhere in the world
- non-exclusive, which means you can license your content to others
- royalty-free, which means there are no fees for this license

Rights

This license allows Google to:

- host, reproduce, distribute, communicate, and use your content — for example, to save your content on our systems and make it accessible from anywhere you go

- publish, publicly perform, or publicly display your content, if you've made it visible to others
- modify and create derivative works based on your content, such as reformatting or translating it
- sublicense these rights to:
    - other users to allow the services to work as designed, such as enabling you to share photos with people you choose
    - our contractors who've signed agreements with us that are consistent with these terms, only for the limited purposes described in the Purpose section below

Purpose

This license is for the limited purpose of:

- **operating and improving the services**, which means allowing the services to work as designed and creating new features and functionalities. This includes using automated systems and algorithms to analyze your content:
    - for spam, malware, and illegal content
    - to recognize patterns in data, such as determining when to suggest a new album in Google Photos to keep related photos together
    - to customize our services for you, such as providing recommendations and personalized search results, content, and ads (which you can change or turn off in Ads Settings)

  This analysis occurs as the content is sent, received, and when it is stored.
- **using content you've shared publicly to promote the services**. For example, to promote a Google app, we might quote a review you wrote. Or to promote Google Play, we might show a screenshot of the app you offer in the Play Store.
- **developing new technologies and services** for Google consistent with these terms

Duration

This license lasts for as long as your content is protected by intellectual property rights.

If you remove from our services any content that's covered by this license, then our systems will stop making that content publicly available in a reasonable amount of time. There are two exceptions:

- If you already shared your content with others before removing it. For example, if you shared a photo with a friend who then made a copy of it, or shared it again, then that photo may continue to appear in your friend's Google Account even after you remove it from your Google Account.
- If you make your content available through other companies' services, it's possible that search engines, including Google Search, will continue to find and display your content as part of their search results.

Using Google services

Your Google Account

If you meet these age requirements you can create a Google Account for your convenience. Some services require that you have a Google Account in order to work — for example, to use Gmail, you need a Google Account so that you have a place to send and receive your email.

You're responsible for what you do with your Google Account, including taking reasonable steps to keep your Google Account secure, and we encourage you to regularly use the Security Checkup.

Using Google services on behalf of an organization

Many organizations, such as businesses, non-profits, and schools, take advantage of our services. To use our services on behalf of an organization:

- an authorized representative of that organization must agree to these terms
- your organization's administrator may assign a Google Account to you. That administrator might require you to follow additional rules and may be able to access or disable your Google Account.

Service-related communications

To provide you with our services, we sometimes send you service announcements and other information. To learn more about how we communicate with you, see Google's Privacy Policy.

If you choose to give us feedback, such as suggestions to improve our services, we may act on your feedback without obligation to you.

Content in Google services

Your content

Some of our services give you the opportunity to make your content publicly available — for example, you might post a product or restaurant review that you wrote, or you might upload a blog post that you created.

- See the Permission to use your content section for more about your rights in your content, and how your content is used in our services
- See the Removing your content section to learn why and how we might remove user-generated content from our services

If you think someone is infringing your intellectual property rights, you can send us notice of the infringement and we'll take appropriate action. For example, we suspend or close the Google Accounts of repeat copyright infringers as described in our Copyright Help Center.

Google content

Some of our services include content that belongs to Google — for example, many of the visual illustrations you see in Google Maps. You may use Google's content as allowed by these terms and any service-specific additional terms, but we retain any intellectual property rights that we have in our content. Don't remove, obscure, or alter any of our branding, logos, or legal notices. If you want to use our branding or logos, please see the Google Brand Permissions page.

Other content

Finally, some of our services give you access to content that belongs to other people or organizations — for example, a store owner's description of their own business, or a newspaper article displayed in Google News. You may not use this content without that person or organization's permission, or as otherwise allowed by law. The views expressed in other people or organizations' content are theirs, and don't necessarily reflect Google's views.

Software in Google services

Some of our services include downloadable software. We give you permission to use that software as part of the services.

The license we give you is:

- worldwide, which means it's valid anywhere in the world
- non-exclusive, which means that we can license the software to others
- royalty-free, which means there are no fees for this license
- personal, which means it doesn't extend to anyone else
- non-assignable, which means you're not allowed to assign the license to anyone else

Some of our services include software that's offered under open source license terms that we make available to you. Sometimes there are provisions in the open source license that explicitly override parts of these terms, so please be sure to read those licenses.

You may not copy, modify, distribute, sell, or lease any part of our services or software. Also, you may not reverse engineer or attempt to extract any of our source code unless you have our written permission or applicable law lets you do so.

When a service requires or includes downloadable software, that software sometimes updates automatically on your device once a new version or feature is available. Some services let you adjust your automatic update settings.

In case of problems or disagreements

By law, you have the right to (1) a certain quality of service, and (2) ways to fix problems if things go wrong. These terms don't limit or take away any of those rights. For example, if you're a consumer, then you continue to enjoy all legal rights granted to consumers under applicable law.

Warranty

We provide our services using reasonable skill and care. If we don't meet the quality level described in this warranty, you agree to tell us and we'll work with you to try to resolve the issue.

Disclaimers

The only commitments we make about our services (including the content in the services, the specific functions of our services, or their reliability, availability, or ability to meet your needs) are (1) described in the Warranty section, (2) stated in the service-specific additional terms, or (3) provided under applicable laws. We don't make any other commitments about our services.

And unless required by law, we don't provide implied warranties, such as the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

Liabilities

For all users

These terms only limit our responsibilities as allowed by applicable law. Specifically, these terms don't limit Google's liability for death or personal injury, fraud, fraudulent misrepresentation, gross negligence, or willful misconduct.

Other than the rights and responsibilities described in this section (In case of problems or disagreements), Google won't be responsible for any other losses, unless they're caused by our breach of these terms or service-specific additional terms.

For business users and organizations only

If you're a business user or organization, then to the extent allowed by applicable law:

- You'll indemnify Google and its directors, officers, employees, and contractors for any third-party legal proceedings (including actions by government authorities) arising out of or relating to your unlawful use of the services or violation of these terms or service-specific additional terms. This indemnity covers any liability or expense arising from claims, losses, damages, judgments, fines, litigation costs, and legal fees.
- Google won't be responsible for the following liabilities:
  - loss of profits, revenues, business opportunities, goodwill, or anticipated savings
  - indirect or consequential loss
  - punitive damages
- Google's total liability arising out of or relating to these terms is limited to the greater of (1) US$500 or (2) 125% of the fees that you paid to use the relevant services in the 12 months before the breach

If you're legally exempt from certain responsibilities, including indemnification, then those responsibilities don't apply to you under these terms. For example, the United Nations enjoys certain immunities from legal obligations and these terms don't override those immunities.

Taking action in case of problems

Before taking action as described below, we'll provide you with advance notice when reasonably possible, describe the reason for our action, and give you an opportunity to fix the problem, unless we reasonably believe that doing so would:

- cause harm or liability to a user, third party, or Google
- violate the law or a legal enforcement authority's order
- compromise an investigation
- compromise the operation, integrity, or security of our services

Removing your content

If we reasonably believe that any of your content (1) breaches these terms, service-specific additional terms or policies, (2) violates applicable law, or (3) could harm our users, third parties, or Google, then we reserve the right to take down some or all of that content in accordance with applicable law. Examples include child pornography, content that facilitates human trafficking or harassment, and content that infringes someone else's intellectual property rights.

Suspending or terminating your access to Google services

Google reserves the right to suspend or terminate your access to the services or delete your Google Account if any of these things happen:

- you materially or repeatedly breach these terms, service-specific additional terms or policies
- we're required to do so to comply with a legal requirement or a court order
- we reasonably believe that your conduct causes harm or liability to a user, third party, or Google — for example, by hacking, phishing, harassing, spamming, misleading others, or scraping content that doesn't belong to you

If you believe your Google Account has been suspended or terminated in error, you can appeal.

Of course, you're always free to stop using our services at any time. If you do stop using a service, we'd appreciate knowing why so that we can continue improving our services.

Settling disputes, governing law, and courts

For information about how to contact Google, please visit our contact page.

California law will govern all disputes arising out of or relating to these terms, service-specific additional terms, or any related services, regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.

To the extent that applicable local law prevents certain disputes from being resolved in a California court, then you can file those disputes in your local courts. Likewise, if applicable local law prevents

your local court from applying California law to resolve these disputes, then these disputes will be governed by the applicable local laws of your country, state, or other place of residence.

About these terms

By law, you have certain rights that can't be limited by a contract like these terms of service. These terms are in no way intended to restrict those rights.

These terms describe the relationship between you and Google. They don't create any legal rights for other people or organizations, even if others benefit from that relationship under these terms.

We want to make these terms easy to understand, so we've used examples from our services. But not all services mentioned may be available in your country.

If these terms conflict with the service-specific additional terms, the additional terms will govern for that service.

If it turns out that a particular term is not valid or enforceable, this will not affect any other terms.

If you don't follow these terms or the service-specific additional terms, and we don't take action right away, that doesn't mean we're giving up any rights that we may have, such as taking action in the future.

We may update these terms and service-specific additional terms (1) to reflect changes in our services or how we do business — for example, when we add new services, features, technologies, pricing, or benefits (or remove old ones), (2) for legal, regulatory, or security reasons, or (3) to prevent abuse or harm.

If we materially change these terms or service-specific additional terms, we'll provide you with reasonable advance notice and the opportunity to review the changes, except (1) when we launch a new service or feature, or (2) in urgent situations, such as preventing ongoing abuse or responding to legal requirements. If you don't agree to the new terms, you should remove your content and stop using the services. You can also end your relationship with us at any time by closing your Google Account.

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affiliate

An entity that belongs to the Google group of companies, which means Google LLC and its subsidiaries, including the following companies that provide consumer services in the EU: Google Ireland Limited, Google Commerce Ltd, and Google Dialer Inc.

business user

An individual or entity who is not a consumer (see consumer).

consumer

An individual who uses Google services for personal, non-commercial purposes outside of their trade, business, craft, or profession. (See business user)

copyright

A legal right that allows the creator of an original work (such as a blog post, photo, or video) to decide if and how that original work may be used by others.

disclaimer

A statement that limits someone's legal responsibilities.

EU Platform-to-Business Regulation

The Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services.

indemnify or indemnity

An individual or organization's contractual obligation to compensate the losses suffered by another individual or organization from legal proceedings such as lawsuits.

intellectual property rights (IP rights)

Rights over the creations of a person's mind, such as inventions (patent rights); literary and artistic works (copyright); designs (design rights); and symbols, names, and images used in commerce (trademarks). IP rights may belong to you, another individual, or an organization.

liability

Losses from any type of legal claim, whether the claim is based on a contract, tort (including negligence), or other reason, and whether or not those losses could have been reasonably anticipated or foreseen.

organization

A legal entity (such as a corporation, non-profit, or school) and not an individual person.

services

Google services that are subject to these terms are the products and services listed at https://policies.google.com/terms/service-specific, including:

- Google apps and sites (like Search and Maps)
- platforms (like Google Play)
- integrated services (like Maps embedded in other companies' apps or sites)
- devices (like Google Home)

trademark

Symbols, names, and images used in commerce that are capable of distinguishing the goods or services of one individual or organization from those of another.

warranty

An assurance that a product or service will perform to a certain standard.

your content

Things that you write, upload, submit, store, send, receive, or share with Google using our services, such as:

- Docs, Sheets, and Slides you create
- blog posts you upload through Blogger
- reviews you submit through Maps
- videos you store in Drive
- emails you send and receive through Gmail
- pictures you share with friends through Photos
- travel itineraries that you share with Google

SuperTool Beta7

maldenps.org | MX Lookup

Free MxToolBox Account
FREE
Get 1 Free Monitor*, Email Notifications and Troubleshooting Info

Delivery Center
PRO
Real-time insight into the Email Deliverability of you or your 3rd party senders

Blacklist Monitoring
PRO
100+ Blacklist Monitored + Delisting Support

MailFlow Monitoring
PRO
Round-trip email server monitoring for latency and email deliverability issues

Bulk Lookup
PRO
Run Bulk lists of IPs and Domains Blacklist, MX/NS/A Record, GeoIP, & more data

mx:maldenps.org

Find Problems (https://mxtoolbox.com/domain/maldenps.org/?source=findmonitors)

MxTOOLBOX has the experts you need to improve email delivery
Solve Email Delivery Problems (https://mxtoolbox.com/c/products/deliverycenter?source=supertool-mx)

mx

Pref	Hostname	IP Address	TTL		
1	aspmx.l.google.com	173.194.175.26 Google LLC (AS15169)	5 min	Blacklist Check	SMTP Test
1	aspmx.l.google.com	2607:f8b0:400d:c03::1b	5 min	Blacklist Check	
10	alt1.aspmx.l.google.com	64.233.186.26 Google LLC (AS15169)	5 min	Blacklist Check	SMTP Test
10	alt1.aspmx.l.google.com	2800:3f0:4003:c00::1a	5 min	Blacklist Check	

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	Test	Result	
(https://mxtoolbox.com/problem/mx/dmarc-record-published?page=prob_mx&action=mx:maldenps.org&showlogin=1&hidepitch=0&hidetoc=1)	DMARC Record Published	No DMARC Record found	More Info (https://mxtoolbox.com/prob page=prob_mx&action=mx:maldenps.org&
(https://mxtoolbox.com/problem/mx/dmarc-policy-not-enabled?page=prob_mx&action=mx:maldenps.org&showlogin=1&hidepitch=0&hidetoc=1)	DMARC Policy Not Enabled	DMARC Quarantine/Reject policy not enabled	More Info (https://mxtoolbox.com/prob page=prob_mx&action=mx:maldenps.org&

(https://mxtoolbox.com/problem/mx/dns-record-published?page=prob_mx&action=mx:maldenps.org&showlogin=1&hidepitch=0&hidetoc=1)	DNS Record Published	DNS Record found

```
Your email service provider is "Google Apps"  Need Bulk Email Provider
 Data? (https://mxtoolbox.com/bulklookup.aspx?referrer=supertool&type=
email)
```

dns lookup dns check whois lookup spf lookup dns propagation

Reported by **dana.ns.cloudflare.com** on 3/10/2021 at **2:52:32 PM (UTC -6)**, just for you (https://mxtoolbox.com/whatismyip/?justforyou=1). Transcript

An error has occurred with your lookup. Please try again.

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Invalid Input. 'mx' requires a Fully Qualified Domain Name. 'malden's.org' is invalid.. Documentation available at https://mxtoolbox.com/restapi.aspx

ABOUT THE SUPERTOOL!

All of your MX record, DNS, blacklist and SMTP diagnostics in one integrated tool. Input a **domain name** or **IP Address** or **Host Name.** Links in the results will guide you to other relevant tools and information. And you'll have a chronological history of your results.

If you already know exactly what you want, you can force a particular test or lookup. Try some of these examples:

(e.g. "blacklist: 127.0.0.2" will do a blacklist lookup)

Command	Explanation
blacklist:	Check IP or host for reputation
smtp:	Test mail server SMTP (port 25)
mx:	DNS MX records for domain
a:	DNS A record IP address for host name
spf:	Check SPF records on a domain
txt:	Check TXT records on a domain
ptr:	DNS PTR record for host name
cname:	DNS canonical host name to IP address
whois:	Get domain registration information
arin:	Get IP address block information
soa:	Get Start of Authority record for a domain
tcp:	Verify an IP Address allows tcp connections
http:	Verify a URL allows http connections
https:	Verify a URL allows secure http connections
ping:	Perform a standard ICMP ping
trace:	Perform a standard ICMP trace route
dns:	Check your DNS Servers for possible problems **New!**

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Other tools (NetworkTools.aspx)

Feedback: If you run into any problems with the site or have an idea that you think would make it better, we would appreciate your feedback. Please leave us some Feedback (mailto:feedback@mxtoolbox.com).

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Open Meeting Law Guide and Educational Materials

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL MAURA HEALEY

JANUARY 2018

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Dear Massachusetts Residents:

One of the most important functions of the Attorney General's Office is to promote openness and transparency in government. Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives. My office is working to achieve that goal through fair and consistent enforcement of the Open Meeting Law, along with robust educational outreach about the law's requirements.

The Open Meeting Law requires that most meetings of public bodies be held in public, and it establishes rules that public bodies must follow in the creation and maintenance of records relating to those meetings. Our office is dedicated to providing educational materials, outreach and training sessions to ensure that members of public bodies and citizens understand their rights and responsibilities under the law.

Whether you are a town clerk or town manager, a member of a public body, or a concerned citizen, I want to thank you for taking the time to understand the Open Meeting Law. If you would like additional guidance on the law, I encourage you to contact my Division of Open Government at (617) 963-2540 or visit our website at www.mass.gov/ago/openmeeting for more information.

Sincerely,

Maura Healey
Massachusetts Attorney General

Attorney General's Open Meeting Law Guide

Overview

Purpose of the Law

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

Attorney General's Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General's Office. G.L. c. 30A, § 19(a). To help public bodies understand and comply with the law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and orders remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

Certification

Within two weeks of a member's election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences of violating it. The certification must be retained where the public body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General's regulations, this Guide, and Open Meeting Law determinations issued to the member's public body within the last five years in which the Attorney General found a violation of the law.

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law. A public body member must sign a new Certificate upon reelection or reappointment to the public body but need not sign a Certificate when joining a subcommittee.

Open Meeting Law Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. The complete law, as well as the Attorney General's regulations, training materials, and determinations and declinations as to complaints can be found on the Attorney General's Open Meeting website, www.mass.gov/ago/openmeeting. Members of public bodies, other local and state government officials, and the public are encouraged to visit the website regularly for updates on the law and the Attorney General's interpretations of it.

Meetings of Public Bodies

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

1) is the communication between or among members of a **public body**;
2) if so, does the communication constitute a **deliberation**;
3) does the communication involve a matter within the body's **jurisdiction**; and
4) if so, does the communication fall within an **exception** listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches[1] of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and

[1] Although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions must follow the Law's requirements.

its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.[2]

What constitutes a deliberation?

The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body's jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For

[2] See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction." The law does not specifically define "jurisdiction." As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body's members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for "quasi-judicial boards or commissions" to apply only to certain state "quasi-judicial" bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as "agencies" for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore,

the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.

Notice

What are the requirements for posting notice of meetings?

Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

What are the requirements for filing and posting meeting notices for local public bodies?

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located. In the event that meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or adopt the municipal website as the official method of notice posting.

Prior to utilizing the municipal website, the Chief Executive Officer of the municipality must authorize or vote to adopt such website as the official method of posting notice. The clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public bodies must consistently use the most current notice posting method on file with the Division. A description of the website, including directions on how to locate notices on the website, must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk's office is located. Note that meeting notices must still be available in or around the clerk's office so that members of the public may view the notices during normal business hours.

What are the requirements for posting notices for regional, district, county and state public bodies?

For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website.

The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings. As an alternative method of notice, a county public body may post notice of meetings on the county public body's website. The county public body must file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

State public bodies must post meeting notices on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the specific webpage location where notices will be posted and of any subsequent changes to that posting location. A copy of each meeting notice must also be sent to the Secretary of State's Regulations Division and should be forwarded to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

Where a public body adopts a website as the official method of posting notices, it must make every effort to ensure that the website is accessible at all hours. If a website becomes inaccessible within 48 hours of a meeting, not including Saturdays, Sundays or legal holidays, the website must be restored within six business hours of the discovery. If the website is not restored within six business hours, the public body must re-post notice of its meeting to another date and time, in accordance with the requirements of the Open Meeting Law.

A note about accessibility

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.[3] The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 963-2939.

[3] The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time, and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list "open session" as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice. If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted. Recording the date and time enables the public to observe that public bodies are complying with the Open Meeting Law's notice requirements without requiring constant vigilance. Additionally, in the event of a complaint, it provides the Attorney General with evidence of compliance with those requirements.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

Executive Session

When can a public body meet in executive session?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

1. **To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

   This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

   While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. **To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;**

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

3. **To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and

voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

4. **To discuss the deployment of security personnel or devices, or strategies with respect thereto;**

5. **To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

6. **To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details

would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

7. **To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;**

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

8. **To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;**

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

9. **To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:**

   (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

   (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. **To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:**

    - in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
    - in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
    - in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
    - when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

Remote Participation

May a member of a public body participate remotely?

The Attorney General's Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow

individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7.

If the chief executive officer in a municipality authorizes remote participation, that authorization applies to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation and may decide to fund the practice only for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

Note about Local Commissions on Disability: Local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely only if physical attendance would be unreasonably difficult.

What are the acceptable means of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation. Note that accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

1. A quorum of the body, including the chair or, in the chair's absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely; such information must also be recorded in the meeting minutes. The chair's statement does not need to contain any detail about the reason for the member's remote participation.

Members of public bodies who participate remotely may vote and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions but must state at the start of any such session that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair (or, in the chair's absence, person chairing the meeting) may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

Public Participation

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual may not disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove the person. Although public participation is entirely within the chair's discretion, the

Attorney General encourages public bodies to allow as much public participation as time permits.

Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance.

Minutes

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must include:

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely.

While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes, and all documents and exhibits used, are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law. The State and Municipal Record Retention Schedules are available through the Secretary of the Commonwealth's website at: http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A "timely manner" is considered to be within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages minutes to be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within ten days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within ten days of a request.

There are two exemptions to the open session records disclosure requirement: 1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any résumé submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes, or other materials used in an executive session if the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they fall within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.

A public body must respond to a request to inspect or copy executive session minutes within ten days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within ten days, notifying the requestor that it is conducting this review.

Open Meeting Law Complaints

What is the Attorney General's role in enforcing the Open Meeting Law?

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to receive and investigate complaints, bring enforcement actions, issue advisory opinions, and promulgate regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements. The Division of Open Government offers periodic online and in-person training on the Open Meeting Law and will respond to requests for guidance and information from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint ***with the public body*** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a Complaint Form available on the Attorney General's website, www.mass.gov/ago/openmeeting. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to meet to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the complainant. The public body must simultaneously notify the Attorney General that it has responded to the complainant and provide the Attorney General with a copy of the response and a description of any remedial action taken. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so. A public body is not required to respond to unsigned complaints or complaints not made on the Attorney General's complaint form.

The public body may request additional information from the complainant within seven business days of receiving the complaint. The complainant then has ten business days to respond; the public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take remedial action. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

Step 3. Filing a Complaint with the Attorney General's Office

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are ***not*** automatically treated as filed for review by the Attorney General upon filing with the public body. A complainant who has filed a complaint with a public body and seeks further review by the Division of Open Government must file the complaint with the Attorney General after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation or the date that the violation was reasonably discoverable.

When filing the complaint with the Attorney General, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the response of the public body. Note, however, that the Attorney General will not review allegations that were not raised in the initial complaint filed with the public body. Under most circumstances, complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

The Attorney General will review the complaint and any remedial action taken by the public body. The Attorney General may request additional information from both the complainant and the public body. The Attorney General will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The Attorney General may decline to investigate a complaint that is filed with our office more than 90 days after the date of the alleged violation.

May a public body request mediation to resolve a complaint?

If a complainant files five complaints with the same public body or within the same municipality within 12 months, the public body may request mediation upon the fifth or subsequent complaint in order to resolve the complaint. The public body must request mediation prior to, or with, its response to the complaint, and will assume the expense of such mediation. If the parties cannot come to an agreement after mediation, the public body will

have ten business days to respond to the complaint and its resolution will proceed in the normal course.

Mediation may occur in open session or in executive session under Purpose 9. In addition, a public body may designate a representative to participate on behalf of the public body. If mediation does not resolve the complaint to each party's satisfaction, the complainant may file the complaint with the Attorney General. The complaint must be filed within 30 days of the last joint meeting with the mediator.

The mediator will be chosen by the Attorney General. If the complainant declines to participate in mediation after a request by the public body, the Attorney General may decline to review a complaint thereafter filed with our office. A public body may always request mediation to resolve a complaint, but only mediation requested upon a fifth or subsequent complaint triggers the requirement that the complainant participate in the mediation before the Attorney General will review the complaint.

Any written agreement reached in mediation must be disclosed at the public body's next meeting following execution of the agreement and will become a public record.

When is a violation of the law considered "intentional"?

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than $1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An "intentional violation" is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law's requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements, its conduct will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02. A fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel. G.L. 30A, § 23(g); 940 CMR 29.07.

Will the Attorney General's Office provide training on the Open Meeting Law?

The Open Meeting Law directs the Attorney General to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The Attorney General has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, the Attorney General's determination letters resolving complaints, and other resources. The Attorney General offers periodic webinars and in-person regional training events for members of the public and public bodies, in addition to offering a free online training video.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the Attorney General's Division of Open Government. The Attorney General also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

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Appendix

The Open Meeting Law, G.L. c. 30A, §§ 18-25[4]

Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.

Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session;

[4] NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

1. the general background of the legal requirements for the open meeting law;
2. applicability of sections 18 to 25, inclusive, to governmental bodies;
3. the role of the attorney general in enforcing the open meeting law; and
4. penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

1. the number of open meeting law complaints received by the attorney general;
2. the number of hearings convened as the result of open meeting law complaints by the attorney general;
3. a summary of the determinations of violations made by the attorney general;
4. a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
5. an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
6. the number of actions filed in superior court seeking relief from an order of the attorney general; and
7. any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or

town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the

appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. Executive Sessions

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
    i. to be present at such executive session during deliberations which involve that individual;
    ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
    iii. to speak on his own behalf; and
    iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

    The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.
2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
    i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
    ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or
10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:
1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. Meeting Minutes; Records

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney- client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of

said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g) (1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

2. Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

1. compel immediate and future compliance with the open meeting law;
2. compel attendance at a training session authorized by the attorney general;
3. nullify in whole or in part any action taken at the meeting;
4. impose a civil penalty upon the public body of not more than $1,000 for each intentional violation;
5. reinstate an employee without loss of compensation, seniority, tenure or other benefits;
6. compel that minutes, records or other materials be made public; or
7. prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. Investigation by Attorney General of Violations of Open Meeting Law

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. Regulations; Letter Rulings; Advisory Opinions

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

940 CMR 29.00: Open Meeting Law Regulations

The official regulations are published in the Massachusetts Register. For more information, contact the Secretary of the Commonwealth's State Publications and Regulations Division.

Section
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29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body. A public body created by county government with jurisdiction that comprises a single county.

District Public Body. A public body with jurisdiction that extends to two or more municipalities.

Emergency. A sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation. An act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, the public body or public body member that:

(a) acted with specific intent to violate the law;

(b) acted with deliberate ignorance of the law's requirements; or

(c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person. All individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice. To place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body. Has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that Public Body shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office. The election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body. A public body with jurisdiction that extends to two or more municipalities.

Remote Participation. Participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies.

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.

(b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.

(d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

(a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.

(b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.

1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.

(c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices *via* other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.

(d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.

(3) Requirements Specific to Regional or District Public Bodies.

(a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

(a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

(a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

29.04: Certification

(1) For local public bodies, the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall, upon a public body member's qualification for office, either deliver to the public body member, or require the public body member to obtain from the Attorney General's website, the following educational materials:

(a) The Attorney General's Open Meeting Law Guide, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and 940 CMR 29.00.
(b) A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25. Open Meeting Law determinations are available at the Attorney General's website.

(2) Educational materials may be delivered to public body members by paper copy or in digital form.

(3) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(4) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(5) A public body member must sign a new certification upon reelection or reappointment to the public body.

29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.

(4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25 or, if the alleged violation of M.G.L. c. 30A, §§ 18 through 25 could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(7) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered. However, this time may be extended if the Attorney General grants an extension to the public body to respond to a complaint or if the complainant demonstrates good cause for the delay in filing with the Attorney General.

(8) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days.

(9) Mediation to Resolve a Complaint.

(a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and will be selected by the Attorney General.

(b) A public body must request mediation prior to, or with, its response to the complaint. If the mediation does not produce an agreement, the public body will have ten business days from the last joint meeting with the mediator to respond to the complaint.

(c) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.

(d) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), the Attorney General may decline to review the complaint if it is thereafter filed with the Attorney General.

(e) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.

(f) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.

(g) Nothing in 940 CMR 29.05(9) shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).

(h) Nothing in 940 CMR 29.05(9) shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(d).

29.06: Investigation

Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25 has occurred, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

(a) Take testimony under oath;
(b) Examine or cause to be examined any documentary material; or
(c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or in a written determination to resolve the investigation pursuant to 940 CMR 29.07.

29.07: Resolution

(1) No Violation. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has not been violated, the Attorney General shall issue a written determination to the subject of the complaint and copy any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

(a) Informal Action. The Attorney General may resolve the investigation with a letter or other appropriate form of written communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.
(b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:
    1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;

2. attendance at a training session authorized by the Attorney General;
3. nullification of any action taken at the relevant meeting, in whole or in part;
4. that minutes, records or other materials be made public;
5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or
6. other appropriate action.

(c) Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00: *Formal Rules*, as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25 occurred, and whether the public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

(a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
(b) attendance at a training session authorized by the Attorney General;
(c) nullification of any action taken at the relevant meeting, in whole or in part;
(d) imposition of a fine upon the public body of not more than $1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
(e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
(f) that minutes, records or other materials be made public; or
(g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body, subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07, shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring immediate and future compliance pursuant to 940 CMR 29.07(2)(b)1. or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of *certiorari*. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25 pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may, by majority vote of the commissioners at a regular meeting, authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting in accordance with the procedures described in 940 CMR 29.10(7) only if physical attendance would be unreasonably difficult.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

1. telephone, internet, or satellite enabled audio or video conferencing;
2. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines after investigation that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY
940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

Certificate of Receipt of Open Meeting Law Materials

I, _____, who qualified as a member of the
(Name)

_____, on _____, certify pursuant
(Public Body) (Date)

to G.L. c. 30A, § 20(h) and 940 CMR 29.04, that I have received and reviewed copies of the following Open Meeting Law materials:

1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;

2) the Attorney General's Regulations, 940 CMR 29.00–29.11;

3) the Attorney General's Open Meeting Law Guide, explaining the Open Meeting Law and its application; and

4) if applicable, a copy of each Open Meeting Law determination issued by the Attorney General within the last five (5) years to the public body of which I am a member and in which the Attorney General found a violation of the Open Meeting Law.

I have read and understand the requirements of the Open Meeting Law and the consequences of violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes to the Open Meeting Law during my term of office.

_____
(Name)

_____
(Name of Public Body)

_____
(Date)

Pursuant to G.L. c. 30A, § 20(h), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

Boylan, Kassandra (SEC)

From:	Dorai, Shirley <sdorai@maldenps.org>
Sent:	Wednesday, May 12, 2021 3:56 PM
To:	SEC-DL-PREWEB
Cc:	Greg Lucey; Karen Anderson; Bruce Friedman; Malden Transparency; Felicia S. Vasudevan
Subject:	Petition for Extension of Time to Respond
Attachments:	FOIA Request 2021-0067, 0107 and 207 Time Petition.pdf

Dear Supervisor Murray,

Please see the attached petition. 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

May 12, 2021

VIA EMAIL ONLY
pre@sec.state.ma.us
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
ATTN: Rebecca Murray, Supervisor of Records

RE: Petition for Extension of Time to Respond

Dear Supervisor Murray:

This is a petition on behalf of Malden concerning the three record requests, detailed below, from Mr. Friedman/OpenMalden, received on February 25, 2021, March 11, 2021 and April 26, 2021 respectively.

Specifically, there were the following requests:

1) FOIA Request 2021-0067 dated 2/25/2021 - Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.

2) FOIA Request 2021-0107 dated 3/11/2021 - Please provide all emails where five or more of the following people at any Malden Public Schools email address: Gary Christenson, Michael Drummey, Robert S. McCarthy Jr., Jennifer M. Spadafora, Leonard Iovino, Adam Weldai, Joseph Gray, Michelle Luong, John Froio appear in one or more of the of the following email fields;
From:
To:
Cc:

Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.

3) FOIA Request: 2021-0207 dated 4/26/2021 - Request Detail: Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
And where the Business Manager, Toni Mertz is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. Thisrequest specifically seeks the email header information, all fields of the email, the body of the email, This request specifically seeks the email header information, allfields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format. Please provide the responsive documents electronically to the email address info@openmalden.com.

The first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost.

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

Malden has estimated that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing.

Malden hereby petitions for an extension of time to respond to Mr. Friedman's/Open Malden's public records requests. Given that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension. Pursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt payment for the work, to response to these requests. Malden's demonstration of good cause is based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents in immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce.

Responding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time.

Thank you for your consideration of this Petition. Please do not hesitate to contact me with any questions or to discuss further.

Sincerely,
Shirley Dorai
School Department

cc: Greg Lucey, Records Access Officer, City of Malden
Karen Anderson, Records Access Officer, City of Malden
Bruce Friedman/Open Malden, Requestor
Felicia Vasudevan, Attorney for Malden

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 7, 2021
SPR21/1043

Shirley Dorai
Malden Public Schools
110 Pleasant Street
Malden, MA 02148

Dear Ms. Dorai:

I have received the petition of Bruce Friedman appealing the response of the Malden Public Schools (School/Malden) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 11, 2021, Bruce Friedman requested emails from identified individuals "[f]or the time period January 1, 2020 through the date you respond with the responsive documents."

Previous petition and appeal

This request was the subject of a previous fee petition and subsequent appeal. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021) and SPR21/0838 Determination of the Supervisor of Records (April 15, 2021). In my April 15th determination, I directed the School to clarify why it requires 20 minutes to review 10 emails to determine their responsiveness. Accordingly, I ordered the School to provide Mr. Friedman with a response. Subsequently, the School provided a response on April 20, 2021. Unsatisfied with the response, Mr. Friedman petitioned this office and this appeal, SPR21/1043, was opened as a result.

Fee estimate – municipalities

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

Municipalities may not assess a fee for the first (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 of Records under a petition under G. L. c. 66, § 10(d)(iv).

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

The School's April 20th response

In its April 20, 2021 response, the School reiterates that its search generated a total of 602 email records, and "[e]ach email must be reviewed as they may contain attorney-client privilege, student record information or private personal information under Exemption (C)." Further, the School explains, "[s]earch time includes the time needed to locate and identify a public record. Although Malden could narrow down the email search, by conducting a search with each school committee member in the 'from,' line and at least one school committee member in the 'to,' line, these records are not completely responsive to your request for emails where there is more than a majority of the school committee members present on the email. As a result, each email must be reviewed to determine whether it is responsive. Malden has no way to automate the search." The School explains that because of this reviewing process, it pulled a sample of 10 emails which required 20 minutes to review as some had multiple emails in a chain. The School indicates, "[s]pecifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes[.]"

The School explains, "Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 1204 minutes or 20.1 hours to search these records. Thus, Malden estimates a total of 20.1 hours to search the records." The School also states that "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 60.2 minutes or 1 hour. . . . Malden estimates another 1 minute for redactions based on that email or another 60.2 minutes or 1 hour." As a result, the School ". . . estimates a total of 22.1 hours. In

accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 20.1 multiplied by $25 per hour yields a fee estimate of $502.50."

In its response, the School suggests that Mr. Friedman ". . . could potentially reduce this estimate if [he] provided a specific person for the 'to' and 'from,' boxes of the email search." In light of the School's response, I encourage Mr. Friedman and the School to communicate in order to facilitate producing records efficiently and affordably. Mr. Friedman may wish to narrow the parameters or include applicable time periods or factors to enable the search to be processed. G. L. c. 66, § l0(a)(i). The School must use its knowledge of the records to facilitate providing any responsive records. G. L. c. 66, § l0(a)(vii) (an agency or municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably). Please be advised the School received approval to charge for segregation and redaction, to the extent the responsive records contain the exempt information. See SPR21/0742 Determination of the Supervisor of Records (April 1, 2021).

Conclusion

Accordingly, I will consider this administrative appeal closed. If issues remain after further communication, Mr. Friedman may file an appeal.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia Vasudevan, Esq.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 18, 2021
SPR21/1199

Shirley Dorai
Executive Assistant to the Superintendent
School Committee Clerk
Malden Public Schools
77 Salem Street, Room H104
Malden, MA 02148

Dear Ms. Dorai:

I have received your petition on behalf of the Malden Public Schools (School) seeking an extension of time to produce records. G. L. c. 66, § 10(c). As required by law, it is my understanding that the School furnished a copy of this petition to the requestor. Id. Specifically, Open Malden submitted the following three requests:

- FOIA Request 2021-0067 dated 2/25/2021 – "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."

- FOIA Request 2021-0107 dated 3/11/2021 – "Please provide all emails where five or more of the following [named individuals] appear in one or more of the of the following email fields; From:, To:, Cc:, Bcc:. For the time period January 1, 2020 through the date you respond with the responsive documents."

- FOIA Request: 2021-0207 dated 4/26/2021 – "Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields; From:, To:, Cc:, Bcc:. And where the Business Manager… is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents."

Petition for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a

single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

> (i) the need to search for, collect, segregate or examine records;
> (ii) the scope of redaction required to prevent unlawful disclosure;
> (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
> (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
> (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
> (vi) the public interest served by expeditious disclosure.
>
> G. L. c. 66, § 10(c).

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

Current Petition

In its May 12, 2021 petition, the School requests "[p]ursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute… based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents [is] immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce." Further, "[r]esponding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time."

The School indicates "[t]he first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost."

The School estimates "… that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing."

The School explains that "[g]iven that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension."

I find that in light of the capacity of the School to produce the request without the extension, the potential scope of redactions, as well as efforts undertaken by the School in fulfilling the requests, the School has established good cause to permit an extension of time. See G. L. c. 66, § 10(c)(i)-(iv). I hereby grant the School an extension of 30 business days to furnish copies of records responsive to Open Malden's requests. See G. L. c. 66, § 10(c). To the extent possible, the School must provide responsive records on a rolling basis.

Conclusion

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

Please note, Open Malden has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Malden Transparency
Greg Lucey
Karen Anderson
Felicia Vasudevan, Esq.

Mackenzie Nekton

From: Stewart, Gregory (SEC)
Sent: Monday, June 21, 2021 4:36 PM
To: Chan, Benjamin (SEC); Ghobrial, Andrew (SEC); Boylan, Kassandra (SEC); LaRosee, Matthew (SEC); Bottorf, Augustine (SEC); Mackenzie Nekton
Cc: Durgin, Barbara (SEC); Arthur, Manza (SEC); Rastellini, Patricia (SEC)
Subject: FW: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination
Attachments: spr211199.pdf; spr211042.pdf; 2021-0067 Request.pdf; SPR 1042 Payment.pdf; SPR21-1199.pdf; Payment email 5-11-21.pdf

Importance: High

Please assign to Connor. Appealing records not provided past Petition time allowed. Thank you.

Best,

Greg

From: Bruce Friedman [redacted]
Sent: Monday, June 21, 2021 2:19 PM
To: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; Puccini, Angela (SEC) <Angela.Puccini@sec.state.ma.us>
Cc: sdorai@maldenps.org; kanderson@cityofmalden.org
Subject: Request for Appeal - City of Malden #2021-0067 A.K.A. SPR21/1042 and SPR21/1199 Determination
Importance: High

Greetings:

On February 24, 2021 the following attached verbatim request was served upon the City of Malden via their official public records request site: "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."

On March 10, 2021, a response and fee estimate was received. SPR 21/1042 was opened as a result the determination was rendered and is attached hereto.

On May 11, 2021 the attached email and proof of payment was sent (attached).

On May 12, 2021 SPR21/1199 was opened as a result of the City seeking a time extension (attached).

On May 18, 2021 SPR21/1199 was determined and is attached. This decision gave the City of Malden a 30 day extension for the following public records requests:

- **2021-0067 – Filed 2-25-2021**
- **2021-0107 – Filed 3-11-2021**
- **2021-0201 – Filed 4-26-2021**

The extension for 2021-0067 would effectively allow the City to respond on May 14, 2021. (2-25-2021 + 25 business days = 4-1-2021 + 30 business days extension = 5-14-2021).

It is Now June 21 and eighty (80) business days have passed since the request was filed.

Wherefore, I respectfully request that the Secretary Order the City of Malden to comply with the Orders of SPR21/1199 and provide the responsive documents immediately.

I also respectfully request that the Secretary contemplate this lack of response in concert with the myriad of other current lack of responses and this lack of compliance along with the lack of compliance with other current Orders of the Secretary in this determination and in all other relief sought against the City and by the City in the future.

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.

Request Number 2021-0067

Request Details

Request Submitted	2/25/2021 8:30:00 AM
Requester Name	Bruce Friedman
Requested Department	School
Request Content	**Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.**
Request Document Attachment	No request document found for this request.

Response Details

Response Date	3/10/2021 3:21:56 PM
Response Department	School
Response Content	Breakdown of estimated fees have been sent to requestor. Please be advised that if you object to this response, you have the right to petition the Commonwealth of Massachusetts Supervisor of Public Records. Your written appeal petition must be made within 90 calendar days of the date of this response, and must specify the nature of your objections to this response, and include a copy of your electronic request with all header information including the time, date, subject, sender and recipient email address, and a copy of this written response, and sent to the following address: Supervisor of Records Division of Public Records Office of the Secretary of the Commonwealth One Ashburton Place, Room 1719 Boston, MA 02108 or; pre@sec.state.ma.us Electronic communication is strongly encouraged and is the preferred method of correspondence.
Response Document Attachment	No response document found for this request.

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Subject: Re: SPR21/1042 Determination
Date: Tuesday, May 11, 2021 at 12:16:22 PM Eastern Daylight Time
From: Bruce Friedman
To: pre@sec.state.ma.us
CC: kanderson@cityofmalden.org, Kathryn M. Fallon, Greg Lucey, sdorai@maldenps.org
Attachments: SPR 1042 Payment.pdf, spr211042.pdf

Greetings:

Be it known, that today, May 11, 2021 I personally conveyed a check in the amount of $1661.50 and hand delivered same to the Malden Public Schools @ 77 Salem Street, Malden, MA. 02148. Steve at the front security desk took the package and indicated that Ms. Dorai would have the package before the end of the day.

I will be expecting the documents to be released ASAP.

Kindest Regards,

- Bruce Friedman

From: Robertson, Jack (SEC) <jack.robertson@state.ma.us>
Date: Friday, May 7, 2021 at 11:21 AM
To: Dorai, Shirley <sdorai@maldenps.org>, fvasudevan@mhtl.com <fvasudevan@mhtl.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>, Bruce Friedman <[redacted]>
Subject: SPR21/1042 Determination

Good Morning,

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

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

Thank you,

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

[redacted]

Fidelity®Cash Management Account

[redacted]
80-568/1012

5/11/21
Date

Pay to the Order of Malden Public Schools $ 1661.50

One thousand Six hundred Sixty-one dollars & 50/100 Dollars

Photo Safe Deposit®

Fidelity INVESTMENTS UMB Bank, N.A. Kansas City, MO

For Estimate 2021-0067

[redacted] [redacted]

Help

Welcome Bruce Friedman ! [Logout]

Back

Request Details

Requestor Details

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

Description of Request

Request Number	2021-0067	Department	School
Request Sent Date	02/24/2021 08:32 PM	Request Received Date	02/25/2021 08:30 AM
Response Due By	03/16/2021	Response Sent On	03/10/2021 03:21 PM

Request Detail: Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.

Request Documents

No Document.

Response Details

Response: Breakdown of estimated fees have been sent to requestor.

Please be advised that if you object to this response, you have the right to petition the Commonwealth of Massachusetts Supervisor of Public Records. Your written appeal petition must be made within 90 calendar days of the date of this response, and must specify the nature of your objections to this response, and include a copy of your electronic request with all header information including the time, date, subject, sender and recipient email address, and a copy of this written response, and sent to

Boylan, Kassandra (SEC)

From:	Dorai, Shirley <sdorai@maldenps.org>
Sent:	Wednesday, May 12, 2021 3:56 PM
To:	SEC-DL-PREWEB
Cc:	Greg Lucey; Karen Anderson; Bruce Friedman; Malden Transparency; Felicia S. Vasudevan
Subject:	Petition for Extension of Time to Respond
Attachments:	FOIA Request 2021-0067, 0107 and 207 Time Petition.pdf

Dear Supervisor Murray,

Please see the attached petition. 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

May 12, 2021

VIA EMAIL ONLY
pre@sec.state.ma.us
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108
ATTN: Rebecca Murray, Supervisor of Records

RE: Petition for Extension of Time to Respond

Dear Supervisor Murray:

This is a petition on behalf of Malden concerning the three record requests, detailed below, from Mr. Friedman/OpenMalden, received on February 25, 2021, March 11, 2021 and April 26, 2021 respectively.

Specifically, there were the following requests:

1) FOIA Request 2021-0067 dated 2/25/2021 - Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata.

2) FOIA Request 2021-0107 dated 3/11/2021 - Please provide all emails where five or more of the following people at any Malden Public Schools email address: Gary Christenson, Michael Drummey, Robert S. McCarthy Jr., Jennifer M. Spadafora, Leonard Iovino, Adam Weldai, Joseph Gray, Michelle Luong, John Froio appear in one or more of the of the following email fields;
From:
To:
Cc:

Bcc:
For the time period January 1, 2020 through the date you respond with the responsive documents.

3) FOIA Request: 2021-0207 dated 4/26/2021 - Request Detail: Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields;
From:
To:
Cc:
Bcc:
And where the Business Manager, Toni Mertz is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents. This request specifically seeks the electronic documents and they are to be provided in the same manner in which they are regularly maintained, transmitted and/or stored. This request seeks all email communications, including those deleted by any party, stored in any folder, including the draft(s) folder. Thisrequest specifically seeks the email header information, all fields of the email, the body of the email, This request specifically seeks the email header information, allfields of the email, the body of the email, any attachments and all associated metadata and should be provided in whole through a .pst, .ost or .eml format. Please provide the responsive documents electronically to the email address info@openmalden.com.

The first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost.

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

Malden has estimated that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing.

Malden hereby petitions for an extension of time to respond to Mr. Friedman's/Open Malden's public records requests. Given that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension. Pursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt payment for the work, to response to these requests. Malden's demonstration of good cause is based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents in immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce.

Responding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time.

Thank you for your consideration of this Petition. Please do not hesitate to contact me with any questions or to discuss further.

Sincerely,
Shirley Dorai
School Department

cc: Greg Lucey, Records Access Officer, City of Malden
Karen Anderson, Records Access Officer, City of Malden
Bruce Friedman/Open Malden, Requestor
Felicia Vasudevan, Attorney for Malden

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 7, 2021
SPR21/1042

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 (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On February 25, 2021, Mr. Friedman requested "… any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request … in the electronic form which they are regularly maintained and must include all email metadata."

Previous Determinations

The requested records were the subject of previous determinations. See SPR21/0589 Determination of the Supervisor of Records (March 17, 2021); SPR21/0718 Determination of the Supervisor of Records (April 6, 2021). In my April 6th determination, I found the School's fee estimate has not explained with specificity why the indicated amount of time is necessary for producing the requested records. The City was ordered to provide Mr. Friedman with a revised response, in a manner consistent with the order, the Public Records Law and its Regulations. The School provided said response on April 20, 2021. Unsatisfied with the School's response, Mr. Friedman petitioned this office and this appeal, SPR21/1042, was opened as a result.

The Public Records Law

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

Fee Estimate – Municipalities

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

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

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4). Petitions relating to fees must be submitted to the Supervisor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

The School's April 20th response

In its April 20th response, the School indicates it "had to conduct a search with each school committee member in the 'from,' line and at least one school committee member in the 'to,' line. There is no other way to narrow down the information requested. The search generated 1,785 emails. Malden is not certain what percentage of the emails are responsive to the request."

The School further explains, "…each email must be reviewed to determine whether it is responsive. Malden has no way to automate the search. Malden spent three hours locating the emails. Malden took a sample of ten emails. It took 20 minutes to review the ten emails to

determine which ones are responsive to the request, as some of the emails had multiple emails in a chain." The School states "[s]pecifically, it took the following time for each of the ten emails:

1) Email1 - 0.5 minutes
2) Email2 - 5 minutes
3) Email3 - 0.5 minutes
4) Email4 - 3 minutes
5) Email5 - 1 minute
6) Email6 - 2 minutes
7) Email7 - 6 minutes
8) Email8 - 1 minute
9) Email9 - .5 minutes
10) Email10 - .5 minutes"

The School explains "Email 2 that was one of the longest was 51 pages with 29 emails in the chain. Email 7 that was also one of the longest estimates was 49 pages with over 60 emails. Extrapolating that up, it would take 3570 minutes or 59.5 hours to search these records. Thus, Malden estimates a total of 62.5 hours to search the records."

The School indicates "[i]t took Malden 1 minute to segregate the relevant email. Malden thus estimates another 178.5 minutes or 2.98 hours…Malden estimates another 1 minute for redactions based on that email or another 178.5 or 2.98 hours. As a result, Malden estimates a total of 68.46 hours. In accordance with 950 CMR 37.02(2)(m)(1) you will not be charged for the first two (2) hours of those services. 66.46 multiplied by $25 per hour yields a fee estimate of $1,661.50."

In its response, the School suggests that Mr. Friedman ". . . could potentially reduce this estimate if [he] provided a specific person for the 'to' and 'from,' boxes of the email search." In light of the School's response, I encourage Mr. Friedman and the City to communicate in order to facilitate producing records efficiently and affordably. Mr. Friedman may wish to narrow the parameters or include applicable time periods or factors to enable the search to be processed. G. L. c. 66, § l0(a)(i). The City must use its knowledge of the records to facilitate providing any responsive records. G. L. c. 66, § l0(a)(vii) (an agency or municipality shall suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably). Please be advised the School received approval to charge for segregation and redaction, to the extent the responsive records contain the exempt information. See SPR21/0589 Determination of the Supervisor of Records (March 17, 2021).

Conclusion

Accordingly, I will consider this administrative appeal closed. If issues remain after further communication, Mr. Friedman may file an appeal.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Bruce Friedman
Felicia Vasudevan, Esq.

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

May 18, 2021
SPR21/1199

Shirley Dorai
Executive Assistant to the Superintendent
School Committee Clerk
Malden Public Schools
77 Salem Street, Room H104
Malden, MA 02148

Dear Ms. Dorai:

I have received your petition on behalf of the Malden Public Schools (School) seeking an extension of time to produce records. G. L. c. 66, § 10(c). As required by law, it is my understanding that the School furnished a copy of this petition to the requestor. Id. Specifically, Open Malden submitted the following three requests:

- FOIA Request 2021-0067 dated 2/25/2021 – "Please provide any emails between any members of the School Committee where the recipients (to, carbon copy, and/or blind carbon copy) of the email would create a quorum from January 2019 through the date you answer this request. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."

- FOIA Request 2021-0107 dated 3/11/2021 – "Please provide all emails where five or more of the following [named individuals] appear in one or more of the of the following email fields; From:, To:, Cc:, Bcc:. For the time period January 1, 2020 through the date you respond with the responsive documents."

- FOIA Request: 2021-0207 dated 4/26/2021 – "Please provide all emails where any email address from the @mhtl.com FQDN appear in one or more of the of the following email fields; From:, To:, Cc:, Bcc:. And where the Business Manager… is either the sender or a recipient of said email. For the time period July 1, 2020 through the date you respond with the responsive documents."

Petition for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a

single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

> (i) the need to search for, collect, segregate or examine records;
> (ii) the scope of redaction required to prevent unlawful disclosure;
> (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
> (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
> (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
> (vi) the public interest served by expeditious disclosure.
>
> G. L. c. 66, § 10(c).

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

Current Petition

In its May 12, 2021 petition, the School requests "[p]ursuant to M.G.L. c. 66, section 10(c), Malden requests an additional 30 business days beyond the time specified under the statute… based on the volume of the potential response and the complexity of the review of the response. As set forth above, the volume of potentially responsive documents [is] immense, consisting of approximately 2,400 to retrieve, review, segregate, potentially redact, and produce." Further, "[r]esponding to these requests is burdensome to Malden, and impacts the ability of Malden staff to complete its mission and other work. For these reasons, it requires the additional time."

The School indicates "[t]he first two requests were the subject of appeals at the Supervisor, SPR21-1042 and SPR21-1043, in which the Supervisor ruled on May 7, 2021. For the third request, Malden provided a response on May 10, 2021. On May 11, 2021, Mr. Friedman dropped off a check in the amount of $1,661.50 for the first request and $502.50 for the second request. For the third request, he asked for a balance that Malden held to be applied to the cost."

The School estimates "… that there are 1,785 emails in the first request that will take an estimate of 68.46 hours. For the second request, there are 602 emails that will take an estimate of 22.10 hours. The third request has 48 emails, which will take an estimate of 4.32 hours. The estimate for these three requests in total is 95 hours, which is not possible to do within 10 business days under current staffing."

The School explains that "[g]iven that there is attorney-client privilege and student record information implicated, the scope of redaction required to prevent unlawful disclosure is significant. We request relief from the sheer volume that will be required to respond and the complexity of the redactions. Malden is unable to produce the records during normal business hours of operation without the extension."

I find that in light of the capacity of the School to produce the request without the extension, the potential scope of redactions, as well as efforts undertaken by the School in fulfilling the requests, the School has established good cause to permit an extension of time. See G. L. c. 66, § 10(c)(i)-(iv). I hereby grant the School an extension of 30 business days to furnish copies of records responsive to Open Malden's requests. See G. L. c. 66, § 10(c). To the extent possible, the School must provide responsive records on a rolling basis.

Conclusion

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

Please note, Open Malden has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Malden Transparency
Greg Lucey
Karen Anderson
Felicia Vasudevan, Esq.