



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

Manza Arthur
Supervisor of Records

June 10, 2026
SPR26/2024

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

Dear Ms. Perperian:

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

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

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

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

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

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

Previous Appeal and Petition

This request was the subject of a previous appeal and petition. See SPR26/1533 Determination of the Supervisor of Records (May 5, 2026) and SPR26/1880 Determination of the Supervisor of Records (May 22, 2026). In my May 22nd determination, I granted the City an

extension of seven (7) business days. The City provided a response on May 27, 2026. Unsatisfied with the response, the requestor petitioned this office and this appeal, SPR26/2024, was opened as a result.

The Public Records Law

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

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

If there are any fees associated with a response a written, good faith estimate must be provided. See 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.

The City’s May 27th Response

In its May 27, 2026 response, the City provided responsive records with redactions made pursuant to attorney-client privilege.

Current Appeal

In the requestor’s May 27, 2026 appeal to this office, the requestor stated, “Malden’s responsive documents include entire blocks of redactions which are both unexplained per record as required under law, they have failed to provide a privilege log, and they are applying a generic attorney-client privilege to all redactions where a billing statement cannot possibly contain legal advice to requests for legal advice from Malden. While some of what Malden has redacted may be exempt and proper for redactions, Malden has again claimed blanket exemptions where they do not and cannot exist and have not provided a privilege log which is required under Massachusetts law.”

In a June 3, 2026 email to this office, the requestor stated, “Malden has failed to produce the requested public records. As of the time of this appeal, Malden has not provided the same export of data from its financial systems with the updated dates. Instead, Malden continues to provide .pdf files that were neither requested nor are responsive. The public records law requires

that the holder must provide the requested records in the specified format, and that exporting data from a system is not creating records...”

Common Law Attorney-Client Privilege

A records custodian claiming the attorney-client privilege under the Public Records Law has the burden of not only proving the existence of an attorney-client relationship, but also (1) that the communications were received from a client during the course of the client's search for legal advice from the attorney in his or her capacity as such; (2) that the communications 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. 450 n.9 (2007); 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). Records custodians seeking to invoke the common law attorney-client privilege “are required to produce detailed indices to support their claims of privilege.” Suffolk, 449 Mass. at 460.

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).

Based on the City’s response, I find that the City has not satisfied the requirements articulated in Suffolk. Specifically, the City must clarify whether the redacted information concerns communications between the City and its attorney in the attorney’s capacity as such, whether the communication was made in confidence, and whether the privilege has not been waived with respect to the communication. The city must also provide a privilege log which includes the names of the author and recipients, the date, the substance of the record, and the grounds upon which the attorney-client privilege is being claimed, as required by G. L. c. 66, § 10A(a).

Preferred Format

A records access officer must, to the extent feasible, provide public records to a requestor in electronic format unless the record is not available in electronic form or the requestor does not have the ability to receive or access the records in electronic format and if feasible, in the requestor’s preferred format. In the absence of a preferred format, the records must be provided in a searchable machine-readable form. See 950 C.M.R. 32.04(5)(d).

In light of the requestor’s appeal, I find the City must clarify whether the responsive records can be provided in the format that the requestor requested. I encourage the parties to work together to resolve the outstanding issues.

Conclusion

Accordingly, the City is ordered to provide the requestor with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us. The requestor may appeal the substantive nature of the City's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur", written in a cursive style.

Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency/OpenCommonwealth