

**Subject:** FOIA 2024-0310

**Date:** Tuesday, June 25, 2024 at 1:53:21 PM Eastern Daylight Time

**From:** Public Records <publicrecords@CITYOFMALDEN.ORG>

**To:** Commonwealth Transparency <info@opencommonwealth.org>

**CC:** Dorai, Shirley <sdorai@maldenps.org>

Hello,

There are 817 emails that fit the criteria. They are broken down by year as follows:

2016	9
2017	9
2018	62
2019	44
2020	298
2021	241
2022	112
2023	37
2024	5

We will prepare an estimate based on a review time estimate of 30 seconds per email. On a preliminary basis, this amounts to 6.8 hours – 2 hours=4.8 hours x \$25=\$120.

Please advise if you want to narrow the years down or apply key words to the emails above. Without knowing the intent, I am unable to use my understanding to offer any further guidance.

Also, as you have made a similar request of the school department, I have included Ms. Dorai on this email.

Regards,  
Stephanie

Stephanie M. Burke  
Records Access Administrator

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**From:** Commonwealth Transparency <[info@opencommonwealth.org](mailto:info@opencommonwealth.org)>

**Sent:** Monday, June 24, 2024 8:35 AM

**To:** Public Records <[publicrecords@CITYOFMALDEN.ORG](mailto:publicrecords@CITYOFMALDEN.ORG)>

**Subject:** Re: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A

Greetings:

We are looking to understand the totality of these records. Once we understand the total number of responsive records, we may choose to modify the request.

Kindest Regards,

OpenCommonwealth.org

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**From:** Public Records <[publicrecords@CITYOFMALDEN.ORG](mailto:publicrecords@CITYOFMALDEN.ORG)>

**Date:** Monday, June 24, 2024 at 8:23 AM

**To:** Commonwealth Transparency <[info@opencommonwealth.org](mailto:info@opencommonwealth.org)>

**Subject:** RE: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A

Hello,

Is there a time frame for this request?

Stephanie

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**From:** Commonwealth Transparency <[info@opencommonwealth.org](mailto:info@opencommonwealth.org)>

**Sent:** Sunday, June 23, 2024 2:55 AM

**To:** Public Records <[publicrecords@CITYOFMALDEN.ORG](mailto:publicrecords@CITYOFMALDEN.ORG)>

**Cc:** Carol Ann Desiderio <[CDesiderio@CITYOFMALDEN.ORG](mailto:CDesiderio@CITYOFMALDEN.ORG)>

**Subject:** Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A

**Importance:** High

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

**- This is a new request and does not replace or modify any prior requests.**

Please provide the following public records in the possession or under the control of the City of Malden, Massachusetts ("Malden"):

Please provide the following email communications:

Any email communications From: [tmertz@cityofmalden.org](mailto:tmertz@cityofmalden.org) To: [tmertz@maldenps.org](mailto:tmertz@maldenps.org)

This request includes but is not limited to emails and calendar entries.

OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

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 mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her “superior knowledge” to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs’ agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for “retrieval of public portions of records to provide maximum public access.” See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a “searchable machine-readable form.” 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: “Where public records are in electronic form, a public records request that requires a government entity to search its electronic database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. ” Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

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 our government.

Kindest Regards,

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