

**Subject:** Request for Appeal & In-Camera Review- Malden, Massachusetts - Material Misrepresentation of Record Set in Estimate and Fee Petition  
**Date:** Sunday, June 23, 2024 at 1:48:17 PM Eastern Daylight Time  
**From:** Commonwealth Transparency <info@opencommonwealth.org>  
**To:** pre@sec.state.ma.us <pre@sec.state.ma.us>, SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>  
**CC:** publicrecords@cityofmalden.org <publicrecords@cityofmalden.org>  
**Priority:** High  
**Attachments:** ~ Modified~ Public Record Request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A.pdf, FOIA Request 2024-042424C Response.pdf, Re: FOIA Request 2024-042424C.pdf, All Redactions including Duplicates.pdf

Greetings:

On April 24, 2024 the attached modified PRR was served upon Malden.

On May 8, 2024, Malden provided the attached response.

Malden petitioned the SPR for Fees and for Time Extensions under SPR 24/1405.

OpenCommonwealth paid \$1062.00 on May 15, 2024.

Malden stated and affirmed the following in their estimate and fee petition to the SPR and OpenCommonwealth:

- **“734 emails as well as attachments for November 1 through December 31, 2019”**
- **“1,935 for July 1, 2020 through October 31, 2020.”**
- **“The total number of emails and attachments is 2,669”**
- **“these records likely contain the content of discussions between the District and its attorneys”**
- **“the records contain personal identifying information of public school students”**
- **“the responsive records may include personnel record information or private personal information which is not subject to disclosure pursuant to Exemption (c)”**

On June 22, 2024 the attached email was received. OpenCommonwealth has downloaded the 4 files received from Malden (#1376273v1\_docs\_ - 1376090\_1\_Redacted.pdf, #1376122v1\_docs\_ - 1375631\_1\_Redacted\_Redacted.pdf, #1376080v1\_docs\_ - 1375630\_1\_Redacted\_Redacted.pdf#1376268v1\_docs\_ - 1376088\_1\_Redacted.pdf).

OpenCommonwealth has assembled the files in the order which they were received, bates stamped them and will send the files along to the SPR as a part of this appeal broken into

15 files that are designed to pass through email. (Combined Response Part 1 - PP 1-146.pdf, Combined Response Part 2 - PP 147-362.pdf, Combined Response Part 3 - PP 363-381.pdf, Combined Response Part 4 - PP 382-524.pdf, Combined Response Part 5 - PP 525-971.pdf, Combined Response Part 6 - PP 972-1191.pdf, Combined Response Part 7 - PP 1192-1344.pdf, Combined Response Part 8 - PP 1345-1455.pdf, Combined Response Part 9 - PP 1456-1540.pdf, Combined Response Part 10 - PP 1541-1635.pdf, Combined Response Part 11 - PP 1636-1720.pdf, Combined Response Part 12 - PP 1721-1790.pdf, Combined Response Part 13 - PP 1791-1900.pdf, Combined Response Part 14 - PP 1901-1945.pdf, and Combined Response Part 15 - PP 1946-1994.pdf)

OpenCommonwealth has thoroughly reviewed the documents produced by Malden. These records are summarized as follows:

- 1,994 total pages were provided.
- 454 total emails were provided, NOT 2,669
- 350 total emails were provided that were electronic communications of Antonietta ('Toni') Mertz (To or From Ms. Mertz) totaling 655 pages.
- ONLY 263 of the 350 Mertz emails (551 total pages) **were responsive to the request** in that they were BOTH;
  1. electronic communications of Antonietta ('Toni') Mertz (To or From Ms. Mertz)  
AND
  2. Contained any of the following words;
    - a. NRT ((N.R.T. and/or North Reading Transport(ation))
    - b. Abuse
    - c. Incident
    - d. Video
    - e. Bus and/or Van
    - f. Testimony
    - g. Testify
    - h. Monitor

(These emails will be provided in subsequent emails to the SPR (263 Responsive Records-All\_Part 1.pdf and 263 Responsive Records-All\_Part 2.pdf)

There were 127 total redactions on 40 of the 263 responsive emails. ZERO of the redacted emails are attorney-client privileged. SEVEN of the redacted emails potentially contain FERPA information and require the SPR to review in-camera. THIRTY-THREE of the redacted emails are improperly redacted and require the SPR to review in-camera. (These redacted emails are attached hereto.)

In 2024 alone OpenCommonwealth has provided the SPR with documentation demonstrating that Malden has on at least FOUR PRIOR OCCASSIONS made similar material misrepresentations—grossly overstating the number of responsive documents thereby grossly over-estimating fees associated with redacting and producing records; and

claiming privileges that do not apply to the records identified. Malden has done it yet again here.

On this occasion, like in the past, Malden purposefully and intentionally inflated the number of responsive records. Malden produced 10% of the number of claimed emails. It claimed over TEN TIMES the number of actual responsive records (263 actual versus 2669 claimed).

Malden has claimed attorney-client privilege with no basis to do so and has not provided a single responsive record which can be exempted under attorney-client privilege. Malden has improperly redacted responsive records.

The production was made in a completely haphazard and disorganized fashion—not in the manner in which the records are regularly kept:

- converting what are electronic records into PDFs;
- producing records that don't identify parties that were copied or blind copied;
- not revealing what attachments accompanied a particular email but apparently tacking on all attachments in large groups at the conclusion of each of the four files;
- not producing the documents in any date order;
- not providing specifically requested metadata;
- not providing any log of their redactions or identifying specific exemptions;
- not providing any emails from Mertz's city email account [tmertz@cityofmalden.org](mailto:tmertz@cityofmalden.org);
- not providing all responsive records (OpenCommonwealth is in possession of documents that would have been responsive to its request that were not produced);

This comes after Malden requested additional time to respond to the request; time that would not have been needed had it truthfully indicated to the SPR and the requestor the actual number of responsive records. Malden has engaged in bad faith requesting a \$1062.00 fee to segregate, redact and produce records based on the existence of 2669 emails. Thus, this should have cost OpenCommonwealth \$100.00 not \$1000.00. It's not a one-off. It happens over and over and over again and is how Malden is attempting to stop the public from accessing public records. It does not appear to be ineptness. It appears to be intentional and purposeful.

OpenCommonwealth requests that the SPR find and Order Malden to perform a diligent search for all responsive records, including those from the [tmertz@cityofmalden.org](mailto:tmertz@cityofmalden.org) account. Malden should be ordered to provide all responsive records with attachments and metadata in the form that they are regularly kept. Further, OpenCommonwealth requests that the SPR find and Order that Malden may not charge for the responsive records because Malden has acted in bad faith in their estimate and fee petition, providing only 1/10<sup>th</sup> of the records claimed; claiming exemptions which simply do not exist, and making improper redactions. Malden should further be ordered to return the \$1062.00 paid to them by OpenCommonwealth.

17 additional, sequential emails will follow this email with the attachments listed above:

- 263 Responsive Records-All\_Part 1.pdf
- 263 Responsive Records-All\_Part 2.pdf
- Combined Response Part 1 - PP 1-146.pdf
- Combined Response Part 2 - PP 147-362.pdf
- Combined Response Part 3 - PP 363-381.pdf
- Combined Response Part 4 - PP 382-524.pdf
- Combined Response Part 5 - PP 525-971.pdf
- Combined Response Part 6 - PP 972-1191.pdf
- Combined Response Part 7 - PP 1192-1344.pdf
- Combined Response Part 8 - PP 1345-1455.pdf
- Combined Response Part 9 - PP 1456-1540.pdf
- Combined Response Part 10 - PP 1541-1635.pdf
- Combined Response Part 11 - PP 1636-1720.pdf
- Combined Response Part 12 - PP 1721-1790.pdf
- Combined Response Part 13 - PP 1791-1900.pdf
- Combined Response Part 14 - PP 1901-1945.pdf
- and Combined Response Part 15 - PP 1946-1994.pdf

Kindest Regards,

[OpenCommonwealth.org](http://OpenCommonwealth.org)