

**Subject:** Re: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A  
**Date:** Monday, June 24, 2024 at 8:34:59 AM Eastern Daylight Time  
**From:** Commonwealth Transparency <info@opencommonwealth.org>  
**To:** Public Records <publicrecords@CITYOFMALDEN.ORG>

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

---

**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

---

**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,

OpenCommonwealth.org

OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published. 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.

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

