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July 9, 2024

**VIA ELECTRONIC MAIL**

info@opencommonwealth.org

**RE: Public Records Request dated June 27, 2024-FOIA DIRECT  
2024-0336/Fee & Time Petition**

Good day Open Commonwealth:

On June 27, 2024, we received the following request from info@opencommonwealth.org:

**"- 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"):

For the time period **January 1, 2019 through June 27, 2024:**

Please provide all emails between (To: or From:) [andy.zeiberg@gmail.com](mailto:andy.zeiberg@gmail.com) and any City of Malden email address including but not limited to the City of Malden, Malden Public Schools, and The Malden Police Department..."

**Response**

The City is in possession of approximately 1623 emails and attachments that are responsive to your request. The City did not find any other responsive documents.

Based on the City's initial review, and given the broad scope and volume of records, (2019-2024) the City will be filing a time petition for an additional thirty (30) business days to reply to the request pursuant to G.L. C 66 § 10 (b) (vi).

**Fee Petition**

The City intends to petition the Supervisor of Records to charge a fee to produce the records you seek because the records will need to be reviewed to determine if they contain information protected by certain statutory exemptions to the Public Record Law.

**Grounds for Redaction**

The records sought in the request need be reviewed, and potentially redacted. The City seeks the ability to charge for redactions under Exemption C.

These documents 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 second clause of the privacy exemption, it 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).

Records responsive to your request will thus need to be reviewed and redacted to the extent they contain private email addresses and contact information and information concerning an applicant for a license, which are sensitive to them, such as home address, social security number, passport etc.

### **Calculation of Fee Estimate**

To produce these records, the City provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 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." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds \$25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the Requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of \$25 per hour.

Each page of the records must be reviewed to determine if an exemption applies. 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. 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. The City estimates that it will take 30 seconds per page to segregate and redact the email. As a result, the City estimates a total of 63.125 hours.

After subtracting the first two (2) hours, 61.125 hours for segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$1528.13. Please note that this is comprised of the following analysis:

	#	MINUTE /ITEM	TOTAL	
TOTAL EMAILS	1623			
LIQUOR APPLICATIONS	40	20	800	*
OTHER DOCUMENTS WITH ATTACHMENTS	488	5	2440	**
EMAILS WITH NO ATTACHMENTS	1095	0.5	547.5	
TOTAL MINUTES			<u>3787.5</u>	
TOTAL HOURS			<u>63.125</u>	
FIRST 2 HOURS			<u>-2</u>	
BILLABLE			<u>61.125</u>	
RATE			<u>\$25</u>	
ESTIMATE			<u>\$ 1,528.1</u>	

\* a sample was made, and the actual time was 20 minutes for one application  
\*\*a sample was made, and the actual time was 5 minutes for one document

**Right of Appeal**

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).

Sincerely,

/s/ *Alicia A. McNeil*

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Alicia A. McNeil  
City Solicitor

cc:

Supervisor of Public Records  
Stephanie Muccini Burke, Records Access Administrator, City of Malden  
Carol Ann Desiderio, City Clerk