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

Date: Tuesday, July 9, 2024 at 9:38:39 AM Eastern Daylight Time

From: Commonwealth Transparency <info@opencommonwealth.org>

To: publicrecords@cityofmalden.org <publicrecords@CITYOFMALDEN.ORG>

Priority: High

Greetings:

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

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

- Please <u>***extract***</u> the author and all recipients (To:, Cc:, and/or Bcc:), date, and subject heading of all email sent by and/or received by any electronic mail account for Andrew H. Zeiberg.

- This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, the subject of the email and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.

- This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

This request specifically includes ALL email accounts and addresses in your possession and/or under your control, including group and resource email addresses.

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 <u>and metadata</u>.

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