

**Subject:** Objection to Fee and Time Petition - SPR 24/1944  
**Date:** Tuesday, July 9, 2024 at 1:47:29 PM Central Daylight Time  
**From:** Commonwealth Transparency  
**To:** pre@sec.state.ma.us, SEC-DL-PREWEB, Arthur, Manza (SEC)  
**CC:** Public Records, Carol Ann Desiderio, Kelly, Mairead (SEC), Alicia McNeil  
**Priority:** High  
**Attachments:** image001.png, Exhibit 1- Licensing Board | Malden, MA.pdf, Exhibit 2 - PublicRequestDetails.aspx.pdf, Exhibit 3 - 2024-0271 Export.csv

Greetings:

Please assure that this objection is attached to SPR 24/1944:

Counsel for the City singularly contends that Exemption C is the reason for redactions.

- The email account for which OpenCommonwealth seeks these records is a private email account ([andy.zeiberg@gmail.com](mailto:andy.zeiberg@gmail.com)) for a Public Official (Andrew H. Zeiberg) who is and has been a long standing member of the Malden Licensing Board, which is the last work on Liquor Licensing in Malden. (See Exhibit 1).
- Mr. Zeiberg is a public official and also a public figure. As such any responsive records cannot be redacted unless the two-prong standards are met.
  - The subjects of this records request, Mr. Zeiberg is by definition a public figure, public officials and public employees and have a diminished expectation of privacy as such. **See Brogan v. School Committee of Westport, 401 Mass. 306, 308 (1987).**
  - Exemption C specifically states “personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation;” **This application is limited to “intimate details of a highly personal nature” — such things as marital status, paternity, unemployment payments, government assistance, and family disputes. See G.L. c. 214, § 1B.** This includes information like marital status, paternity, substance abuse, government assistance, or family disputes. See **Att’y Gen. v. Assistant Comm’r of the Real Prop. Dep’t of Boston, 370 Mass. 623, 625 (1980).**
  - When it comes to records that relate to a public employee's performance of official duties, however, the privacy interest will be particularly muted. See, e.g., **George W. Prescott Publ’g Co. v. Register of Probate, 395 Mass. 274, 79 N.E.2d 658 (1985)** (newspaper successfully sought access to divorce records, including financial statements, of county treasurer). Under specific circumstances, courts have deemed that individual privacy interests were trumped by the public’s right to know “whether

- the burden of public expenses is equitably distributed,” “whether public servants are carrying out their duties in an efficient and law-abiding manner,” See ***Attorney Gen. v. Collector of Lynn, 374 Mass. at 158, 385 N.E.2d at 509***; the “expenditure of public monies by public officials,” ***Attorney General v. Assistant Comm’r of Real Property Dep’t, 380 Mass. at 626, 404 N.E.2d at 1256 (1980)***; and “what its public servants are paid”, See ***Hastings, 374 Mass. at 818, 375 N.E.2d at 304***.
- Applying this standard forbids Malden from withholding or redacting any of the responsive records.
- The City has treated recent public records requests from Mr. Zeiberg differently than the City is treating OpenCommonwealth. (See Exhibit 2)
    - This request seeks the emails regarding a very volatile public debate currently unfolding in Malden, a resolve regarding Israel and Gaza.
    - The responsive record set was provided to Mr. Zeiberg, ***without objection, without a fee petition, with a request for additional time, without a single charge, without a single redaction and without a single responsive records being withheld.***
    - The responsive records set ***contained over 20,646 responsive records.*** (See Exhibit 3)
    - The responsive records set was delivered to Mr. Zeiberg **within 10 business days.**
    - The responsive records set contains the ***personal email address of thousands of private individuals***, not one claim of exemption from the City.
    - Under public records law, the City is barred from treating any public records requestor differently than another.
  - The City acknowledges that it has public records which it has no ability to control, on Mr. Zeiberg’s private email, in violation of Public Records Data Retention Law.
  - The City appears to claim that liquor license applications are somehow subject to Exemption C, which they clearly are not.

The City cannot make any valid claim for Exemption C, and as such cannot legally charge for segregation or redaction.

singularly

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**From:** Alicia McNeil <[amcneil@CITYOFMALDEN.ORG](mailto:amcneil@CITYOFMALDEN.ORG)>

**Date:** Tuesday, July 9, 2024 at 10:51 AM

**To:** [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us) <[pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)>

**Cc:** Commonwealth Transparency <[info@opencommonwealth.org](mailto:info@opencommonwealth.org)>, Public Records <[publicrecords@CITYOFMALDEN.ORG](mailto:publicrecords@CITYOFMALDEN.ORG)>, Carol Ann Desiderio <[CDesiderio@CITYOFMALDEN.ORG](mailto:CDesiderio@CITYOFMALDEN.ORG)>

**Subject:** Open Commonwealth - Fee and Time Petition - FOIA - 2024-0336

Good day Supervisor-

See attached Petition for additional time and for Fees.

Thank you.

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