

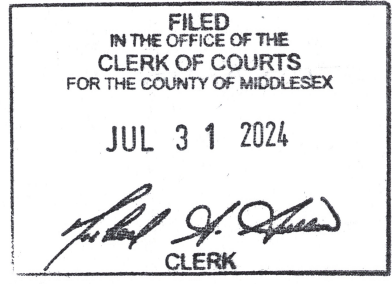
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR CIVIL COURT DEPARTMENT

_____)
)
 OpenCommonwealth (Bruce Friedman, D.B.A.)
 OpenCommonwealth.org),)
 Plaintiff,)
)
 v.)
)
 Maria Luise, Ronald Hogan and Deborah Burke,)
 as Individuals and The Malden)
 Community Fund, Inc.)
 Defendants,)
 _____)

CIVIL ACTION NO. 24CV2011



INTRODUCTION

Plaintiff media company, OpenCommonwealth.org of Malden, MA (“Plaintiff”) sues to obtain public records requested under the General Laws of Massachusetts (“G.L.”) at Chapter. 66, the Commonwealth’s Public Records Law and seeks an order directing The Malden Community Fund, Inc., (“MCFI”) and its board of directors and officers, Maria Luise, Director and President, Ronald Hogan, Director and Clerk, and Deborah Burke, Director and Treasurer (“Defendants”) to produce the properly requested public records, and award of reasonable attorney’s fees and costs, an injunctive Order preventing similar evasive behavior, and an award of punitive damages.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this dispute pursuant to the provisions of G. L. c. 66 § 10A(c).
2. Venue is proper under G. L. c. 66 § 10A(c).

PARTIES

3. Plaintiff OpenCommonwealth is a media organization, publishing news, and publishing public sought from across the Commonwealth. Bruce Friedman is an individual who

resides in Malden, Massachusetts who is responsible for the day-to-day operations of OpenCommonwealth and singularly funds the entire organization.

4. Defendant MCFI is a corporation, registered with the Secretary of Massachusetts, claiming to be a charitable organization in its articles of incorporation (Exhibit 'A') with a principal place of business at 110 Pleasant Street in Malden, Massachusetts.
5. Individual Defendants Luise, Hogan and Burke are the sole directors of MCFI, serve in its only corporate roles, President, Clerk and Treasurer respectively and are all also full-time employees of the City of Malden ("City"), and all directly report to the Mayor of Malden, Mr. Gary Christenson.

ALLEGATIONS

6. The MCFI scheme was a plan hatched within the Mayor's office by the individual Defendant's and others, including the Mayor, and the City Controller, Charles Ranaghan.
7. The MCFI Scheme was setup to absorb, launder and then distribute public monies received by the City into a private corporation where policies of the Commonwealth like the Anti-Aid amendment to the constitution, and where the proper appropriation of public monies under the City Charter requires appropriation includes the City Council could be skirted and the Individual Defendants who all work under the direct supervision of the Mayor can use these laundered funds without oversight.
8. The MCFI scheme was created to avoid public scrutiny and oversight through Open Meeting Law and the Commonwealth's Public Records laws.

FACTS

9. MCFI has received its only funding from public monies. These monies come from the Encore Casino in Everett, MA ("Encore"), and under an agreement (Exhibit 'B') whereby Encore pays the City over \$1,000,000.00 annually and \$100,000.00 is to be directed to the "Malden Community Fund" (Exhibit B, 6.-6.2.B).

10. MCFI was setup and is managed in its entirety on City equipment, computers, network and security infrastructure and even their physical location and address.
11. MCFI's records were created on and are managed and maintained on the City's public infrastructure.
12. MCFI's work is and was performed by City personnel and using City time.
13. MCFI was created to perform governmental functions, that of distributing public funds under its contract with Encore.
14. MCFI is wholly controlled by City officials.
15. MCFI is a public entity, subject to Massachusetts Public Records Law.
16. OpenCommonwealth.org is a community-based news outlet and public transparency advocate, started, wholly funded and supported exclusively by the Plaintiff.
17. The records requested in Plaintiff's Requests are public records as defined in Chapter 66.
18. The records requested are not subject to exemption(s) articulated in Chapter 66.
19. Defendants failed to properly respond to Plaintiffs proper and correct originally filed May 29, 2024 (Exhibit 'C').
20. Defendants failed to properly respond to Plaintiffs proper and correct Public Records Request ("PRR") originally filed June 12, 2024 (Exhibit 'F').
21. Defendants were Ordered by the Secretary of Public Records ("SPR") to properly respond to the June 13, 2024, PRR within 10 business days on July 15, 2024.
22. Defendants have failed to provide a single responsive record and has failed to abide the July 15, 2024, SPR decision for the June 13, 2024, PRR.
23. Defendants have not produced a single responsive public record to the Plaintiff, ever.
24. Defendants continue to refuse and fail to comply with orders issued by the Supervisor of Records and otherwise continues to ignore the requests from Plaintiff and the Supervisor of Records.
25. By simply ignoring the Plaintiff's Requests and the Supervisory of Records, the Defendants "did not act in good faith" as that phrase is defined in G.L. c. 66, § 10A(d)(4).
26. Plaintiff is entitled to attorney fees, costs, and punitive damages.

The Public Records Law

27. Pursuant to G. L. c. 66 § 10, a records access officer “shall . . . permit inspection or furnish a copy of any public record . . . not later than 10 business days following the receipt of the request.”
28. Business days are “Monday through Friday,” not including “Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.” 950 C.M.R. 32.02.
29. If the RAO “does not intend to permit inspection or furnish a copy of a requested record . . . [it] shall inform the requestor in writing not less than 10 business days after the initial receipt of the request for public records.” G. L. c. 66 § 10(b).
30. If the RAO “does not intend to permit inspection or furnish a copy of a requested record,” its response must provide certain information to the requestor. G. L. c. 66 § 10(b).
31. The response must identify the records or categories of records that the “municipality intends to withhold” and “the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based” G. L. c. 66 § 10(b)(iv).
32. The response must identify any records the municipality does intend to produce “and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens” the municipality such that it “requires additional time to produce the public records sought.” G. L. c. 66 § 10(b)(v).
33. The response must “identify a reasonable timeframe in which . . . the municipality shall produce the public records sought,” which timeframe must not exceed 25 business days. G. L. c. 66 § 10(b)(vi).
34. The response must “suggest a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably.” G. L. c. 66 § 10(b)(vii).
35. The response must “include an itemized, good faith estimate of any fees that may be charged to produce the records.” G. L. c. 66 § 10(b)(viii).
36. “If the magnitude or difficulty of a request, or the receipt of multiple requests from the same requestor, unduly burdens the other responsibilities” of the municipality such that it “is unable to complete the request within the” required time, “a records access officer

- may, as soon as practical and within 20 business days after initial receipt of the request, or within 10 business days after receipt of a determination by the supervisor of public records that the requested record constitutes a public record, petition the supervisor of records for an extension of the time for the agency or municipality to furnish copies of the requested record, or any portion of the requested record, that the agency or municipality has within its possession, custody or control and intends to furnish.” G. L. c. 66 § 10(c).
37. “Upon a showing of good cause, the supervisor of records may grant a single extension to an agency not to exceed 20 business” G. L. c. 66 § 10(c).
38. “If the supervisor of records determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the supervisor of records may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. The supervisor of records shall issue a written decision regarding a petition submitted by a records access officer under this subsection within 5 business days following receipt of the petition.” G. L. c. 66 § 10(c).
39. A municipality may charge the requestor a “reasonable fee” to produce the requested records, which “shall not exceed the actual cost of reproducing the record.” G. L. c. 66 § 10(d).
40. If production of the requested record requires more than two hours of “employee time to search for compile, segregate, redact or reproduce a record requested,” then “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 perform such task. That hourly rate shall not exceed \$25 per hour. G. L. c. 66 § 10(d)(iii).
41. No fee shall be charged for production of requested records “unless the records access officer responded to the requestor within 10 business days” as required by statute. G. L. c. 66 § 10(e).
42. Pursuant to G.L. c. 66 § 10A(a), if an agency “fails to comply with a requirement of section 10 or issues a response the requestor believes is in violation of section 10, the

person who submitted the initial request for public records may petition the supervisor of records for a determination as to whether a violation has occurred.”

43. The supervisor of records “shall issue a written determination” within ten business days of any such petition. If a “violation has occurred,” then “the supervisor of records shall order timely and appropriate relief.” G.L. c. 66 § 10A(a).
44. If a “municipality refuses or fails to comply with an order issued by the supervisor of records,” then “a requestor may initiate a civil action to enforce the [statutory] requirements.” G.L. c. 66 § 10A(c).

The May 29, 2024, Request

45. On May 29, 2024, OpenCommonwealth.org filed a proper, complete, tailored and specific PRR to all three individual Defendants of Defendant MCFI, Ms. Luise, Mr. Hogan and Ms. Burke (Exhibit ‘C’). Defendant Luise was emailed the request at the non-city email address provided in the articles of incorporation (Exhibit ‘A’) and the remainder of individual Defendants were emailed at their City email addresses.
46. Mr. Friedman’s request was not designed to harass or intimidate.
47. A true and accurate copy of the email is attached hereto as Exhibit C.
48. On June 10, 2024, the City RAO, Ms. Stephanie Burke responded to the request (Exhibits ‘D’ and ‘E’). In this response, the City claims “Please be advised the entity in question, “Malden Community Fund”, is a non profit corporate entity that is not under the control of the City of Malden.”
49. A true and accurate copy of the City’s response is attached hereto as Exhibit D and Exhibit E.
50. On June 10, 2024, OpenCommonwealth appealed the response to the Supervisor of Public Records (“SPR”) (Exhibit ‘G’). OpenCommonwealth specified the Defendants and NOT the City as the public body whom the records were sought from.
51. A true and accurate copy of the request for appeal is attached hereto as Exhibit G.
52. The SPR opened SPR 24-1754 as a result (Exhibit ‘H’). This appeal was directed to the Defendants.
53. A true and accurate copy of the appeal is attached hereto as Exhibit H.

54. On June 10, 2024, the President and Director, the Individual Defendant, Ms. Luise (who is a licensed member of the Massachusetts Bar, BBO# 557353) responded to the SPR in her official capacity as the “Special Assistant to Mayor Gary Christenson, City of Malden – Office of the Mayor” (Exhibit ‘I’) where she makes the following claims:
 - a. “[an] organization that is not a public entity (The Malden Community Fund).”
 - b. “It is our position that the records of this organization are not subject to public records laws.”
55. A true and accurate copy of Defendant Luise’s response is attached hereto as Exhibit I.
56. On June 11, 2024, the SPR modified the appeal 24-1754 to be directed to the City instead of to the defendants (Exhibit ‘J’), likely as a result of communications with the Defendants and the City.
57. A true and accurate copy of the revised appeal is attached hereto as Exhibit J.
58. On June 26, 2024, the SPR made findings and issued an Order in her determination of 24-1754 (Exhibit ‘K’). In her findings and Order, she states that the City provided all the records responsive to the request and has indicated same to her through assertions in writing and verbally; “...the City has provided records in its possession, custody, or control that are responsive to the request, I find the City properly responded to this PRR. Further, based upon a telephone conference between a staff attorney of the Public Records Division and a representative of the City, the City confirmed that all responsive records have been provided.”
59. On July 3, 2024, another unaffiliated media company, Malden News Network (“MNN”) received responsive documents to a different PRR from the City which are and were responsive to OpenCommonwealth’s May 29, 2024, PRR which were withheld. (Exhibit ‘L’)
60. On July 3, 2024, OpenCommonwealth requested that the SPR reconsider her June 26, 2024, findings, Order and determination based in part on the documents released to MNN and in part on the information within those requests that prove that the City’s systems, employees and infrastructure was and is utilized to create, manage and maintain the records if the Defendants and thus are public records of the City (Exhibit ‘M’)
61. A true and accurate copy of the request for reconsideration is attached hereto as Exhibit M.

62. On July 5, the SPR agreed to reconsider 24-1754 (Exhibit 'N').
63. On July 26, 2024, the SPR reconsidered her June 26, 2024, determination and found and Ordered that the City must provide all responsive records (Exhibit 'O').
64. A true and accurate copy of the reconsideration is attached hereto as Exhibit O.
65. As of the date of this filing, the City has failed to respond to the Order of the SPR's reconsideration in 24-1754.

The June 12, 2024, Request

66. On June 12, 2024, OpenCommonwealth.org filed a proper, complete, tailored and specific PRR on the individual Defendant Ms. Luise, and on the Defendant MCFI (Exhibit 'F'). Defendant Luise was emailed the request at the non-city email address provided in the articles of incorporation (Exhibit 'A').
67. OpenCommonwealth.org filed a proper, complete, tailored and specific PRR on the Defendants.
68. Mr. Friedman's request was not designed to harass or intimidate.
69. A true and accurate copy of the PRR is attached hereto as Exhibit F.
70. The Defendants have failed to respond to the request (Exhibit 'F') whatsoever.
71. On June 27, 2024, OpenCommonwealth appealed the non-response of the Defendants to the SPR (Exhibit 'P').
72. A true and accurate copy of the request for appeal is attached hereto as Exhibit P.
73. The SPR opened SPR 24-1897 as a result (Exhibit 'Q'). This appeal was directed to the Defendants, not the City.
74. A true and accurate copy of the appeal is attached hereto as Exhibit Q.
75. On July 15 the SPR found and Ordered in her determination of 24-1897 (Exhibit 'R'), the following: "I understand that the Committee intends to provide a response. Accordingly, said response must be provided in a manner consistent with the Public Records Law and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us. If issues remain unresolved, the requestor may appeal the

substantive nature of the Committee's response within ninety days. See 950 C.M.R. 32.08(1)."

76. A true and accurate copy of the determination is attached hereto as Exhibit R.
77. As of the time of this filing, the Defendants have failed to respond to OpenCommonwealth's PRR and to the SPR's July 15, 2024, Orders.

COUNT I

The May 29th, 2024, Request
G. L. c. 66 § 10A

78. OpenCommonwealth repeats, realleges, and incorporates herein the allegations contained in Paragraphs 1 through 79 of this Verified Complaint as if each were set forth here and in their entirety.
79. As to Public Record Request of *May 29th, 2024*, the individual Defendants and the Defendant MCFI have and continue to fail to produce the requested public records, in violation of G.L c. 66 §§ 10 and 10A.
80. As to Public Record Request of *May 29th, 2024*, the individual Defendants and the Defendant MCFI have and continue to fail to properly respond to an order of the Supervisor of Records, in violation of G.L c. 66 §§ 10 and 10A.
81. The failure of individual Defendants and the Defendant MCFI to produce public records or otherwise respond was not reasonably in reliance on any published opinion of an appellate court or the attorney general. OpenCommonwealth's request was not designed to harass or intimidate, and it was not made for any commercial purpose.
82. The individual Defendants and the Defendant MCFI did not act in good faith in withholding and failing to furnish the requested public records and response.

COUNT II

The June 12th, 2024, Request
G. L. c. 66 § 10A

83. OpenCommonwealth repeats, realleges, and incorporates herein the allegations contained in Paragraphs 1 through 79 of this Verified Complaint as if each were set forth here and in their entirety.

84. As to Public Record Request of *June 12th, 2024*, the individual Defendants and the Defendant MCFI have and continue to fail to produce the requested public records, in violation of G.L c. 66 §§ 10 and 10A.
85. As to Public Record Request of *June 12th, 2024*, the individual Defendants and the Defendant MCFI have and continue to fail to properly respond to an order of the Supervisor of Records, in violation of G.L c. 66 §§ 10 and 10A.
86. The failure of individual Defendants and the Defendant MCFI to produce public records or otherwise respond was not reasonably in reliance on any published opinion of an appellate court or the attorney general. OpenCommonwealth's request was not designed to harass or intimidate, and it was not made for any commercial purpose.
87. The individual Defendants and the Defendant MCFI did not act in good faith in withholding and failing to furnish the requested public records and response.

COUNT III

Declaratory Judgment

G. L. c. 231A 152.

88. OpenCommonwealth repeats, realleges, and incorporates herein the allegations contained in Paragraphs 1 through 79 of this Complaint as if each were set forth here and in their entirety.
89. There is an actual controversy between OpenCommonwealth and individual Defendants and the Defendant MCFI regarding their failure to produce the requested public records.
90. Pursuant to G.L.231A and the public records statute, OpenCommonwealth is entitled to declarations that the records he requested are public records which should have been produced, and that individual Defendants and the Defendant MCFI have violated the public records statute by failing to timely produce the requested records.

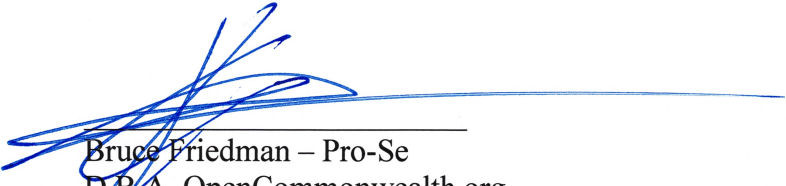
WHEREFORE, Plaintiff respectfully requests that the Court award the following relief:

1. Issue a declaratory judgment that the individual Defendants and the Defendant MCFI have violated the public records law by failing to produce the requested public records.

2. Issue an order requiring the individual Defendants and the Defendant MCFI to produce the requested public records and abide the Supervisor's orders without charge to the Plaintiff and without delay.
3. Enjoin the individual Defendants and the Defendant MCFI from further violations of G.L c. 66 §§ 10 and 10A.
4. Award to OpenCommonwealth reasonable attorneys' fees and other litigation costs incurred in seeking these records, and waive all fees assessed by individual Defendants and the Defendant MCFI to produce any of the requested public records.
5. Order the individual Defendants and the Defendant MCFI to pay punitive damages; and;
6. Grant such other relief as is just and equitable.

Respectfully Submitted

July 30th, 2024



Bruce Friedman – Pro-Se
D.B.A. OpenCommonwealth.org
8 Marvin Street
Malden, MA. 02148
(617) 952-3183
info@opencommonwealth.org

VERIFICATION

I, Bruce Friedman, do hereby declare that I have read the above Verified Complaint and attest to the truthfulness and accuracy of the foregoing.

Signed this 30th day of July 2024, under the pains and penalties of perjury.



Bruce Friedman Pro-Se