



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Manza Arthur  
Supervisor of Records

August 30, 2024  
**SPR24/2322**

Carol Ann Desiderio  
City Clerk  
City of Malden  
215 Pleasant Street  
Malden, MA 02148

Dear Ms. Desiderio:

I have received the petition of Commonwealth Transparency (“requestor”) appealing the response of the City of Malden (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On July 9, 2024, the requestor sought “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 [a named individual].”

***Prior Appeal***

This request was the subject of a prior appeal. See SPR24/2100 Determination of the Supervisor of Records (August 7, 2024). In my August 7<sup>th</sup> determination, I found that it was unclear if any of the personal email addresses redacted under Exemption (c) of the Public Records Law were used for City business. Additionally, I found that the City must clarify if additional records exist.

The City responded on August 15, 2024, providing redacted records. Unsatisfied with the City’s response, the requestor petitioned this office and this appeal, SPR24/2322, was opened as a result. While this appeal was pending, the City provided a supplemental response on August 20, 2024.

***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or

municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### ***The City's August 15<sup>th</sup> and August 20<sup>th</sup> Responses***

In its August 15, 2024 response, the City stated, “[t]o clarify, the responsive records begin prior to 1-2-2019... and all responsive records have been provided. Additionally, the only email addresses which were redacted from the responsive records belong to students within the District or members of the public – none were used for City business. Malden has not received permission from any of these individuals to release their private email addresses and has redacted personal email addresses for the reasons contained within its original response.”

In its August 20, 2024 response, the City stated, “[a]s further clarification, the request seeks an extract of email subject line information in spreadsheet format. Malden can only produce such an extract for emails within its own internal email system and has done so in its initial response. It cannot produce such an extract for emails outside of its internal email system. Neither Malden nor [a named individual] have failed to produce responsive records – because the requested extract is impossible for emails outside of Malden’s internal email domain, all responsive records have been provided.”

### ***Current Appeal***

In the appeal petition, the requestor states the following:

Malden has now indicated that they have provided all such records that exist under their control and in their custody. Because [a named individual] has created public records on his private GMAIL account and failed to provide any of these public records in his private possession to Malden, a public records request seeking public records related to his work on the Malden Licensing Committee (Liquor licensing) does not produce work of that public body.

OpenCommonwealth seeks Orders and findings that Malden failed to secure, maintain and manage public records in accord with their responsibilities, and in accord with the law. We ask the SPR to resolve this problem by requiring [a

named individual] and all other Malden officials who used private accounts to return these public records to Malden, and provide oath that they have done so forthwith.

G. L. c. 66, § 10 (a) requires, “(a) A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request, provided that: (i) the request reasonably describes the public record sought; (ii) the public record is within the possession, custody or control of the agency or municipality that the records access officer serves.”

Also, please see G. L. c. 66, § 13 which states as follows:

Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

G. L. c. 66, § 13.

Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county or municipality to which the records originally belonged; provided, however, that the custodian of public records may enter into a contract for the storage of records containing public record information, but no contract for the storage of public records shall be entered into if the contract prevents or unduly restricts a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records not directly in the custodian’s possession shall be considered in the custody of the custodian if subject to a contract for the storage of public records that is permitted by this section. If the custodian does not have custody of public records, the custodian shall demand delivery from any person unlawfully having possession of the records, and the records shall immediately be delivered by such person to the custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of not more than \$20.

G. L. c. 66, § 17.

Consequently, the City must clarify whether additional records exist from [a named individual] who appears to have created public records on a private Gmail account.

***Conclusion***

Accordingly, the City is ordered to provide the requestor with a response to the request, provided in a manner consistent with this order, 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](mailto:pre@sec.state.ma.us). The requestor may appeal the substantive nature of the City's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is written in a cursive, flowing style.

Manza Arthur  
Supervisor of Records

cc: Commonwealth Transparency