

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 24CV3069

City of Malden,

Plaintiff,

v.

MANZA ARTHUR, Supervisor of Records
of the Public Records Division of the Office of
William Francis Galvin, Secretary of the
Commonwealth, WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth and
OPENCOMMONWEALTH (BRUCE
FRIEDMAN D/B/A
OPEN COMMONWEALTH.ORG),

Defendants.

RECEIVED

11/21/24

tc

**VERIFIED COMPLAINT FOR JUDICIAL REVIEW AND REQUEST FOR STAY
PURSUANT TO G.L. c. 30A, §14, AND FOR CERTIORARI REVIEW AND
INJUNCTION PURSUANT TO G.L. c. 249, § 4**

INTRODUCTION

1. Plaintiff City of Malden ("Malden") seeks relief from several determinations by the Supervisor of Records which arbitrarily denied harassment petitions submitted by Malden concerning non-stop frivolous public records requests from Defendant OpenCommonwealth. Relief from the Court is necessary to prevent substantial injustice and prejudice to Malden.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this dispute pursuant to the provisions of G. L. c. 30A, § 14; G. L. c. 249, § 4 and G.L. c. 231A.

3. Venue is proper under G. L. c. 30A, § 14(1).

PARTIES

4. Plaintiff Malden is a municipality organized and operating under the laws of the Commonwealth of Massachusetts with a principal place of business located at 215 Pleasant Street, Malden, MA 02148.
5. Defendant William Francis Galvin is the Secretary of the Commonwealth of Massachusetts (the "Secretary"). The Secretary is sued in his official capacity as Secretary of the Commonwealth. His usual place of employment is One Ashburton Place, 17th Floor, Boston, Massachusetts 02108.
6. Defendant Manza Arthur is the Supervisor of Records of the Public Records Division (the "Supervisor"). The Public Records Division is a division of the Office of the Secretary that is legislatively assigned the duty to adjudicate administrative appeals under the Massachusetts Public Records Law, G.L. c. 66 § 10A. The Supervisor is sued in his official capacity as Supervisor of Records. His usual place of employment is One Ashburton Place, 17th Floor, Boston, Massachusetts 02108.
7. Upon information and belief, Defendant OpenCommonwealth is a purported organization operated by Bruce Friedman doing business in the Commonwealth of Massachusetts, in Middlesex County, Malden, Massachusetts. Bruce Friedman is an individual with a residential address of 8 Marvin Street, Malden, Massachusetts 02148.

FACTS

Public Records Law

8. The Massachusetts Public Records Law provides, in relevant part:

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.

G.L. c. 66, § 10(c).

9. The Massachusetts Public Records Law Regulations provide:

[I]f, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimate 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 may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought.

950 C.M.R. 32.06(4)(f).

Background of Harassment

10. Mr. Friedman initiated litigation at the Bureau of Special Education Appeals (“BSEA”) against Malden Public Schools in October 2019.
11. Since then, Mr. Friedman, using his personal email address or the email address of several purported organizations created by him, including OpenCommonwealth, OpenMalden, and, upon information and belief, Public Schools Data Exchanger, among others, has submitted over three hundred public records requests to Malden.
12. Mr. Friedman and OpenCommonwealth’s harassment of Malden is already the subject of current and active litigation in Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, Docket No. 2181CV01458 and City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin,

Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A
OpenCommonwealth.Org, Docket No. 2481CV2456.

13. Mr. Friedman harassed a former Malden employee by sending a personal investigator he had hired to the home of the former Malden employee. A copy of the former Malden employee's email correspondence to Malden's counsel alerting them of the private investigator, as well as correspondence from Malden's counsel to Mr. Friedman's former counsel regarding the private investigator, is attached as Exhibit A.
14. Mr. Friedman has also targeted several other Malden officials through his public records requests, including, but not limited to, Malden Public Schools Director of Finance and Operations Toni Mertz and former Malden Public Schools Superintendent Ligia Noriega-Murphy.
15. Mr. Friedman submitted seventeen (17) separate public records requests to Malden concerning Ms. Mertz from April 8, 2024 to August 9, 2024.
16. Upon information and belief, Mr. Friedman also submitted over seventy (70) separate public records requests to over fifty-five (55) municipalities other than Malden concerning Ms. Mertz.
17. Additionally, Mr. Friedman published eighteen (18) separate blog posts on OpenCommonwealth's website attacking Ms. Mertz without any basis from April 6, 2024 to June 25, 2024. Screenshots of the list of the 18 attack articles are attached as Exhibit B.
18. Mr. Friedman publicly posted records containing former Superintendent Noriega-Murphy's home address and social security number in 2022.
19. After Malden's counsel requested to Mr. Friedman's counsel that he take down the records with former Superintendent Noriega-Murphy's home address and social security number,

Mr. Friedman did so. A copy of email correspondence by Mr. Friedman's counsel confirming the removal of the records is attached as Exhibit C.

20. Malden's counsel then provided Mr. Friedman's wife with a redacted version of the same records, which removed former Superintendent Noriega-Murphy's home address and social security number, and requested destruction of the unredacted records. A copy of the email correspondence by Malden's counsel transmitting the redacted records to Ms. Friedman is attached as Exhibit D.

21. On May 1, 2024, despite his possession of the redacted records provided by Malden, Mr. Friedman again posted the unredacted records containing former Superintendent Noriega-Murphy's home address and social security number to OpenCommonwealth's website in an intentional attack against the former Superintendent, and has yet to take the records down.

22. From January 16, 2024 until March 8, 2024, Bruce Friedman and OpenCommonwealth filed twenty-two (22) Open Meeting Law Complaints against the Malden School Committee. A copy of the Massachusetts Office of the Attorney General's November 1, 2024 determination on seventeen (17) of said Complaints is attached as Exhibit E.

23. From January 1, 2024 to September 4, 2024, OpenCommonwealth alone submitted 123 separate public records requests, often containing multiple subparts, to Malden.

24. Malden responded to all 123 public records requests and submitted 35 separate fee petitions to the Supervisor. A copy of the Supervisor's tracking information for Malden's fee petitions in 2024 is attached as Exhibit F.¹

¹ OpenCommonwealth sometimes refers to itself as "Commonwealth Transparency." Accordingly, the Supervisor refers to OpenCommonwealth as both "Open Commonwealth" and "Commonwealth Transparency" in its records.

25. Out of Malden's 123 responses, OpenCommonwealth appealed Malden's response on 52 separate occasions. A copy of the Supervisor's tracking information for appeals of Malden's responses in 2024 is attached as Exhibit G.
26. When the Supervisor approved one of Malden's 35 fee petitions, OpenCommonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. A copy of the Supervisor's tracking information for requests for reconsideration of Malden's approved fee petitions in 2024 is attached as Exhibit H.
27. When the Supervisor denied one of OpenCommonwealth's appeals to Malden's responses, OpenCommonwealth requested reconsideration of the denial on another 9 separate occasions. A copy of the Supervisor's tracking information for requests for reconsideration of denied appeals of Malden's responses in 2024 is attached as Exhibit I.

Malden's First Harassment Petition

28. Between September 4, 2024 and September 15, 2024, OpenCommonwealth submitted 26 new public records requests to Malden (the "First Harassment Petition Requests").
29. Malden responded to the First Harassment Petition Requests within ten business days with a response dated September 18, 2024 ("September 18 Response"). A copy of the response is attached as Exhibit J.²
30. Malden also submitted a Harassment, Fee, and Time Petition to the Supervisor on September 18, 2024 regarding the First Harassment Petition Requests (the "First Harassment Petition"). A copy of the First Harassment Petition is attached as Exhibit K.

² Malden's response is incorrectly dated May 22, 2024, but was sent to Open Commonwealth via email on September 18, 2024.

31. In a determination dated September 25, 2024, the Supervisor granted Malden's fee petition and time petition, but arbitrarily denied Malden's harassment petition. A copy of the determination in SPR24/2625 is attached as Exhibit L.
32. OpenCommonwealth submitted 10 separate appeals of the determination in SPR24/2625 regarding 10 of the 26 total First Harassment Petition Requests. A copy of the Supervisor's email acknowledging the appeals is attached as Exhibit M.
33. The Supervisor sought and received an extension of time of an extra 10 business days to issue a determination with respect to OpenCommonwealth's appeals "due to the large number of requests involved." A copy of the Supervisor's email request and acknowledgment of agreement is attached as Exhibit N.
34. Malden is not afforded the same opportunity for an extension to respond to the requests, even though it was required to respond to the same number of requests.
35. In SPR24/2781, the Supervisor instructed OpenCommonwealth that it could not appeal the determination in SPR24/2625 until it communicated with Malden about the First Harassment Petition Requests. A copy of the determination in SPR24/2781 is attached as Exhibit O.

Malden's Second Harassment Petition

36. Between September 23, 2024 and October 7, 2024 at 8:14 AM, Open Commonwealth submitted 14 public records requests to Malden (the "Second Harassment Petition Requests").
37. Malden responded to the Second Harassment Petition Requests within ten business days with a response dated October 7, 2024 ("October 7 Response"). A copy of the response is attached as Exhibit P.

38. Malden also submitted a Harassment, Fee, and Time Petition to the Supervisor on October 7, 2024 regarding the Second Harassment Petition Requests (the “Second Harassment Petition”). A copy of the Second Harassment Petition is attached as Exhibit Q.
39. In a determination dated October 15, 2024, the Supervisor granted Malden’s fee petition and time petition, but arbitrarily denied Malden’s harassment petition. A copy of the determination in SPR24/2777 is attached as Exhibit R.
40. OpenCommonwealth submitted 10 separate appeals of the determination in SPR24/2777 regarding 10 of the 14 total Second Harassment Petition Requests.
41. In SPR24/2832, the Supervisor instructed OpenCommonwealth that it could not appeal the determination in SPR24/2777 until it communicated with Malden about the Second Harassment Petition Requests. A copy of the determination in SPR24/2832 is attached as Exhibit S.

Malden’s Third Harassment Petition

42. After Malden prepared the October 7 Response and Second Harassment Petition, OpenCommonwealth submitted 2 additional public records requests to Malden on October 7 at 3:04 PM (“Third Harassment Petition Requests”).
43. Malden responded to the Third Harassment Petition Requests within ten business days with a response dated October 22, 2024 (“October 22 Response”). A copy of the response is attached as Exhibit T.
44. Malden also submitted a Harassment, Fee, and Time Petition to the Supervisor on October 22, 2024 regarding the Third Harassment Petition Requests (the “Third Harassment Petition”). A copy of the Third Harassment Petition is attached as Exhibit U.

45. In a determination dated October 28, 2024, the Supervisor granted Malden's fee petition and time petition, but arbitrarily denied Malden's harassment petition. A copy of the determination in SPR24/2901 is attached as Exhibit V.

The Harassing Nature of OpenCommonwealth's Requests

46. In total this year, OpenCommonwealth has submitted 165 public records requests, many of which have subparts, 92 appeals, and 18 requests for reconsideration to Malden.

47. Mr. Friedman has submitted additional public records requests to Malden through other purported organizations and email addresses this year as well.

48. This outrageous volume of public records requests, appeals, and requests for reconsideration generated by OpenCommonwealth, all of which require Malden's attention, review, and response, is designed to harass Malden, its officials, and its employees.

49. OpenCommonwealth continues to request some of the same information that was at issue in discovery disputes in prior litigation filed by Mr. Friedman or in current litigation in the Superior Court.

50. Many of OpenCommonwealth's requests, including the First, Second, and Third Harassment Petition Requests, are duplicative of each other.

51. OpenCommonwealth repeatedly and frivolously submits nearly identical requests, including the First, Second, and Third Harassment Petition Requests, despite knowing that Malden obtained an approved fee petition for the same type of information, with the sole purpose of forcing Malden to issue a new response and fee petition which it has never had any intention of paying.

52. For example, OpenCommonwealth repeatedly requests the same information for different Malden employees or officials, including in the First, Second, and Third Harassment Petition Requests, despite the issuance of an approved fee petition from the Supervisor which authorizes a fee for the same type of information regarding a different employee or official.
53. Likewise, OpenCommonwealth often requests the same information but changes the number of records requested, alternating between the latest 50, 75, or 100 responsive records, including in the First, Second, and Third Harassment Petition Requests, despite the presence of an approved fee petition or a pending fee petition before the Supervisor for those same records.
54. Open Commonwealth repeatedly informs the Supervisor of modified requests knowing that the Supervisor will close out a pending fee petition, even though the so-called 'modified' request requests the same information and necessitates a new response and fee petition from Malden.
55. OpenCommonwealth has paid a fee estimate from Malden on exactly three occasions this year, despite all of these requests.
56. Malden has expended countless hours, resources, and energy on responding to OpenCommonwealth and Mr. Friedman's public records requests at tremendous financial and opportunity cost.
57. OpenCommonwealth's requests subvert the Public Records Law, which imposes a standard of reasonableness on the conduct of records requesters.
58. The only purpose behind OpenCommonwealth's requests is to harass Malden, its officials, and its employees.

COUNT I – JUDICIAL REVIEW
PURSUANT TO G. L. c. 30A, § 14

59. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 49 of this Verified Complaint as if each were set forth here and in their entirety.

60. The Supervisor' Determinations with respect to the First, Second, and Third Harassment Petitions are:

- a. In violation of constitutional provisions;
- b. In excess of the statutory authority or jurisdiction of the Supervisor;
- c. Based upon an error of law;
- d. Made upon unlawful procedure;
- e. Unsupported by substantial evidence; and
- f. Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

61. The Supervisor's Determinations with respect to the First, Second, and Third Harassment Petitions exceed the Supervisor's statutory authority, are arbitrary or capricious, an abuse of discretion, and otherwise not in accordance with law and fundamental fairness.

62. It is therefore appropriate for the Court to enter an order, under G. L. c. 30A, § 14(3), staying the enforcement of the Supervisor's Determination with respect to the First, Second, and Third Harassment Petitions.

63. The Court should set aside the Supervisor's Determination with respect to the First, Second, and Third Harassment Petitions. Alternatively, the Court should modify the Supervisor's Determination to reflect that:

- a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and
- b. Malden is relieved of its obligation to provide copies of the records sought; and
- c. Malden is relieved of its obligation to respond to requests in the future from Mr. Friedman, OpenCommonwealth, or any other organization operated by Mr. Friedman.

COUNT II – CERTIORARI REVIEW
PURSUANT TO G. L. c. 249, § 4

64. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 54 of this Complaint as if each were set forth here and in their entirety.
65. The Public Records Appeal process before the Supervisor regarding the Original Response constitute a judicial or quasi-judicial proceeding.
66. If judicial review under G. L. c. 30A is not available to Malden, then Malden lacks reasonably adequate remedies to address the manifest injustice it is experiencing.
67. Malden has suffered a substantial injury or injustice arising from the proceedings before the Supervisor because it is being forced to respond to public records requests designed to harass Malden.
68. Certiorari review is appropriate to correct errors in the proceeding before the Supervisor which were not conducted in accordance with the course of common law.
69. The Court should set aside the Supervisor's Determination with respect to the First, Second, and Third Harassment Petitions. Alternatively, the Court should modify the Supervisor's Determination to reflect that:

- a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and
- b. Malden is relieved of its obligation to provide copies of the records sought; and
- c. Malden is relieved of its obligation to respond to requests in the future from Mr. Friedman, OpenCommonwealth, or any other organization operated by Mr. Friedman.

COUNT III – DECLARATORY JUDGMENT
PURSUANT TO M.G.L. c. 231A

70. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 60 of this Complaint as if each were set forth here and in its entirety.
71. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden.
72. The Supervisor's Determinations reflects a continuing dispute and actual controversy between the parties within the meaning of M.G.L. c.231A.
73. Malden seeks and is entitled to a binding declaration of right, duty, status and other legal relations within the meaning of M.G.L. c. 231A, § 1 in the manner herein described.
74. Malden respectfully requests that this Honorable Court declare that
- a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and
 - b. Malden is relieved of its obligation to provide copies of the records sought; and

- c. Malden is relieved of its obligation to respond to requests in the future from Mr. Friedman, OpenCommonwealth, or any other organization operated by Mr. Friedman.

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

1. Set aside the Supervisor's Determinations with respect to the First, Second, and Third Harassment Petitions;
2. Issue a stay, under G. L. c. 30A, § 14(3), of the production of any records by Malden in response to the First, Second, and Third Harassment Petitions or any other request by Mr. Friedman, OpenCommonwealth, or any other organization operated by Mr. Friedman;
3. Modify the Supervisor's Determination to reflect that
 - a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and
 - b. Malden is relieved of its obligation to provide copies of the records sought; and
 - c. Malden is relieved of its obligation to respond to requests in the future from Mr. Friedman, OpenCommonwealth, or any other organization operated by Mr. Friedman.
4. Grant such other relief as is just and equitable.

Respectfully submitted by

Plaintiff City of Malden,
By its Attorneys,

/s/ Felicia Vasudevan


Felicia Vasudevan, Esq., BBO #687463
James R. Donnelly, Esq., BBO #713025
Murphy, Hesse, Toomey & Lehane LLP
50 Braintree Hill Office Park, Suite 410
Braintree, MA 02184
Tel. No. (617) 479-5000
Fax. No. (617) 479-6469
fvasudevan@mhtl.com
jdonnelly@mhtl.com

Dated: November 21, 2024

VERIFICATION

I, Carol Ann T. Desiderio, Records Access Officer for the City of Malden, do hereby declare that I have read the above Verified Complaint and attest to the truthfulness and accuracy of the forgoing.

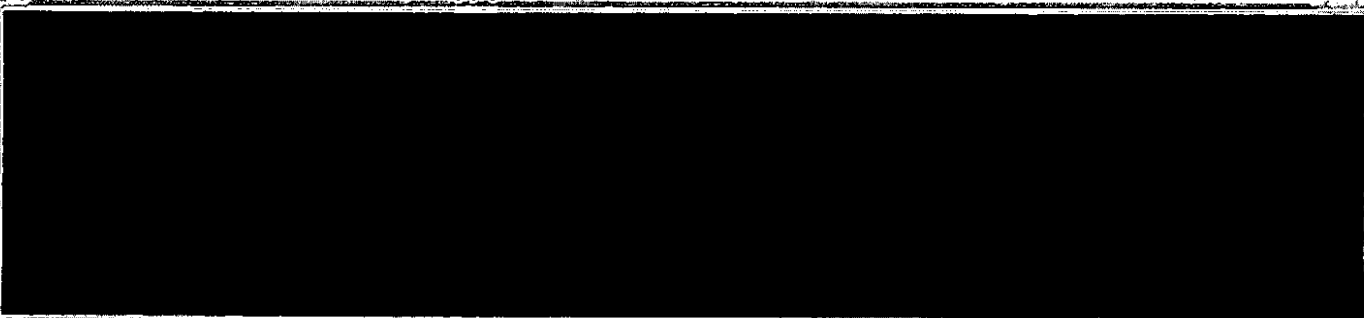
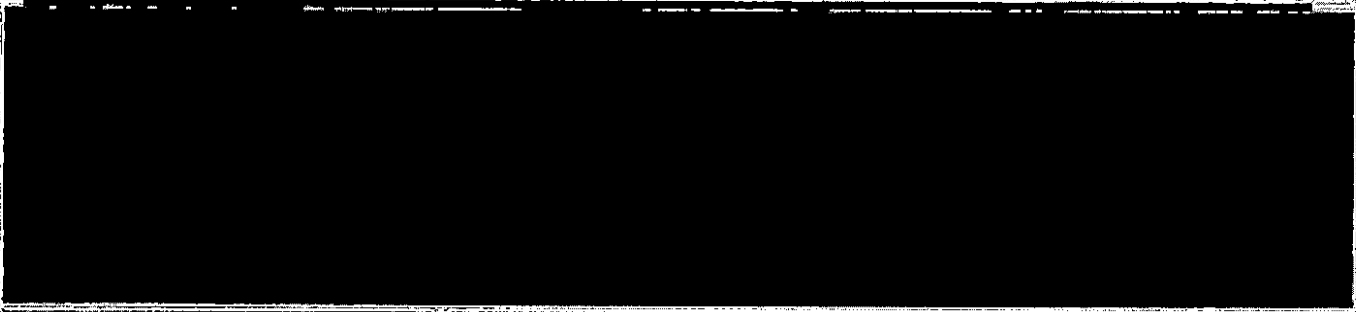
Signed this 15th day of November, 2024, under the pains and penalties of perjury.



Carol Ann T. Desiderio
Records Access Officer, City of Malden

Exhibit A

Madison Harris-Parks



From: Michael Wood <mwood@hatfieldps.net>
Sent: Thursday, September 16, 2021 2:52 PM
To: Alisia St. Florian <astflorian@mhtl.com>
Subject: Private Investigator.

*****WARNING: EXTERNAL*****

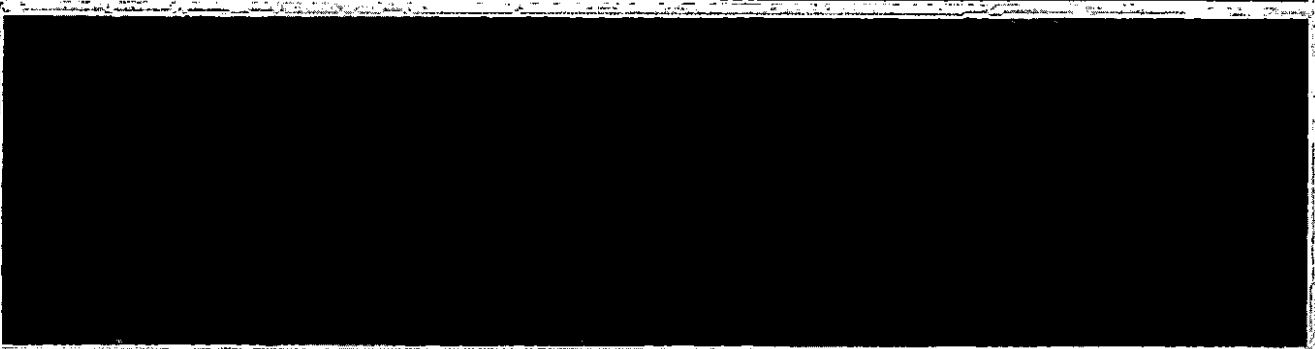
Hatfield Public Schools Office of the Superintendent

Hi,

A private investigator stopped by my house looking for me saying to my son it had something to do with Malden. Do you know what it's about?

Michael L. Wood
Interim Superintendent of Schools
Hatfield Public Schools
34 School Street
Hatfield, MA 01038
413-247-5641

Madison Harris-Parks



From: Felicia S. Vasudevan
Sent: Wednesday, September 29, 2021 8:35 PM
To: Kevin S. Freytag <kfreytag@mhtl.com>; Inga Bernstein <ibernstein@zalkindlaw.com>
Cc: Caroline Davis <cdavis@zalkindlaw.com>; Elena Jacob <ejacob@zalkindlaw.com>
Subject: RE: MPS v. Murphy, et al | limited record search

Hi Inga:

I hope that you are doing well. I am just following up on below as we still have not received a response.

Additionally, on Sunday night, Mr. Friedman sent a public records request to every school district in the state for our bills for a three year time frame. Along with the private investigator, who admitted to Mr. Wood that Mr. Friedman hired him, the targeted nature of Mr. Friedman's request furthers our belief that Mr. Friedman's public records requests to Malden are intended to harass. It appears that the recent request to every district in the state was intended to overwhelm our law firm during litigation as we will need to review the records sought to determine if they contain information protected by the attorney-client privilege.

Felicia

From: Kevin S. Freytag <kfreytag@mhtl.com>
Sent: Tuesday, September 21, 2021 10:17 PM
To: Inga Bernstein <ibernstein@zalkindlaw.com>; Felicia S. Vasudevan <fvasudevan@mhtl.com>
Cc: Caroline Davis <cdavis@zalkindlaw.com>; Elena Jacob <ejacob@zalkindlaw.com>
Subject: RE: MPS v. Murphy, et al | limited record search

Hi Inga,

Just wanted to follow up on my request in my last email.

Kevin S. Freytag, Esq.

MURPHY, HESSE, TOOMEY & LEHANE, LLP

Crown Colony Plaza | 300 Crown Colony Drive, Suite 410 | Quincy, MA 02169

Tel: (617) 479-5000 | Fax: (617) 479-6469

E-mail: kfreytag@mhtl.com | www.mhtl.com

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

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From: Kevin S. Freytag
Sent: Thursday, September 16, 2021 4:55 PM
To: 'Inga Bernstein' <ibernstein@zalkindlaw.com>; Felicia S. Vasudevan <fvasudevan@mhtl.com>
Cc: Caroline Davis <cdavis@zalkindlaw.com>; Elena Jacob <ejacob@zalkindlaw.com>
Subject: RE: MPS v. Murphy, et al | limited record search

Hello Inga,

Thank you for your email.

Also, today we learned that a private investigator showed up at Michael Wood's home and told his son that he needed to speak with Michael Woods regarding a Malden matter. Have you hired an investigator?

Kevin S. Freytag, Esq.
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Crown Colony Plaza | 300 Crown Colony Drive, Suite 410 | Quincy, MA 02169
Tel: (617) 479-5000 | Fax: (617) 479-6469
E-mail: kfreytag@mhtl.com | www.mhtl.com

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

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From: Inga Bernstein <ibernstein@zalkindlaw.com>
Sent: Tuesday, September 14, 2021 4:52 PM
To: Kevin S. Freytag <kfreytag@mhtl.com>; Felicia S. Vasudevan <fvasudevan@mhtl.com>
Cc: Caroline Davis <cdavis@zalkindlaw.com>; Elena Jacob <ejacob@zalkindlaw.com>
Subject: MPS v. Murphy, et al | limited record search

WARNING: EXTERNAL

[REDACTED]

Hi Kevin and Felicia,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you,

Inga

Inga S. Bernstein

(617) 742-6020

Partner

ibernstein@zalkindlaw.com

65A Atlantic Ave., Boston,
MA 02110

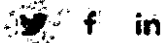



Exhibit B

 mertz

clear 

Relevance • Newest • Oldest

Filters 

Showing popular results

#PublicRecords Another 817 Antonietta "Toni" Mertz Emails, another \$120.00

publicrecords-another-817-antonietta-toni-mertz-emails-another-120-00

OpenCommonwealth wants to know why Toni Mertz has BOTH a Malden Public Schools email account and

Jun 25, 2024

Is it the responsibility of a Public School District to verify and validate the educational credentials of its own administration: (Antonietta ('Toni') Mertz)?

is-it-the-responsibility-of-a-public-school-district-to-verify-and-validate-the-educational-cred...

its own administration. Ms. Antonietta ('Toni') Mertz currently holds a position which has a minimum educational ... No-Masters-Degree-for-Antonietta-Toni-Mertz-1 Download

Jun 3, 2024

How far will the City of Malden go to prevent releasing Antonietta ('Toni') Mertz Emails? What are they hiding now?

how-far-will-the-city-of-malden-go-to-prevent-releasing-antonietta-toni-mertz-emails-what...

In fact, why does Ms. Mertz have a City of Malden email account to begin with? All of the other Assistant ... have Malden Public Schools email accounts, Ms. Mertz has BOTH...

Nov 28, 2024

Jun 3, 2024

How far will the City of Malden go to prevent releasing Antonietta ('Toni') Mertz Emails? What are they hiding now?

how-far-will-the-city-of-malden-go-to-prevent-releasing-antonietta-toni-mertz-emails-what...

In fact, why does Ms. Mertz have a City of Malden email account to begin with? All of the other Assistant ... have Malden Public Schools email accounts, Ms. Mertz has BOTH...

May 29, 2024

Salem Massachusetts releases Antonietta ('Toni') Mertz Emails.

salem-massachusetts-releases-antonietta-toni-mertz-emails

All of Salem's public records on Ms. Mertz can be found here:

Form	Check #	Amount	Due D
2016	000120	101.120	05/10/16
2016	000121	100.000	05/10/16
2016	000122	100.000	05/10/16
2016	000123	100.000	05/10/16
2016	000124	100.000	05/10/16
2016	000125	100.000	05/10/16
2016	000126	100.000	05/10/16
2016	000127	100.000	05/10/16
2016	000128	100.000	05/10/16
2016	000129	100.000	05/10/16
2016	000130	100.000	05/10/16
2016	000131	100.000	05/10/16
2016	000132	100.000	05/10/16
2016	000133	100.000	05/10/16
2016	000134	100.000	05/10/16
2016	000135	100.000	05/10/16
2016	000136	100.000	05/10/16
2016	000137	100.000	05/10/16
2016	000138	100.000	05/10/16
2016	000139	100.000	05/10/16
2016	000140	100.000	05/10/16

May 29, 2024

Arlington Releases Antonietta ('Toni') Mertz Records

arlington-releases-antonietta-toni-mertz-records

payments spanning 2016 well into 2024 today. Ms. Mertz made over \$100,000.00 in 2016-2019 from Arlington ... stopped, however the emails demonstrate that Ms. Mertz was working for Arlington at least into February

May 23, 2024

Never mind the truth.

never-mind-the-truth

shielding public records regarding Antonietta ('Toni') Mertz from OpenCommonwealth.

Thousands of you are receiving

including public records regarding Antonietta ('Toni') Mertz from OpenCommonwealth.
Thousands of you are receiving

May 9, 2024

Malden Releases Antonietta ('Toni') Mertz Contract...

malden-releases-antonietta-toni-mertz-contract

- "Toni Mertz shall serve as Finance Director / Business Manager and shall ...
OpenCommonwealth has been unable to verify that Ms. Mertz has met this qualification:

May 8, 2024

Does Antonietta ('Toni') Mertz possess the Minimum Required Masters Degree to be the Assistant Superintendent of Finance and Operations in Malden?

does-antonietta-toni-mertz-possess-the-minimum-required-masters-degree-to-be-the-assista...

These records contain the job description for Ms. Mertz current position which states the
following: ... Ms. Mertz was elevated to this position on May 3, 2021:

May 7, 2024

Antonietta ('Toni') Mertz ALSO worked for Burlington... \$33,670 for 2018-2020...

antonietta-toni-mertz-also-worked-for-burlington-33670-for-2018-2020

May 2, 2024

In Malden Public Schools, when you have Budget Problems...

Burlington... \$33,670 for 2018-2020...

~~antonieta-toni-mertz-also-worked-for-burlington-33670-for-2018-2020~~

May 2, 2024

In Malden Public Schools, when you have Budget Problems...

~~in-malden-public-schools-when-you-have-budget-problems~~

following schedule; officially from Antonietta ('Toni') Mertz::

May 1, 2024

Salem Public Schools Releases Antonietta ('Toni') Mertz documents.

~~salem-public-schools-releases-antonieta-toni-mertz-documents~~

Ms. Mertz emailed Salem Officials every day of the week except Saturdays and most emails were sent during

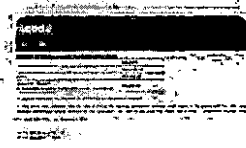
Apr 30, 2024

Mayor, would you please enlighten us? What exactly do you know about Antonietta ('Toni') Mertz?

~~mayor-would-you-please-enlighten-us-what-exactly-do-you-know-abou...~~

plethora of news regarding Antonietta ('Toni') Mertz, her outside employment arrangements during her

Apr 27, 2024



Account #	Check #	Amount	Date	
7428	1011000	741-339	P	31195
7428	1000100	740-011	P	31990
7428	1000100	740-011	P	34990
7428	1000100	740-011	P	35990
7428	1000100	740-011	P	36990
7428	1000100	740-011	P	37990
7428	1000100	740-011	P	38990
7428	1000100	740-011	P	39990
7428	1000100	740-011	P	40990
7428	1000100	740-011	P	41990
7428	1000100	740-011	P	42990
7428	1000100	740-011	P	43990
7428	1000100	740-011	P	44990
7428	1000100	740-011	P	45990
7428	1000100	740-011	P	46990
7428	1000100	740-011	P	47990
7428	1000100	740-011	P	48990
7428	1000100	740-011	P	49990
7428	1000100	740-011	P	50990
7428	1000100	740-011	P	51990
7428	1000100	740-011	P	52990
7428	1000100	740-011	P	53990
7428	1000100	740-011	P	54990
7428	1000100	740-011	P	55990
7428	1000100	740-011	P	56990
7428	1000100	740-011	P	57990
7428	1000100	740-011	P	58990
7428	1000100	740-011	P	59990
7428	1000100	740-011	P	60990
7428	1000100	740-011	P	61990
7428	1000100	740-011	P	62990
7428	1000100	740-011	P	63990
7428	1000100	740-011	P	64990
7428	1000100	740-011	P	65990
7428	1000100	740-011	P	66990
7428	1000100	740-011	P	67990
7428	1000100	740-011	P	68990
7428	1000100	740-011	P	69990
7428	1000100	740-011	P	70990
7428	1000100	740-011	P	71990
7428	1000100	740-011	P	72990
7428	1000100	740-011	P	73990
7428	1000100	740-011	P	74990
7428	1000100	740-011	P	75990
7428	1000100	740-011	P	76990
7428	1000100	740-011	P	77990
7428	1000100	740-011	P	78990
7428	1000100	740-011	P	79990
7428	1000100	740-011	P	80990
7428	1000100	740-011	P	81990
7428	1000100	740-011	P	82990
7428	1000100	740-011	P	83990
7428	1000100	740-011	P	84990
7428	1000100	740-011	P	85990
7428	1000100	740-011	P	86990
7428	1000100	740-011	P	87990
7428	1000100	740-011	P	88990
7428	1000100	740-011	P	89990
7428	1000100	740-011	P	90990
7428	1000100	740-011	P	91990
7428	1000100	740-011	P	92990
7428	1000100	740-011	P	93990
7428	1000100	740-011	P	94990
7428	1000100	740-011	P	95990
7428	1000100	740-011	P	96990
7428	1000100	740-011	P	97990
7428	1000100	740-011	P	98990
7428	1000100	740-011	P	99990
7428	1000100	740-011	P	100000



Mertz?

mayor-would-you-please-enlighten-us-what-exactly-do-you-know-abou...

plethora of news regarding Antonietta ('Toni') Mertz, her outside employment arrangements during her

Apr 27, 2024



Did Antonietta ('Toni') Mertz hire a family member to work at the Malden Public Schools? Were they qualified for the position? Did they report to her? OpenCommonwealth is working to find out...

did-antonietta-toni-mertz-hire-a-family-member-to-work-at-the-malden...

Apr 24, 2024

staff
lic.Schools
Aug 2019 · 2 years
ssachusetts, Unitec

Bedford Releases additional 690 records. Antonietta 'Toni' Mertz has worked there from at least January 2021 through at least April 4, 2024. More to come.

bedford-releases-additional-690-records-antonietta-toni-mertz-has-wor...

Apr 23, 2024

not possible
Malden Public Schools
2021 to 2024
Antonietta Mertz
Malden Public Schools
Malden Public Schools

Bedford Releases first set of Antonietta ('Toni') Mertz Documents...

bedford-releases-first-set-of-antonietta-toni-mertz-documents

Mertz-KVS-2021-2022-P2 Download ... Toni-Mertz-Terms-of-Employment-Contract

Showing popular results

Who Needs Antonietta Mertz (a.k.a. "Toni")?

who-needs-antonietta-mertz-a-k-a-toni

Who-Needs-Antonietta-Mertz-5 Download ... Who Needs Antonietta Mertz (a.k.a. "Toni")? ...

Ms. Mertz made \$173,692 in 2022 from Malden Public Schools. ... Ms. Mertz received pay

Apr 6, 2024

Toni Mertz - First District Public Records Response

toni-mertz-first-district-public-records-response

T-Mertz-Engagement-Letter-2021_1qBGE0abiN4RzQO=1_nU5TL-5-YO6xGV8

Apr 11, 2024

Did Antonietta ("Toni") Mertz work for Peabody Public Schools too? It looks like she may have or does.

did-antonietta-toni-mertz-work-for-peabody-public-schools-too-it-looks-like-she-may-have

commonwealth-transparency.response-to-mertz-request Download

Apr 16, 2024

Bedford Releases first set of Antonietta ("Toni") Mertz Documents...

bedford-releases-first-set-of-antonietta-toni-mertz-documents

Mertz-KVS-2021-2022-P2 Download ... Toni-Mertz-Terms-of-Employment-Contract

Download ... Mertz-FY2024-Munis Download ... Mertz-FY2023-Munis Download

Apr 23, 2024

Exhibit C

James Donnelly

From: Inga Bernstein <ibernstein@zalkindlaw.com>
Sent: Friday, September 23, 2022 11:16 AM
To: Kevin S. Freytag
Cc: Daisy Wang
Subject: Re: Public Records

*** WARNING: EXTERNAL ***

Hi Kevin,

I conveyed your request that the referenced records be taken down and they have been. Just to be clear, the records were posted as received from Malden.

Best,

Inga

Inga S. Bernstein
Partner

(617) 742-6020
ibernstein@zalkindlaw.com
65A Atlantic Ave., Boston, MA
02110



From: Kevin S. Freytag <kfreytag@mhtl.com>
Sent: Friday, September 23, 2022 9:18 AM
To: Inga Bernstein <ibernstein@zalkindlaw.com>
Subject: Public Records

Good morning Inga, I was just informed that portions of the records that were recently posted by the Friedmans on their website regarding the superintendent contain the superintendent's home address and Social Security number. I request that your clients please take those records down immediately. Malden will prepare versions of those records with that information redacted which can then be produced to the Friedmans.

Kevin S. Freytag, Esq.
kfreytag@mhtl.com
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Crown Colony Plaza
300 Crown Colony Drive
Quincy, MA 02169

Tel: (617) 479-5000

Fax: (617) 479-6469

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential and/or privileged information. If you are not the intended recipient, please notify Murphy, Hesse, Toomey & Lehane, LLP immediately by replying to the message or by contacting us at the phone number listed above. Please Delete this message and any attachments from your system. Thank you.

Exhibit D

11/20/24, 10:43 AM

Mail - mmarquetti@mhtl.com

Response to Public Records Request September 2, 2022

Mariem Marquetti

Thu 9/29/2022 11:11 AM

To: [REDACTED] <[REDACTED]>

1 attachment (4 MB)

Response to Public Records Request.pdf

Good Morning,

On behalf of the Malden Public Schools, please find attached the District's response regarding your Public Records Request dated September 2, 2022.

Sincerely,

Mariem Marquetti, Esq.

Murphy, Hesse, Toomey & Lehane, LLP

300 Crown Colony Drive, Suite 410

Quincy, MA 02169

mmarquetti@mhtl.com

Tel: (617) 479-5000 | Fax: (617) 479-6469

<https://www.mhtl.com/>

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

Mariem Marquetti, Esq.
mmarquetti@mhtl.com

September 29, 2022

VIA ELECTRONIC MAIL

Amy Friedman
8 Marvin Street
Malden, MA 02148
[REDACTED]

Re: Public Records Request received September 2, 2022

Dear Ms. Friedman:

This office represents the Malden Public Schools ("District"). On September 2, 2022, the District received the following public records request:

Please provide any and all educational credentials of Ligia Noriega-Murphy (the current Superintendent of Malden Public Schools) in the possession of, or under the control of the Malden Public Schools, including the staff, administration, superintendent, and/or any member of the School Committee, past or present. Please provide all responsive documents electronically to [REDACTED]

Response

The District responded to your public records request on September 19, 2022 producing responsive documents. The documents produced were not redacted by the District. Enclosed in this letter are the records responsive to your request. Please note that these records have been redacted pursuant to M.G.L. c. 4, § 7 ¶ 26(a) and M.G.L. c. 4, § 7 ¶ 26(c). Please dispose of any and all records protected from public disclosure under M.G.L. c. 4, § 7 ¶ 26(a) and M.G.L. c. 4, § 7 ¶ 26(c), including those records sent on September 19th in response to the above public records request.

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).

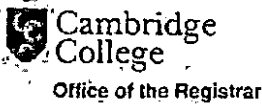


Public Records Request dated September 2, 2022
September 29, 2022
Page 2

Very truly yours,

/s/ Mariem Marquetti
Mariem Marquetti

Enclosures



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 SHOULD NOT BE USED FOR ANY PURPOSES
 WITHOUT THE OFFICIAL RECORDS OFFICE
 PAGE HOLD AT AN OFFICIAL VIEW

STUDENT ID NO.: [REDACTED]
 RECD OF: Ligia B. Noriega
 TO: Ligia B. Noriega

UNIV MASS BOSTON BA 1990
 BASIS OF ADMISSION
 DATE AND STATUS OF ENTRANCE: September 1991

OFFICIAL TRANSCRIPT
 ISSUED TO STUDENT

NUMBER	COURSE TITLE	GRADE	CREDITS	NUMBER	COURSE TITLE	GRADE	CREDITS
Division: Graduates							
Fall Semester 1: 1991-1992				Fall Semester 1: 1992-1993			
ED 523	TEACHING READING IN THE PRIMARY GRADES	CR	3.00	7P	TEACHING READING IN THE PRIMARY GRADES	CR	3.00
ED 527	DEVELOPMENTAL PSYCHOLOGY	CR	3.00				
GE 550	IMPACT EVALUATION STUDY	CR	3.00				
GE 551	TEACHER EDUCATION	CR	3.00				
GE 551	PROFESSIONAL SEMINAR: ISSUES IN LEARNING THEORY	CR	2.00				
			Term Totals:				12.00
			Career Totals:				141.00
			Term Totals:				9.00
			Career Totals:				9.00
			Division Career Totals:				141.00
Spring Semester 1: 1993-1994							
Degree Confirmed: Master of Education Major: Teaching Certification							
ED 507	EDUCATIONAL TESTING AND MEASUREMENT	CR	1.00				
ED 528	TEACHING READING IN THE ELEMENTARY SCHOOL	CR	3.00				
ED 610	CRITICAL THINKING SKILLS ACROSS THE CURRICULUM	CR	3.00				
GE 692	PROFESSIONAL SEMINAR: ISSUES IN PROFESSIONAL GROWTH AND DEVELOPMENT	CR	2.00				
			Term Totals:				9.00
			Career Totals:				18.00
Summer Semester 1: 1992-1993							
ED 517	ADAPTING MATERIALS FOR SPANISH SPEAKING STUDENTS	CR	1.00				
ED 528	TEACHING READING IN THE ELEMENTARY SCHOOL	CR	3.00				
ED 534	DEVELOPMENTAL PSYCHOLOGY	CR	3.00				
ED 533	INTEGRATING CURRICULAR METHODS	CR	3.00				
			Term Totals:				10.00
			Career Totals:				28.00
Fall Semester 1: 1992-1993							
GS 620	INDEPENDENT LEARNING PROJECT	CR	1.00				

Column: 2 of 2
 End of Transcript
 Date of Issue: 3/18/2003

Ligia B. Noriega
 REGISTRAR

NAME: NORTEGA, LIGIA B.

DEPT.	NUMBER	TERM	COURSE TITLE	CREDIT	GRADE	DEPT.	NUMBER	TERM	COURSE TITLE	CREDIT	GRADE
BOSTON NON-MATRICULATED RECORD											
SPRING 1991											
SPE G	621		COG & THEORY OF LRNG	3.0	B						
SUMMER 2003 *											
ADM G	621		CURR THRY-DEV & EVAL	3.0							
ADM G	622		CURR-STAT/TSS/TRENDS	3.0							
ADM G	646		LEADERSHIP DEVELOPMNT	3.0							
FALL 2003 **											
ADM G	601		ORGANIZATHN ANALYSTS	3.0	A						
ADM G	632		FAC DSGN/FISCL MGMT	3.0	A						
ADM G	666		INTERNSHIP I ED ADM	3.0	A						
EDC G	606		SOCIO-CULTURAL FOUND	3.0							
***** CUMULATIVE TOTALS *****											
*QUALITY CREDITS 12.00 QUALITY POINTS 44.25 *											
*DEGREE CREDITS 12.00 CUMULATIVE GPA 3.69 *											

***** *SUMMARY* *****
PROGRAM: NON-DEGREE GRADUATE

END OF TRANSCRIPT PRINTED 03/26/04

OFFICIAL TRANSCRIPT
ISSUED TO STUDENT IN
SEALED ENVELOPE



LIGIA B NORTEGA
GRAD NONDEGREE

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OFFICIAL UNIVERSITY TRANSCRIPT

NORTHEASTERN UNIVERSITY

NORTHEASTERN UNIVERSITY



LTGIA [REDACTED] NORTHEASTERN
 [REDACTED]

ENTRANCE DATE: SEPT 23, 2002
 CURRENT MAJOR: EDUCATION PDP
 [REDACTED]

NORTHEASTERN UNIVERSITY
 BOSTON, MASSACHUSETTS 02115
 GRADUATE SCHOOL OF
 ARTS AND SCIENCES

TRM	COURSE NUMBER	COURSE TITLE	QTR HOURS	GRADE	COMMENT	TRM	COURSE NUMBER	COURSE TITLE	QTR HOURS	GRADE	COMMENT	TRM	COURSE NUMBER	COURSE TITLE	QTR HOURS	GRADE	COMMENT
F02	ED 3885	INSTEDLEAD1	6.0	A													
W03	ED 3886	INSTEDLEAD2	6.0	A													
SP03	ED 3576	PRACTICUM 2	0.0	S													
	ED 3887	INSTEDLEAD3	6.0	A													
SN03	ED 3888	INSTEDLEAD4	6.0	A													

DEGREE(S) [REDACTED]											
MAR 31 2004 [REDACTED]											
OFFICIAL TRANSCRIPT [REDACTED]											
QUARTER VALUES											
QUALITY POINTS	HOURS TAKEN	QPA	EARNED HOURS	TRANSFER CREDIT	EXPERIENTIAL CREDIT						
94.002	24.00	3.932	24.00								

Linda Mer

NAME: NORIEGA, LIGIA B,

DEPT. NUMBER	TERM COURSE TITLE	CREDIT	GRADE	DEPT. NUMBER	TERM COURSE TITLE	CREDIT	GRADE
BOSTON UNDERGRADUATE RECORD				TERM GPA: 2.52			
FALL 1985				SPRING 1988			
E S L	100A ORAL/AURAL SKILLS	4.0	B	ART	281 DRAWING I	3.0	B
E S L	100B READING COMPREHENS	4.0	B+	ITAL	D102 ELEM ITALIAN I	4.0	A-
E S L	100C FUND ENGL GRAMMAR	4.0	C+	MATH	D125 INTRO TO STATISTICS	3.0	W
TERM GPA: 1.80				SPAN 467 CONTEMP SPAN-AM FIC 3.0 A-			
SPRING 1986				TERM GPA: 3.53 DEAN'S LIST			
E S L	100D ADV ENGLISH GRAMMAR	4.0	C+	SUMMER 1988			
E S L	100E ADVANCED READING	4.0	B+	ART-CE	E250 ART OF THE 20TH CENT	3.0	C-
ECON	E102 INTRO ECONOMICS I	3.0	F	TERM GPA: 1.75			
SPAN	463 MOD SPAN-AM FICTION	3.0	B	FALL 1988			
TERM GPA: 1.80				ART 201 ANCIENT-MEDIEVAL ART 3.0 D+			
SUMMER 1986				ART 265 FILM ANALYSIS 3.0 C+			
ENG-CE	101E ESL FRESHMAN ENGLISH	3.0	C	ART	293 PHOTOGRAPHY I	4.0	B
MAT-CE	D110 BASIC ALGEBRA	3.0	F	SPAN	462 CONT. SPAN-AM POETRY	3.0	A
TERM GPA: 2.00				TERM GPA: 2.65			
FALL 1986				SPRING 1989			
ECON	E101 INTRO ECONOMICS	3.0	D-	ART	202 RENAISS TO MODERN ART	3.0	C
ENGL	D102E ESL FRESHMAN ENG II	3.0	B+	ART	310 THE AGE OF REMBRANDT	3.0	C+
MATH	D140 CALCULUS I	4.0	B	HIST	356 LAT AM SINCE INDEP	3.0	C+
TERM GPA: .75				SPAN 411 HISTORY: SPAN LANGUAGE 3.0 A-			
SPRING 1987				TERM GPA: 2.56			
ART	C199 VISUAL THINKING	3.0	A	SUMMER 1989			
BIOI	D101 BASIS OF LIFE	3.0	C-	ART-CE	210 SAME ART IN BOSTON	3.0	B+
FRSKST	C101 FRESH STUDY SEMINAR	3.0	B	TERM GPA: 3.25			
PE	160 AQUATICS	1.0	B+	FALL 1989			
SPAN	432 DON QUIJOTE	3.0	B	ART	311 ITAL RENAISS: PAINTING	3.0	C
TERM GPA: 2.73				ART 340 ARTS OF JAPAN 3.0 B-			
FALL 1987				ENGL C202 NATURE OF LIT: POETRY 3.0 B			
ENGL	102E ESL FRESHMAN ENG II	3.0	B+	SPAN	478 INDEPENDENT STUDY	3.0	B
ITAL	D101 ELEM ITALIAN I	4.0	B	TERM GPA: 2.63			
MATH	D110 BASIC ALGEBRA	3.0	C	TRANSCRIPT CONTINUED ON NEXT PAGE			
SPAN	454 ARGENTINA	3.0	C+	SIGNATURE			

LIGIA B NORIEGA
 UNDERGRAD

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NAME: NORIEGA, LIGIA B.

DEPT.	NUMBER	TERM COURSE TITLE	CREDIT	GRADE	DEPT.	NUMBER	TERM COURSE TITLE	CREDIT	GRADE
UNDERGRADUATE RECORD CONT'D									
SPRING 1990									
ART	260	ARTS OF ASIA	3.0	B-					
ART	317	PAINTING 1850-1900	3.0	C					
MUSIC	C111	INTRO MUSIC	3.0	C+					
SPAN	352	SURVEY SPAN-AM LIT	3.0	A					
SPAN	461	19TH C SPAN-AM LIT	3.0	A-					
WOST	C275	WOM-IN-EUROP THOUGHT	3.0	B-					
TERM GPA: 2.83									
SUMMER 1990									
GER-CE	101	ELEMENTARY GERMAN I	4.0	C					
HIS-CE	C101	INDIVIDUAL IN HISTORY	3.0	A					
REL-CE	C104	SOCRATES, JESUS, BUDDHA	3.0	B+					
TERM GPA: 2.90									
FALL 1990									
SPE-G	621	DEVELOPMNTL PATTERNS	3.0	B+					
TERM GPA: 3.25									
***** CUMULATIVE TOTALS *****									
*QUALITY CREDITS 126.00 QUALITY POINTS 331.25 *									
*DEGREE CREDITS 123.00 CUMULATIVE GPA 2.63 *									

***** DEGREE SUMMARY *****									
*AWARDED: BA COLLEGE OF ARTS & SCIENCES									
*DATE: DECEMBER 27, 1990									
*MAJOR: ART									

END OF TRANSCRIPT: PRINTED 03/26/04

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Exhibit E



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

November 1, 2024

OML 2024 – 204

VIA EMAIL ONLY

James Donnelly
Murphy, Hesse, Toomey & Lehane, LLP
jdonnelly@mhtl.com

RE: Open Meeting Law Complaint

Dear Attorney Donnelly:

This determination addresses 17 complaints filed with our office by Bruce Friedman, on behalf of OpenCommonwealth.org.¹ The complaints allege that the Malden School Committee (the "Committee") and its Superintendent Search Committee (the "Search Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. This determination reviews the public bodies' obligations to comply with the Open Meeting Law's requirements with respect to meeting minutes, responding to requests for meeting minutes, and executive sessions.

The chart attached to this determination summarizes the separate allegations raised in each of the 17 complaints and specifies whether we found a violation of the Open Meeting Law and, when a violation was found, the remedial action taken. Because of the volume of complaints; many raising the same or similar issues, we review the applicable law below and present our specific findings on the allegations in the attached chart. After review, we find that the Committee and Search Committee violated the Open Meeting Law in some respects and not in others, and we decline to review many of the allegations raised in the seventeen complaints for the various reasons explained below.

¹ Between February and May of 2024, the Complainant filed 22 Open Meeting Law complaints with our office alleging that the Malden School Committee and its Superintendent Search Committee violated the Open Meeting Law. The Complainant numbered almost all of the complaints when he filed his requests for further review with our office. This determination resolves the following complaints, as numbered by the Complainant: unnumbered complaint dated February 26, and Complaints 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 20. The other complaints were previously resolved in separate determinations.

In reaching our determinations, we reviewed the Open Meeting Law complaints, the bodies' responses, the requests for further review, various documents provided to our office by the Complainant, notices and minutes for various meetings, and the City of Malden's website, www.cityofmalden.org, which is its official notice posting location.

As an initial matter, we note that for each violation found here, as reflected in the attached chart, the Committee had already taken appropriate remedial action prior to the complaint being filed with our office for further review. In instances where a public body acknowledges a violation and all appropriate corrective action has been taken, we urge complainants not to consume resources by filing complaints where the transparency purpose of any such complaint has already been addressed by the corrective action taken. See OML 2012-46; OML 2017-191; OML 2023-113; OML 2024-20. Pursuing such complaints, especially several complaints raising the same legal issues, consumes scarce state and local resources without advancing the Open Meeting Law's goal of improved governmental transparency.

DISCUSSION

Allegations We Decline to Review

We decline to review many of the allegations raised in the complaints for one or more of the following reasons described below.

Allegations that are untimely or were not raised in a complaint filed with the public body

To begin, we decline to review allegations that were not timely raised. To be considered timely, an Open Meeting Law complaint must be filed with the public body within 30 days of the alleged violation, or, if the alleged violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. G.L. c. 30A, § 23(b); 940 CMR 29.05(4). When reviewing the timeliness of a complaint we consider when the action that is alleged to have violated the Open Meeting Law was reasonably discoverable; not when an individual complainant became aware of the action or of the requirements of the Open Meeting Law. See OML 2022-188; OML Declination 2-8-22 (Milton Select Board); OML Declination 12-18-20 (Pembroke Board of Health).² Events that occur during an open session meeting are reasonably discoverable at the time they occur. See OML Declination 8-1-2018 (Essex Board of Selectmen). In general, allegations regarding the sufficiency of a meeting notice are discoverable on the date of the meeting. See OML Declination 10-9-2012 (Templeton Municipal Light and Water Plant Board of Commissioners); OML 2023-17.

A complaint challenging the propriety of an executive session must be filed within 30 days of the date that the substance of the executive session discussions was reasonably discoverable. See OML Declination 2-18-2014 (Easton Board of Selectmen); OML 2015-123, n.1. Likewise, an allegation regarding the sufficiency of executive session meeting minutes must be raised within 30 days of the date that such minutes are made available to the public. See OML

² Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

Declination 6-2-2022 (Marblehead Board of Selectmen); OML Declination 9-5-2024 (Milford School Committee).

Finally, we decline to review allegations that were not raised in a complaint filed with the public body and instead were raised for the first time in a request for further review filed with this office. See G.L. c. 30A, § 23(b); OML 2013-99.

Allegations that are insufficiently specific

We decline to review allegations that are insufficiently specific. Open Meeting Law complaints must allege violations with a degree of specificity, as our office will not conduct broad audits of public bodies based on generalized allegations. See OML 2016-57; OML 2014-119; OML 2012-106. For example, nine of the complaints addressed by this determination allege that 24 sets of executive session meeting minutes are insufficiently detailed and fail to list documents that were used during the meetings; however, the complaints do not identify any particular insufficiency, nor any particular documents alleged to have been used but not listed in the minutes. Instead, each of the nine complaints includes the identical or nearly identical generic language that follows:

The minutes of the aforementioned executive session minutes are insufficiently detailed and fail to include a list of the documents used at the executive sessions. Meeting minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred.

A few of the complaints additionally state, “[s]pecifically, documents are referenced in the Executive meeting minutes which are not provided, have never been provided, have never been posted or released to the public.”

Because of the volume of complaints, the number of meeting minutes involved, and the lack of specificity with respect to the allegation that minutes are insufficient, we find that the Complainant seeks precisely the kind of broad audit that we decline to perform. Therefore, we decline to review whether the Committee’s executive session minutes are, in general, insufficient.

Allegations that, even if true, would not constitute a violation of the Open Meeting Law

Because the Division’s statutory authority concerns compliance with the Open Meeting Law, G.L. c. 30A, §§ 18-25, we decline to review any allegations that, even if true, would not constitute a violation of the Open Meeting Law. For example, an allegation that records other than meeting minutes were not provided in response to a request concerns a public body’s compliance with the Public Records Law, not the Open Meeting Law. The Open Meeting Law provides that documents and exhibits used by a public body at an open or executive session meeting “shall, along with the minutes, be part of the official record of the session.” G.L. c. 30A, § 22(d). Furthermore, the Law provides that, with two exceptions, “[t]he minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not

exempt from disclosure pursuant to any of the exemptions under the Public Records Law. G.L. c. 30A, § 22(e). Although the Open Meeting Law clarifies that the above materials are public records, it only provides a mechanism for requesting meeting minutes. Moreover, in explaining that various materials are public records and are not exempt from disclosure under the Public Records Law, the Open Meeting Law makes clear that requests for such records are subject to the Public Records Law. See G.L. c. 30A, § 22(c), (g)(2). Finally, we have long explained that requests for records other than meeting minutes are governed by the Public Records Law, not the Open Meeting Law. See G.L. c. 66, § 10(a-b); 950 CMR 32.05(2); OML 2015-199; OML 2016-94; OML 2022-216.

Likewise, assertions regarding redactions made to executive session minutes based on a claim of the attorney-client privilege or an exemption to the Public Records Law do not allege a violation of the Open Meeting Law. See OML 2012-27. Although the Open Meeting Law requires a public body to release executive session minutes once the executive session purpose has expired, a public body may still redact or withhold minutes subject to the Public Records Law, G.L. c. 4, § 7, or where discussions may be protected by the attorney-client privilege. G.L. c. 30A, § 22(f). Review of such redactions, however, falls outside the Division's purview. See OML 2012-41 (explaining that the Division may not review an allegation that the attorney-client privilege does not apply); OML 2020-120 (finding that the executive session purpose had been served but noting that "we offer no opinion as to whether the attorney-client privilege or an exemption to the Public Records Law may allow the Committee to continue to redact all or portions of the minutes at issue"); OML 2024-119.

Additionally, as our office has consistently explained, the Open Meeting Law does not require that public bodies post meeting minutes or other documents to a website or elsewhere; therefore, failure to post minutes and other documents to a website does not violate the Open Meeting Law. See, e.g., OML Declination 1-14-2013 (Board of Boiler Rules); OML 2015-43, n.1; OML 2018-86; OML 2023-203.

Finally, allegations that a public body violated municipal rules or policies, violated an individual's constitutional rights, did not allow for public comment, or limited public comment, even if true, do not allege violations of the Open Meeting Law and we therefore decline to review them. See OML Declination 9-4-2012 (Cambridge Historical Commission) (declining to review whether the Commission violated its own policies); OML Declination 1-19-2016 (Southborough Zoning Board of Appeals) (declining to review whether town bylaws or public hearing laws were violated); OML 2013-135, n.2 (declining to review whether constitutional rights were violated); OML Declination 4-25-2024 (Westwood Charter Review Committee) (explaining that "we do not review allegations concerning restrictions on public comment or compliance with the United States or Massachusetts constitutions").

Allegations We Review

As outlined below, we review several allegations raised in the complaints. These allegations relate to the sufficiency of meeting minutes, responding to requests for open session minutes, withholding executive session minutes, responding to requests for executive session minutes, and holding executive sessions. Below we discuss the requirements of the Open

Meeting Law with respect to each of these topics. In the chart attached to this determination, we detail our specific findings with respect to these allegations as raised in each complaint.

Sufficiency of Meeting Minutes

The Open Meeting Law requires that a public body “create and maintain accurate minutes of all meetings, including executive sessions.” G.L. c. 30A, § 22(a). Meeting minutes must include “the date, time and place [of the meeting], the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.” *Id.* When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. *See* OML 2016-105; OML 2013-64. By substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. *See* OML 2012-106. While minutes must include a summary of the discussion on each topic, a transcript is not required, and the minutes do not need to include every remark or opinion presented. *See* OML 2012-29; OML 2011-55. Executive session minutes must include the same elements as open session minutes and are held to the same standard as open session minutes with respect to the accuracy requirement. *See* OML 2022-189.

Responding to a Request for Open Session Minutes

The Open Meeting Law requires that “the minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.” G.L. c. 30A, § 22(c). If the minutes do not yet exist at the time of a request, the public body is still required to respond to the request within ten days, explaining that the minutes do not exist. *See* OML 2018-98; OML 2017-50; OML 2016-71; OML 2015-173.

Withholding Executive Session Minutes

Executive session minutes may be withheld from disclosure to the public “as long as publication may defeat the lawful purposes of the executive session, but no longer.” G.L. c. 30A, § 22(f). Once the purpose for a valid executive session has been served, the minutes and any documents or exhibits used at the session must be disclosed unless the attorney-client privilege or an exemption to the Public Records Law applies to withhold them, in whole or in part, from disclosure. *See id.* The burden of justifying continued nondisclosure of executive session minutes lies with the public body. *See Foudy v. Amherst-Pelham Regional Sch. Comm.*, 402 Mass. 179, 184 (1988); OML 2017-151.

Public bodies are required to review executive session minutes at reasonable intervals to determine if continued non-disclosure is still warranted. G.L. c. 30A, § 22 (g)(1). The public body must announce the result of this review at its next meeting and record the announcement in the minutes of that meeting. *Id.* Although the Open Meeting Law does not define “reasonable intervals,” we have found that quarterly reviews or reviews every six months satisfy the Law. *Compare* OML 2015-166 (finding a six-month review sufficient) and OML 2024-64 (finding a three-month review sufficient), *with* OML 2024-82 (finding a nine-month review insufficient). A

public body's obligation to review executive session minutes for possible release is ongoing. If a public body reviews executive session minutes and determines that the purpose for the executive session remains ongoing, it must continue to review those same executive session minutes at reasonable intervals until it determines that the reason for secrecy has expired. See OML 2019-133. Finally, we note that even if a contract or collective bargaining agreement has been finalized, there may be circumstances where the executive session purpose of protecting the public body's negotiating position remains ongoing such that the public body may continue to withhold the executive session minutes, in whole or in part, under the Open Meeting Law. See OML 2012-41 (noting, however, that the minutes "may not be withheld indefinitely. At some point, the public interest in transparency will outweigh the potential for harm to the public body's future collective bargaining position."); OML 2015-97.

Responding to a Request for Executive Session Minutes

Upon receipt of a request for executive session minutes, a public body must respond to the requester within ten days. G.L. c. 30A, § 22(g)(2). If the public body has recently performed the review required under G.L. c. 30A, § 22(g)(1), then it should respond to the requester within ten days providing any minutes it determined should be released and explaining if any minutes continue to be withheld. See OML 2013-105; OML 2013-99. If, however, at the time of a request the public body has not recently conducted a periodic review of its executive session minutes, then the body must review the requested minutes to determine if the minutes must be released. G.L. c. 30A, § 22(g)(2). This review must be performed by the body's next meeting or within 30 days, whichever occurs first. Id. In such circumstances, the body must still respond to the requester within ten days and should notify them that the body is conducting a review of the requested executive session minutes. See OML 2013-99.

Executive Session

All meetings of a public body must be open to the public unless a lawful executive session has been convened. G.L. c. 30A, §§ 20(a), 21. A public body may convene in executive session for any one or more of ten purposes enumerated in the Open Meeting Law. See G.L. c. 30A, § 21(a). These ten exceptions to the general rule that meetings must be open are narrowly construed. See McRea v. Flaherty, 71 Mass. App. Ct. 637, 641 (2008). Public bodies are responsible for ensuring that when convened in executive session, they discuss only matters that are appropriate for executive session and for which they have provided notice to the public. We acknowledge that managing the flow of conversation can be difficult. Nevertheless, it is incumbent upon the public body to carefully monitor its executive session discussions to ensure that they do not stray from the lawful purpose for which the executive session was called. See OML 2010-6; OML 2021-80.

One lawful purpose for convening in executive session is "[t]o discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual." G.L. c. 30A, § 21(a)(1) ("Purpose 1"). Our office has unequivocally stated that public bodies may meet in executive session under Purpose 1 to review Open Meeting Law complaints against the body because an Open Meeting Law complaint is by its nature a "complaint[] . . . brought against a public officer," namely, the

members of the public body. See OML 2021-21; OML 2019-170; OML 2019-163; OML 2019-34; OML 2015-105; OML 2013-82; OML 2012-119; OML 2011-6. The individual filing a complaint does not have a right to be present during the executive session discussion but may attend at the discretion of the public body. See OML 2019-64; OML 2013-50.

Another permissible purpose for convening in executive session is to “conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2) (“Purpose 2”). When convening in executive session under Purpose 2, public bodies should identify, both in their notice and in the open session announcement, the name of the specific nonunion personnel or bargaining unit that is the subject of discussion, unless doing so would compromise the public body’s negotiating position. See OML 2015-193; OML 2016-70. The scope of Purpose 2 is limited to the discussions, negotiations, and deliberations that occur prior to the execution of a contract. See OML 2023-78. A public body may reach an agreement on the terms of a contract in executive session under Purpose 2 but it must subsequently vote to approve or ratify such an agreement in open session. See OML 2023-78; OML 2021-187; OML 2011-44. Discussing the resignation of an employee may be appropriate for executive session if the discussion relates to the negotiation of a separation agreement, but not if the discussion relates simply to the resignation itself. Compare OML 2018-146 (discussion of “separation agreement fit within the parameters of executive session Purpose 2, as the discussions related to strategy in preparation for contract negotiations”), with OML 2014-90 (discussion of whether to accept resignation and process for replacing employee was not appropriate for executive session).

An additional permissible reason to convene in executive session is “[t]o discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.” G.L. c. 30A, § 21(a)(3) (“Purpose 3”). The Open Meeting Law does not require that a public body make any specific showing of a potential detrimental effect prior to entering the executive session, beyond the chair’s declaration, see G.L. c. 30A, § 21, and in such circumstances, we defer to the public body’s reasonable belief that holding its discussions in open session may have a detrimental effect on its bargaining or litigating position. See Town of Hull, Bd. of Selectmen v. Healey, 2017 WL 8160437, at *5–6 (Mass. Super.).

With respect to litigation, Purpose 3 offers the narrow opportunity to discuss strategy regarding litigation that is pending or clearly and imminently threatened or otherwise demonstrably likely; the mere possibility of litigation is not sufficient to invoke Purpose 3. See Doherty v. Sch. Comm. of Boston, 386 Mass. 643, 648 (1982); Perryman v. Sch. Comm. of Boston, 17 Mass. App. Ct. 346, 352 (1983); OML 2012-05. With respect to collective bargaining, Purpose 3 limits discussion to those topics that directly correlate to collective bargaining negotiations, rather than broader policy or budgetary matters. See OML 2017-54; OML 2019-170 (finding that discussion of outsourcing custodial services was not appropriate for executive session). A public body should identify the litigation matter or collective bargaining unit to be discussed, if doing so will not compromise the lawful purpose for secrecy. See OML 2016-12; OML 2013-97; OML 2022-148; OML 2015-87.

Next, a public body may convene in executive session “[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.” G.L. c. 30A,

§ 21(a)(7) (“Purpose 7”). Typically, when a public body enters executive session under Purpose 7, it must cite, both on the meeting notice and in the announcement prior to convening in executive session, the specific general or special law, or federal grant-in-aid requirement, that requires confidentiality or requires the public body to meet behind closed doors. See OML 2011-34 (“Because the Board did not provide any law or grant-in-aid requirement to justify their executive session under Purpose 7, it was not appropriate for the Board to employ Purpose 7.”); OML 2015-55; OML 2023-207. We have consistently held that a public body may convene in executive session to review and approve executive session minutes under either the original purpose for the executive session or under Purpose 7, citing to the Open Meeting Law, G.L. c. 30A, §§ 22(f), (g). See OML 2013-199; OML 2019-81; OML 2020-120.

Finally, a preliminary screening committee may convene in executive session “[t]o consider or interview applicants for employment or appointment . . . if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants.” G.L. c. 30A, § 21(a)(8) (“Purpose 8”). However, Purpose 8 is not applicable “to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.” Id. Purpose 8 is limited in scope and allows public bodies to convene in executive session to undertake two activities—to consider or to interview applicants for employment or appointment. The selection process or the development of interview questions are not appropriate topics for discussion in executive session. See OML 2019-48 (finding that discussions related to the selection process and conflict of interest concerns were improper for executive session because they “did not specifically involve the consideration or interview of applicants”); OML 2019-7 (finding a violation where the public body discussed interview questions in executive session).

Intentionality

Finally, we must determine whether the Committee’s and Search Committee’s violations were, as the Complainant urges, intentional. See G.L. c. 30A, § 23(c). An intentional violation is an “act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law].” 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the Law’s requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id.

As detailed in the chart attached to this determination, we find that the Search Committee violated the Open Meeting Law by failing to timely respond to requests for meeting minutes and by discussing a topic in executive session that was not appropriate for executive session. Because we have not previously warned the Search Committee against the violations found here, we decline to find that the Search Committee intentionally violated the Open Meeting Law. Next, as detailed in the attached chart, we find that the Committee violated the Open Meeting Law by failing to timely respond to requests for meeting minutes, failing to periodically review executive session minutes for release, and discussing a topic in executive session that was not appropriate for executive session. The complaints allege that the Committee’s failure to timely respond to requests for meeting minutes constitutes an intentional violation of the Open Meeting Law. We have previously warned the Committee of its obligation to respond to a request for meeting minutes made under the Open Meeting Law within ten calendar days. OML 2023-95. However, because of the volume of requests for minutes and other records made by the Complainant in a

relatively short period of time, less than one month, and the Committee's efforts to respond to the many requests, we decline to find an intentional violation here. We additionally note that for each violation found, as detailed in the chart, remedial action had already been taken prior to the complaints being filed with our office for further review.

CONCLUSION

Attached to this determination is a chart listing each of the seventeen complaints addressed by this determination and our declination or findings with respect thereto. Where we do find a violation of the Open Meeting Law, we order immediate and future compliance with the Open Meeting Law and caution that similar future violations may be considered evidence of an intent to violate the Law and may result in the imposition of a civil penalty of up to \$1,000 per violation. See G.L. c. 30A, § 23(c); 940 CMR 29.02; 940 CMR 29.07(3). Although we find that the Committee and Search Committee violated the Open Meeting Law by failing to timely respond to requests for meeting minutes, failing to periodically review executive session minutes for release to the public, and discussing topics in executive session that were not appropriate for executive session, we order no further remedial action because appropriate remedial action has already been taken.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Committee, Search Committee, or our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

Assisted by Rebecca Wood, Legal Intern

cc: Mayor Gary Christenson, Chair, Malden School Committee
(via email: mayor@cityofmalden.org)
Jennifer Spadafora, Vice Chair, Malden School Committee and Co-Chair, Superintendent
Search Committee (via email: jspadafora@maldenps.org)
Carol Ann Desiderio, Malden City Clerk (via email: cdesiderio@cityofmalden.org)
Bruce Friedman, OpenCommonwealth.org (via email: info@opencommonwealth.org)

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

Date of Complaint	Number Assigned by Complainant	Allegation	Determination
2/26/2024	Unnumbered	Failure to timely respond to a February 5, 2024, request for meeting minutes.	Violation. Response to request provided; no further action required.
1/16/2024	Complaint 3	Failure to "release, disclose and publish" 20 sets of executive session minutes.	Decline: Allegation insufficiently specific/not a violation of Open Meeting Law.
1/16/2024	Complaint 4	Failure to periodically review 20 sets of executive session minutes, including failure to periodically review redactions made under the Open Meeting Law to some of the minutes.	Violation. Remedial action taken; no further action required.
1/30/2024	Complaint 5	Meeting minutes and other records not posted online. ¹	Decline: Does not allege a violation of the Open Meeting Law.
		Failure to timely respond to a January 12, 2024, request for meeting minutes.	Violation. Response to request provided; no further action required.
		Executive session minutes insufficiently detailed, fail to list documents used.	Decline: Allegation insufficiently specific, requesting broad audit, and untimely.
		"[f]ailed to properly notice and lawfully enter executive session." ²	Decline: Allegation insufficiently specific and untimely. ²
		Five executive sessions held for improper purposes.	Decline: Allegations regarding meetings held on August 24, September 14, and December 7, 2020, and February 1, 2021, are untimely. Meeting held on June 7, 2021: No violation.
		Failure to periodically review executive session minutes for release. ³	Decline: Allegation insufficiently specific.
		Redactions to executive session minutes improper.	Decline: Redactions made under

¹ Other complaints addressed by this determination raise the same allegation. We decline to review those allegations as well and do not address them further.

² Other complaints addressed by this determination raise the same allegation with respect to other executive sessions. We decline to review those allegations as well and do not address them further.

³ Other complaints addressed by this determination raise the same allegation. We decline to review those allegations as well and do not address them further.

			attorney-client privilege or exemption to Public Records Law. ⁴
1/19/2024	Complaint 7	Failure to timely respond to a January 8, 2024, request for meeting minutes. ⁵	Violation. Response to request provided; no further action required.
1/22/2024	Complaint 8	Failure to timely respond to a second, identical, request for meeting minutes made on January 12, 2024.	See Complaint 5 above.
1/26/2024	Complaint 9	Executive session minutes insufficiently detailed, fail to list documents used. ⁶	Decline: Allegation insufficiently specific, requests broad audit.
		July 1, 2021, ⁷ executive session improper.	No violation.
		Minutes of the July 29, 2021, executive session improperly redacted.	No violation.
		Document mentioned during executive session not made public and not provided in response to request. ⁸	Decline: Does not allege violation of the Open Meeting Law.
		Minutes of July 29, 2021, executive session insufficient.	No violation
1/23/2024	Complaint 10	March 6, 2023, executive session improper. ⁹	No violation.
		Minutes of the March 6, 2023, executive session	Decline: Redactions made under the Public

⁴ Concerns about the propriety of redactions made under the attorney-client privilege or an exemption to the Public Records Law should be directed to the Public Records Division in the Secretary of the Commonwealth's Office. See OML 2021-143; OML 2020-120; OML 2024-139.

⁵ Additional complaints addressed by this determination raise the same allegation. We do not address this allegation further.

⁶ Other complaints addressed by this determination raise the same allegation regarding other sets of executive session minutes provided in response to the January 8, 2024, request. We decline to review those allegations as well and do not address them further.

⁷ The complaint references an executive session held on July 1, 2021, and an executive session held on July 29, 2021. Based on the alleged violation date and the attachments included with the complaint, we understand the complaint to concern the executive session held on July 1, 2021, not July 29, 2021.

⁸ Other complaints addressed by this determination raise similar allegations about additional documents and records. We decline to review those allegations as well and do not address them further.

⁹ The complaint references an executive session held on January 9, 2023, and an executive session held on March 6, 2023. Based on the attachments included with the complaint, we understand the complaint to concern the executive session held on March 6, 2023, not January 9, 2023.

		improperly redacted.	Records Law.
1/23/2024	Complaint 11	January 9, 2023, executive session improper.	Violation: Executive session topic number 4 was improper where there was no discussion of contract negotiations. All other executive session topics were proper. Minutes capturing improper discussions have been released to the public; no further action required.
		Minutes of January 9, 2023, executive session improperly redacted.	Decline: Redactions made under the Public Records Law.
1/23/2024	Complaint 12	Complaint 12 is identical to Complaint 10.	See Complaint 10 above.
1/23/2024	Complaint 13	September 12, 2022, executive session improper.	No violation.
		Minutes of September 12, 2022, executive session improperly redacted.	Decline: Redactions made under claim of attorney-client privilege.
1/23/2024	Complaint 14	Minutes of the October 3, 2022, executive session improperly redacted.	Decline: Redactions made under claim of attorney-client privilege.
1/23/2024	Complaint 15	Minutes of the October 17, 2022, executive session improperly redacted.	Decline: Redactions made under claim of attorney-client privilege.
1/31/2024	Complaint 16	Failure to timely respond to a January 20, 2024, request for meeting minutes.	Violation: Requested minutes provided; no further action required.
2/5/2024	Complaint 17 (Search Committee)	Failure to timely respond to three requests for meeting minutes made on January 22, 2024.	Violation: Response to requests provided; no further action required.
		Open session minutes from January of 2021 are insufficient.	Decline: Allegation untimely.
		Minutes of the January 27, 2021, executive session are insufficient.	Decline: Allegation insufficiently specific, requests broad audit.

		January 27, 2021, executive session improper.	Violation: Discussion of candidate profile process and interview questions not appropriate for executive session. Minutes capturing improper discussions have been released to the public; no further action required.
		Minutes of the January 27, 2021, executive session improperly redacted.	Decline: Redactions made under the Public Records Law.
2/5/2024	Complaint 18	Failure to respond to a January 19, 2024, request for meeting minutes.	Violation: Response to request provided; no further action required.
		Refusal to provide draft executive session minutes.	Decline: Does not allege a violation of the Open Meeting Law.
3/4/2024	Complaint 20	Failure to comply with Committee policies and procedures.	Decline: Does not allege a violation of the Open Meeting Law and is untimely.
		Violation of constitutional right to free speech.	Decline: Does not allege a violation of the Open Meeting Law and is untimely.
		Minutes of the January 8, 2024, open session meeting are insufficient where they do not include specific statements.	No violation.

Exhibit F

9/5/24, 2:08 PM

Appeals Tracking System: Search for an appeal

Secretary of the Commonwealth of Massachusetts
 William Francis Galvin

Public Records Appeals Status

Search for case record

Case type:	Fee Petition	Case sub-type:	Initial
Case number:		Case status:	Select status
Case year:	2024	Processing fees charged:	
Requester name:		Search by name of requester	Contains anywhere
Custodian name:	Malden	Search by custodian name	Contains anywhere
Petitions submitted regarding fees:	Select yes or no		
Did request go to court:	Select yes or no		
Date type:	Select type	Date from:	Date to:
Results per page:	View all results		

[Search for case record](#) [Clear all](#) [Back to Public Records](#)

Legend
 Recon: Reconsideration
 In Cam: In Camera Review

Records found: 39

Case No.	Case Date	Case Date	Case Type	Case Sub-Type	Case Status	Custodian	Determination	
20242512	09-05-2024		Fee Petition	Initial	Open	Commonwealth Transparency	Malden, City of	
20242406	08-23-2024	08-29-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242405	08-23-2024	08-30-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242404	08-23-2024	08-30-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242366	08-21-2024	08-27-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242365	08-21-2024	08-27-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242320	08-15-2024	08-21-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242227	08-06-2024	08-13-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242190	08-02-2024	08-09-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242125	07-26-2024	08-01-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20242085	07-23-2024	07-29-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242084	07-22-2024	07-29-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20242046	07-17-2024	07-24-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20242045	07-17-2024	07-24-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天

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Appeals Tracking System: Search for an appeal

20242042	07-17-2024	07-24-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242039	07-17-2024	07-24-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242019	07-15-2024	07-22-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241963	07-09-2024	07-12-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241954	07-09-2024	07-15-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Office of the City Solicitor	天
20241944	07-09-2024	07-12-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Solicitor	天
20241915	07-03-2024	07-11-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241763	06-13-2024	06-20-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241685	06-04-2024	06-10-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241556	05-21-2024	05-29-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241555	05-21-2024	05-29-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241405	05-08-2024	05-15-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241113	04-12-2024	04-18-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241112	04-12-2024	04-22-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241111	04-12-2024	04-19-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241110	04-12-2024	04-19-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241109	04-12-2024	04-19-2024	Fee Petition	Initial	Closed	Malden News Network	Malden, City of - Public Schools	天
20241108	04-12-2024	04-22-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241107	04-12-2024	04-22-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241106	04-12-2024	04-22-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241021	04-03-2024	04-09-2024	Fee Petition	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241008	04-02-2024	04-08-2024	Fee Petition	Initial	Closed	Malden News Network	Malden, City of - Public Schools	天
20240871	03-22-2024	03-28-2024	Fee Petition	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20240837	03-19-2024	03-26-2024	Fee Petition	Initial	Closed	Public Schools Data Exchanger	Malden, City of - Public Schools	天
20240561	02-22-2024	02-28-2024	Fee Petition	Initial	Closed	Malden News Network	Malden, City of - Public Schools	天

Exhibit G

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Appeals Tracking System: Search for an appeal

Secretary of the Commonwealth of Massachusetts
 William Francis Galvin

Public Records Appeals Status

Search for case record

Case type:	<input type="text" value="Appeal"/>	Case sub-type:	<input type="text" value="Initial"/>
Case number:	<input type="text"/>	Case status:	<input type="text" value="Select status"/>
Case year:	<input type="text" value="2024"/>	Processing fees charged:	<input type="text"/>
Requester name:	<input type="text"/>	Search by name of requester	<input type="text" value="Contains anywhere"/>
Custodian name:	<input type="text" value="Malden"/>	Search by custodian name	<input type="text" value="Contains anywhere"/>
Petitions submitted regarding fees:	<input type="text" value="Select yes or no"/>		
Did request go to court:	<input type="text" value="Select yes or no"/>		
Date type:	<input type="text" value="Select type"/>	Date from:	Date to:
Results per page:	<input type="text" value="View all results"/>		

Legend

Recon: Reconsideration
 In Cam: In Camera Review

Records found: 78

Case No.	Date	Case Type	Status	Open/Closed	Requester	Custodian	Deter- mination	
20242508	09-05-2024	Appeal	Initial	Open	Commonwealth Transparency	Malden, City of		
20242504	09-05-2024	Appeal	Initial	Open	Commonwealth Transparency	Malden, City of		
20242473	08-30-2024	Appeal	Initial	Open	Commonwealth Transparency	Malden, City of		
20242430	08-26-2024	Appeal	Initial	Open	Malden News Network	Malden, City of		
20242410	08-23-2024	Appeal	Initial	Open	Commonwealth Transparency	Malden, City of		
20242396	08-22-2024	Appeal	Initial	Open	Commonwealth Transparency	Malden, City of - Public Schools		
20242370	08-22-2024	Appeal	Initial	Open	Kristin Kotewicz	Malden, City of - Police Department		
20242356	08-20-2024	08-30-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	✘
20242338	08-19-2024	09-03-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	✘
20242323	08-16-2024	08-30-2024	Appeal	Initial	Closed	Kristin Kotewicz	Malden, City of - Police Department	✘
20242322	08-16-2024	08-30-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	✘
20242313	08-15-2024	08-28-2024	Appeal	Initial	Closed	Public Schools Data Exchanger	Malden, City of - Public Schools	✘
20242309	08-15-2024	08-28-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	✘
20242304	08-14-2024	08-27-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of	✘

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Appeals Tracking System: Search for an appeal

20242302	08-14-2024	08-28-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242267	08-09-2024	08-22-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242251	08-08-2024	08-22-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242237	08-07-2024	08-21-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20242236	08-07-2024	08-21-2024	Appeal	Initial	Closed	Sinan AbuShanab	Malden, City of - Police Department	天
20242232	08-07-2024	08-21-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242226	08-06-2024	08-20-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242220	08-06-2024	08-19-2024	Appeal	Initial	Closed	Peter Ebb	Malden, City of - School Committee	天
20242201	08-02-2024	08-16-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20242191	08-02-2024	08-13-2024	Appeal	Initial	Closed	Public Schools Data Exchanger	Malden, City of - Public Schools	天
20242189	08-02-2024	08-16-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242184	08-01-2024	08-15-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242183	08-01-2024	08-15-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242182	08-01-2024	08-14-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20242161	07-30-2024	08-13-2024	Appeal	Initial	Closed	Public Schools Data Exchanger	Malden, City of - Public Schools	天
20242137	07-26-2024	08-09-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242135	07-26-2024	08-08-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242101	07-24-2024	08-06-2024	Appeal	Initial	Closed	Malden NewsNetwork	Malden, City of - Office of the City Clerk	天
20242100	07-24-2024	08-07-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20242095	07-23-2024	08-06-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242090	07-23-2024	08-06-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20242083	07-22-2024	07-31-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20242082	07-22-2024	08-05-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242081	07-22-2024	08-05-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242080	07-22-2024	08-05-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242078	07-22-2024	08-05-2024	Appeal	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20242059	07-18-2024	07-31-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of	天
20242021	07-16-2024	07-29-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20242018	07-15-2024	07-29-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of	天
20242015	07-15-2024	07-26-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天

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Appeals Tracking System: Search for an appeal

20242009	07-15-2024	07-26-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20241967	07-10-2024	07-22-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20241947	07-09-2024	07-23-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241903	07-02-2024	07-16-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of	天
20241897	06-28-2024	07-15-2024	Appeal	Initial	Closed	Commonwealth Transparency	The Malden Community Fund	天
20241838	06-24-2024	07-08-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241795	06-18-2024	07-02-2024	Appeal	Initial	Closed	Open Commonwealth	Malden, City of - IT Department	天
20241706	06-07-2024	06-21-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20241700	06-06-2024	06-20-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20241688	06-05-2024	06-06-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20241682	06-05-2024	06-18-2024	Appeal	Initial	Closed	Open Commonwealth	Malden, City of - Public Schools	天
20241674	06-03-2024	06-17-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20241669	06-03-2024	06-17-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241659	06-03-2024	06-13-2024	Appeal	Initial	Closed	Avery Emison	Malden, City of - Police Department	天
20241634	05-31-2024	06-13-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241633	05-30-2024	06-13-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241622	05-30-2024	06-13-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241598	05-28-2024	06-11-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241597	05-28-2024	06-10-2024	Appeal	Initial	Closed	Open Commonwealth	Malden, City of	天
20241592	05-24-2024	06-07-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241590	05-24-2024	06-03-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241579	05-24-2024	06-03-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241550	05-21-2024	06-05-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241545	05-21-2024	06-05-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天
20241369	05-06-2024	05-16-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20241323	05-01-2024	05-14-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of	天
20241314	04-30-2024	05-13-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241312	04-30-2024	05-03-2024	Appeal	Initial	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天
20241220	04-23-2024	05-07-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20241088	04-12-2024	04-26-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天

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Appeals Tracking System: Search for an appeal.

20241074	04-10-2024	04-25-2024	Appeal	Initial	Closed	Public Schools Data Exchanger	Malden, City of - Office of the City Clerk	天
20240976	03-29-2024	04-12-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of - Office of the City Clerk	天
20240914	03-26-2024	04-08-2024	Appeal	Initial	Closed	Public Schools Data Exchanger	Malden, City of	天
20240898	03-25-2024	04-05-2024	Appeal	Initial	Closed	Malden News Network	Malden, City of	天

Exhibit H

09/5/24, 2:09 PM

Appeals Tracking System: Search for an appeal

Secretary of the Commonwealth of Massachusetts
 William Francis Galvin

Public Records Appeals Status

Search for case record

Case type:	<input type="text" value="Fee Petition"/>	Case sub-type:	<input type="text" value="Reconsideration"/>
Case number:	<input type="text"/>	Case status:	<input type="text" value="Select status"/>
Case year:	<input type="text" value="2024"/>	Processing fees charged:	<input type="text"/>
Requester name:	<input type="text"/>	<input type="text" value="Search by name of requester"/>	<input type="text" value="Contains anywhere"/>
Custodian name:	<input type="text" value="Malden"/>	<input type="text" value="Search by custodian name"/>	<input type="text" value="Contains anywhere"/>
Petitions submitted regarding fees:	<input type="text" value="Select yes or no"/>		
Did request go to court:	<input type="text" value="Select yes or no"/>		
Date type:	<input type="text" value="Select type"/>	Date from:	Date to:
Results per page:	<input type="text" value="View all results"/>		

Legend

Recon: Reconsideration
 In Cam: In Camera Review

Records found: 9

Case No.	Original Date	Appeal Date	Case Type	Case Sub-type	Status	Requester	Custodian	Determination
20242187	08-07-2024	08-27-2024	Fee Petition	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天
20242180	08-07-2024	08-22-2024	Fee Petition	Recon	Closed	Open Commonwealth	Malden, City of - Public Schools	天 天
20242168	08-06-2024	08-22-2024	Fee Petition	Recon	Closed	Open Commonwealth	Malden, City of - Public Schools	天 天
20242165	08-06-2024	08-22-2024	Fee Petition	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天
20242128	08-02-2024	08-22-2024	Fee Petition	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天
20242127	08-02-2024	08-22-2024	Fee Petition	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天
20241690	06-13-2024	07-03-2024	Fee Petition	Recon	Closed	Commonwealth Transparency	Malden, City of	天 天
20241313	05-03-2024	05-24-2024	Fee Petition	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天
20240733	03-14-2024	04-03-2024	Fee Petition	Recon	Closed	Open Commonwealth	Malden, City of - Public Schools	天 天

Exhibit I

9/5/24, 2:07 PM

Appeals Tracking System: Search for an appeal

Secretary of the Commonwealth of Massachusetts
 William Francis Galvin

Public Records Appeals Status

Search for case record

Case type:	Appeal	Case sub-type:	Reconsideration
Case number:		Case status:	Select status
Case year:	2024	Processing fees charged:	
Requester name:		Search by name of requester	Contains anywhere
Custodian name:	Malden	Search by custodian name	Contains anywhere
Petitions submitted regarding fees:	Select yes or no		
Did request go to court:	Select yes or no		
Date type:	Select type	Date from:	Date to:
Results per page:	View all results		

[Search for case record](#) [Clear all](#) [Back to Public Records](#)

Legend

Recon: Reconsideration
 In Cam: In Camera Review

Records found: 9

Case Number	Request Date	Response Date	Case Type	Case Status	Case Description	Custodian	Determination	
20242218	08-20-2024		Appeal	Recon	Open	Commonwealth Transparency	Malden, City of	天
20242167	08-13-2024	09-04-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天 天
20242166	08-14-2024	09-04-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天 天
20242138	08-08-2024	08-28-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天
20241873	07-18-2024	08-07-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天 天
20241869	07-12-2024	08-01-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天 天
20241863	07-19-2024	08-09-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天 天
20241754	07-05-2024	07-26-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Office of the City Clerk	天 天
20241309	05-14-2024	06-05-2024	Appeal	Recon	Closed	Commonwealth Transparency	Malden, City of - Public Schools	天 天

Exhibit J

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

May 22, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: Response to Public Records Requests Since September 4, 2024

Dear Open Commonwealth:

This office represents the City of Malden. Since September 4, 2024, you have submitted 26 public records requests to the City of Malden. Malden hereby responds within ten business days of your requests.

Below, Malden responds to each of your 26 requests and provides a fee estimate for production. Malden has also submitted a harassment, fee, and time petition to the Supervisor of Records.

Response

1. September 4, 2024 at 1:36 PM

Please provide the last 300 text messages containing and/or regarding official City business from the cellular devices of the following people:

Gary Christenson

Open Commonwealth already requested the last 50 text messages from this individual in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request to the last 300 text messages.

The search process here involves going one-by-one through each text sent by the Mayor until the last 300 text messages regarding official City business on the Mayor's cell phone have been identified. The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The texts may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records

may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 9 hours (3 hours per 100 texts) to search, review, and redact any responsive records.

2. September 4, 2024 at 1:37 PM

Please provide the last 100 text messages containing and/or regarding official City business from the cellular devices of the following people:

*Ronald Hogan
Maria Luise
Kathleen Manning Hall
Charles Ranaghan
Daniel Grover
Deborah Burke*

Open Commonwealth already requested the last 50 text messages from each of these individuals in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request to the last 100 text messages.

The search process here involves going one-by-one through each text sent by each individual until the last 700 text messages regarding official City business have been identified. The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as many of these employees interact with the School Department in some capacity. The texts may also contain attorney-client privileged information, as many of these employees often communicate with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public, or share such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as these employees may communicate such information to City employees, like Human Resources. If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 18 hours (3 hours per 100 texts) to search, review, and redact any responsive records.

3. September 4, 2024 at 1:40 PM

Please provide an export of the following public records for the Cellular Numbers/Devices:

*781-661-8032
781-873-9278
781-873-9605*

*The device manufacturer, model and serial number;
The last 300 phone calls Inbound and Outbound;
All applications installed on the device;*

Open Commonwealth already submitted a request for similar information in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request.

This information may contain information protected by Exemption (n) which would jeopardize the cyber security of phones used for City business, including the device manufacturer, model and serial number of each phone and applications installed on each device. This information also may contain cell phone numbers of members of the public or other City employees which are protected by Exemption (c) and Exemption (o). Malden estimates that it will take 9 hours (3 hours per phone) to locate all responsive information and determine if they relate to City business, review, and redact any responsive records.

4. September 4, 2024 at 1:59 PM

Please provide the following email communications, in their entirety, in the format which they are regularly maintained including all metadata and all attachments:

Date: 1/25/14 22:46 From: Mayor Christenson mavor@cityofmalden.org To: Karen Hayes khayes@CITYOFMALDEN.ORG

Date: 2/4/14 18:02 From: Mayor Christenson mavor@cityofmalden.org To: James A. Norton jnorton@cityofmalden.org, Ron Hogan rhogan@CITYOFMALDEN.ORG

Date: 2/5/14 21:16 From: Mayor Christenson mavor@cityofmalden.org To: Eleanor Cushing ecushing@CITYOFMALDEN.ORG, "Robert P. Knox" rknox@CITYOFMALDEN.ORG, Maria Luise mluise@CITYOFMALDEN.ORG

Date: 2/19/14 21:49 From: Mayor Christenson mavor@cityofmalden.org To: Adam Weldai <adamweldaiXXXX.com>, N Weiss nweiss@malden.mec.edu, David DeRuosi DDeRuosi@CITYOFMALDEN.ORG

Date: 2/20/14 20:37 From: Mayor Christenson mavor@cityofmalden.org To: Kathleen Manning Hall kmanninghall@CITYOFMALDEN.ORG, Maria Luise mluise@CITYOFMALDEN.ORG

Date: 2/23/14 21:15 From: Mayor Christenson mavor@cityofmalden.org To: Maria Luise mluise@CITYOFMALDEN.ORG, Kathleen Manning Hall kmanninghall@CITYOFMALDEN.ORG

Date: 2/26/14 20:00 From: Mayor Christenson mavor@cityofmalden.org To: Adam Weldai aweldai@CITYOFMALDEN.ORG

Date: 3/5/14 19:27 From: Mayor Christenson mayor@cityofmalden.org
To: Ron Hogan rhogan@CITYOFMALDEN.ORG, "Kevin J. Duffy"
kduffy@CITYOFMALDEN.ORG

Date: 3/18/14 20:04 From: Mayor Christenson mayor@cityofmalden.org
To: Ron Hogan rhogan@CITYOFMALDEN.ORG

Date: 3/19/14 20:21 From: Mayor Christenson mayor@cityofmalden.org
To: Ron Hogan rhogan@CITYOFMALDEN.ORG, "Charles A. Ranaghan"
cranaghan@CITYOFMALDEN.ORG

Date: 3/19/14 20:24 From: Mayor Christenson mayor@cityofmalden.org
To: Charles A. Ranaghan cranaghan@CITYOFMALDEN.ORG

Date: 3/19/14 20:29 From: Mayor Christenson mayor@cityofmalden.org
To: Charles A. Ranaghan cranaghan@CITYOFMALDEN.ORG

Date: 4/15/14 21:12 From: Mayor Christenson mayor@cityofmalden.org
To: Charles A. Ranaghan cranaghan@CITYOFMALDEN.ORG

Date: 4/17/14 22:26 From: Mayor Christenson mayor@cityofmalden.org
To: Karen Hayes khayes@CITYOFMALDEN.ORG, Maria Luise
mluise@CITYOFMALDEN.ORG

Date: 4/18/14 21:44 From: Mayor Christenson mayor@cityofmalden.org
To: Ron Cochran rcochran@CITYOFMALDEN.ORG

Date: 5/20/16 22:29 From: Mayor Christenson mayor@cityofmalden.org
To: Maria Luise mluise@CITYOFMALDEN.ORG

Date: 4/20/20 22:25 From: Mayor Christenson mayor@cityofmalden.org
To: Maria Luise mluise@CITYOFMALDEN.ORG

Date: 2/7/14 11:02 From: Karen Anderson kanderson@CITYOFMALDEN.ORG
To: MULTIPLE RECIPIENTS

Date: 2/19/14 18:52 From: Adam Weldai <adamweldaiXXXXX.com>
To: Mayor Christenson mayor@cityofmalden.org, N Weiss nweiss@malden.mec.edu,
David DeRuosi DDeRuosi@cityofmalden.org

Date: 1/15/14 10:57 From: Christopher J. Webb cwebb@cityofmalden.org
To: Tom: Walsh twalsh@CITYOFMALDEN.ORG repdonato38XXXXX.com
<repdonato38XXXXX.com>, "Brodeur, Paul - Rep (HOU)" Paul.Brodeur@mahouse.gov,
christopher.fallon@mahouse.gov christopher.fallon@mahouse.gov, David DeRuosi
DDeRuosi@CITYOFMALDEN.ORG

Date: 1/22/14 14:15 From: Gary J. Christenson gchristenson@CITYOFMALDEN.ORG
To: Craig Spadafora craig@craigspadafora.org, "James A. Norton"
jnorton@CITYOFMALDEN.ORG, "Gary J. Christenson"
gchristenson@CITYOFMALDEN.ORG, Craig Spadafora cspadafora@CITYOFMALDEN.ORG,
"Charles A. Ranaghan" cranaghan@CITYOFMALDEN.ORG

Date: 1/30/14 9:06 From: Ron Hogan rhogan@CITYOFMALDEN.ORG

Date: 1/17/14 11:10 From: Mayor Christenson mayor@cityofmalden.org
To: Anthony Rodrigues arodrigues@CITYOFMALDEN.ORG

Malden likely only possesses one record responsive to this request – the requested 2020 email. Malden will need to perform a search for the requested email between the Mayor and the Special Assistant to the Mayor and review it and any attachments to determine if it contains any information protected by the attorney-client privilege, FERPA and Exemption (a), or personnel file information protected by Exemption (c). Malden estimates this process will take 15 minutes.

5. September 4, 2024 at 2:29 PM

Please provide the following email communications, in their entirety, in the format which they are regularly maintained including all metadata and all attachments:

Date/Time: 1/10/14 20:16 From: "David DeRuosi"
DDeRuosi@CITYOFMALDEN.ORG To: "Adam Weldai"
<adamweldaiXXXXXXXXXXXXXXXXX.com>

Date/Time: 1/7/14 16:42 From: Craig Spadafora <craig10873XXXXX.com>
To: "James A. Norton" jnorton@CITYOFMALDEN.ORG, "Gary J. Christenson"
gchristenson@CITYOFMALDEN.ORG, Ron Hogan rhogan@CITYOFMALDEN.ORG, "Charles
A. Ranaghan" cranaghan@CITYOFMALDEN.ORG, Craig Spadafora
cspadafora@CITYOFMALDEN.ORG

Date/Time: 1/7/14 8:49 From: Barbara Murphy <murphyforward5XXXXX>
To: Mayor Gary Christenson

Malden does not possess any records responsive to this request.

6. September 4, 2024 at 2:16 PM

From 1/1/2024 through the date you receive this request, please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), The Schools (@maldenps.org), (thus search all systems), where any email address under the control of Charles Ranaghan appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:).

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

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

Malden conducted a search which produced an extract of responsive information with 18,074 rows. The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City's Controller. As such, each line needs to be reviewed for personal email addresses to redact. Malden estimates that this will take 25.1 hours (one minute per 12 rows of email information within the extract).

7. September 5, 2024 at 4:15 AM

For the entirety of all records available, please extract the author and all recipients (To:, Cc:, and/or Bcc:); date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), where the following people send ANY email sent to a BCC address:

*Maria Luise
Ronald Hogan
Craig Spadafora
Jadeane Sica
Charles Ranaghan
Steve Winslow
Barbara Murphy
Kate Fallon*

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

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

Malden will need to perform 8 separate searches to obtain the requested extracts. The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Malden estimates that this will take 10 hours based on its anticipated number of rows (one minute per 12 rows of email information within the extract).

8. September 5, 2024 at 5:03 AM

Please provide all emails sent to any email address at the "@globe.com" FQDN for the time period of January 1, 2014, through the date you receive this request.

Malden conducted a search which identified 2,535 emails which may be responsive to the request. Malden needs to review each email and any attachments for redactions pursuant to Exemption (a) and Exemption (c). The Globe communicates with Malden on potential stories. Some of the Globe's emails may contain student record information protected by FERPA, CORI information of individuals, or other statutorily protected information or information the disclosure of which would constitute an unwarranted invasion of privacy. If Malden were to produce its responses to those emails, the records would disclose information exempt under Exemption (a) or (c). Malden anticipates that it will take 42.25 hours (1 minute per email) to review and redact all responsive records.

9. September 5, 2024 at 5:25 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

CSP@CITYOFMALDEN.ORG

swinn@civofmalden.org

civstaff@CITYOFMALDEN.ORG

gds@civofmalden.org

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails. Malden responded with a fee and time petition. See SPR 24/2365. Here, Open Commonwealth has frivolously enlarged its request to the latest 100 emails to or from the same email addresses.

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

10. September 5, 2024 at 5:49 AM

- Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Adam Weldai.
- This requests specifically seeks; the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, 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.

Open Commonwealth already requested this information in a previous request. Malden responded with a fee and time petition, and the Supervisor granted Malden's fee and time petition. SPR24/2366. Here, Open Commonwealth has frivolously repeats the same request. Malden maintains its fee estimate from its previous fee petition – 53.62 hours for review and redaction of personal email addresses.

11. September 5, 2024 at 5:50 AM

- Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Kathryn Fallon.
- This requests specifically seeks; the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, 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.

Open Commonwealth already requested this information in a previous request. Malden responded with a fee and time petition which is currently pending in the Supervisor's office. SPR 24/2596. Malden maintains its fee estimate from its previous fee petition – 50 hours to review and redact personal email address in the 30,000 rows of responsive information in the extract.

12. September 5, 2024 at 5:59 AM

- Please extract all text messages of City business on any device, including any personal device of Ronald Hogan, this request specifically seeks text messages both sent and received.
- Please extract all voice mail messages of City business on any personal device of Ronald Hogan, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or pdf format.

This information was already requested in Request #2 above, dated September 4, 2024 at 1:37 PM.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Hogan, the City's Parking Director, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee occasionally communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

13. September 5, 2024 at 6:01 AM

- o Please extract all text messages of City business on any device, including any personal device of Maria Luise, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Maria Luise, this request specifically seeks both the voice recording and any renderings of said recordings including, but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or pdf format.

This information was already requested in Request #2 above, dated September 4, 2024 at 1:37 PM.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Luise, the Special Assistant to the Mayor, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee occasionally communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

14. September 5, 2024 at 6:02 AM

- o Please extract all text messages of City business on any device, including any personal device of Charles Ranaghan, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Charles Ranaghan, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

This information was already requested in Request #2 above, dated September 4, 2024 at 1:37 PM.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Ranaghan, the City Controller, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

15. September 5, 2024 at 6:21 AM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Neal Anderson.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY CSV or XLSX form.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Anderson, the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive

records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

16. September 5, 2024 at 12:00 PM

- o *Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Steve Winslow.*
- o *This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.*
- o *This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.*

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Winslow, the City Council President, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

17. September 6, 2024 at 7:43 AM

- o *Please extract all text messages of City business on any device, including any personal device of Jennifer Spadafora, this request specifically seeks text messages both sent and received.*

- o Please **extract** all voice mail messages of City business on any personal device of Jennifer Spadafora, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Spadafora, a School Committee member, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain student record information protected by FERPA, as this School Committee member sometimes communicates with school parents about their children. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The texts may also contain the personal email address, personal phone number, or home address of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

18. September 6, 2024 at 9:00 AM

- o Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Steve Winslow.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

This request is already submitted a day prior in Request #15 above. Malden repeats its response and fee petition.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Winslow, the City Council President, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such

information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

19. September 6, 2024 at 9:00 AM

- o *Please extract all text messages of City business on any device, including any personal device of Jadeane Sica, this request specifically seeks text messages both sent and received.*
- o *Please extract all voice mail messages of City business on any personal device of Jadeane Sica, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.*
- o *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Sica, a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate about such information to City employees. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

20. September 6, 2024 at 12:56 PM

- o *Please **extract** all text messages of City business on any device, including any personal device of Deano Summers, this request specifically seeks text messages both sent and received.*
- o *Please **extract** all voice mail messages of City business on any personal device of Deano Summers, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.*

- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or pdf format.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Summers, a member on the City's Cannabis Licensing and Enforcement Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, like personal cell phone numbers, email addresses, and other private information of applicants for marijuana licensing. If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

21. September 6, 2024 at 6:38 PM

- *Please extract the author and all recipients (To, Cc, and/or Bcc) and date all personal email addresses used for City business by Antonietta Mertz.*
- *This requests specifically seeks, the To, From, Cc, and Bcc, address fields, the Date and Time that the message was sent and/or received, 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.*

There are no records responsive to your request.

22. September 6, 2024 at 6:39 PM

- *Please extract all text messages of City business on any device, including any personal device of Antonietta Mertz, this request specifically seeks text messages both sent and received.*
- *Please extract all voice mail messages of City business on any personal device of Antonietta Mertz, this request specifically seeks both the voice recording and any renderings of said recordings, including but not limited to transcriptions, text messages and/or email messages.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or pdf format.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Mertz, the Director of Finance

and Operations for Malden Public Schools, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain student record information protected by FERPA, as this employee sometimes communicates with school parents about their children. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information, or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The texts may also contain the personal email address, personal phone number, or home address of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

23. September 7, 2024 at 9:00 AM

- o Please extract all text messages of City business on any device, including any personal device of Neal Anderson, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Neal Anderson, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or pdf format.

Malden has no way of estimating how many responsive texts and voicemails exist without individually going through each email of Mr. Anderson, the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

24. September 8, 2024 at 9:00 AM

- o Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Craig Spadafora.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and, if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Spadafora, a member of the City Council to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

25. September 11, 2024 at 7:45 AM

- o Please **extract** all public records of City business on any personal device of by Gary Christenson including but not limited the device with the phone number 617-233-7001, this request specifically seeks but, is not limited to documents, communications, images, and any other Public Records created, received and/or stored on any device of Gary Christenson.
- o Please **extract** all text messages of City business on any device, including any personal device of by Gary Christenson including but not limited the device with the phone number 617-233-7001, this request specifically seeks text messages both sent and received.
- o Please **extract** all voice mail messages of City business on any personal device of by Gary Christenson including but not limited the device with the phone number 617-233-7001, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Open Commonwealth already requested the last 50 text messages from the Mayor in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR

24/2320. Then, Open Commonwealth frivolously enlarged its request to the last 100 text messages in Request #1 above on September 4, 2024 at 1:36 PM. Here, Open Commonwealth frivolously again enlarges its request.

Malden has no way of estimating how many responsive texts, voicemails, or public records exist without individually going through every text or voicemail of the Mayor, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

26. September 15, 2024 at 10:00 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 75 emails sent to or received by the below email addresses:

swinn@cityofmalden.org
ZCOM@CITYOFMALDEN.ORG
support@CITYOFMALDEN.ORG
SMINI@CITYOFMALDEN.ORG
CSP@CITYOFMALDEN.ORG
gds@CITYOFMALDEN.ORG
disabilitycommission@CITYOFMALDEN.ORG
kdu@CITYOFMALDEN.ORG

where the email address appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:). This request also seeks all responsive calendar items, including invitations, declinations, and/or acceptances.

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

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

Again, Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails from or to these emails. Malden responded with a fee and time petition. See SPR 24/2365. Open Commonwealth then frivolously requested the same information from the same email addresses in Request #9 above, this time enlarged to the latest 100 emails. Here, Open Commonwealth has frivolously submitted the same request with several more email addresses originally contained in the July 18, 2024 and August 6, 2024 requests, this time requesting the last 75 emails to and from the same email addresses.

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 6 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

Grounds for Fee Estimate

General Laws c. 66, § 10(d)(iii) authorizes the District's fee petition and provides, in pertinent part, as follows:

(iii) 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 but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;

G. L. c. 66, § 10d(iii)-(iv); see also 950 CMR 32.06(4).

Calculation of Fee Estimate

To produce these records, Malden 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.

Open Commonwealth has submitted 26 public records requests within a span of ten business days, many of which have subparts as detailed above. Malden argues given that many are interrelated and given the temporal proximity, they should be treated as one large request. The total estimated hours to respond to these requests is 4,126.22 hours.

After subtracting the first two (2) hours, 4,124.22 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$103,105.50.

Please be advised that the fee estimate may be reduced if you narrow the scope of the requests. Malden will not begin its search, segregation, and redaction until it has received its fee estimate from you.

Pursuant to G.L. c. 66, § 10(b)(vi), and given the volume of records requested which require review, Malden takes an additional 15 business days to respond to the requests from the date of receipt of payment for all of the work.

Right of Appeal

You have the right of appeal to the Supervisor of Records under subsection (a) of G. L. c. 66, § 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the Superior Court under subsection (c) of G. L. c. 66, § 10A.

Respectfully,

/s/ James Donnelly
James Donnelly

cc: Supervisor of Public Records, pre@sec.state.ma.us

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

Exhibit K

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP

Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

September 18, 2024

VIA ELECTRONIC MAIL

Supervisor of Records
Division of Public Records
One Ashburton Place, Room 1719
Boston, MA 02108
Telephone: (617) 727-2832
Fax: (617) 727-5914
Email: pre@sec.state.ma.us

RE: Public Records Requests by Open Commonwealth/Fee Petition/Time Petition/Harassment

Dear Supervisor of Public Records:

This office is counsel to the City of Malden. Since September 4, 2024, Open Commonwealth has submitted 26 public records requests to the City of Malden. Malden replied to all requests in a timely fashion on September 18, 2024.

Malden now submits this harassment petition to relieve it of its obligation to provide the records sought. In the alternative, Malden requests that you allow it to charge a fee of \$25 per hour to produce the records and grant it additional time to produce the records.

Harassment

Pursuant to G. L. c. 66, § 10(c), Malden considers these requests to be a part of a series of requests that is intended to harass it and thereby seeks that the Supervisor relieve the District of its obligation to provide copies of the records sought. See Erickson v. Executive Office of Environmental Affairs, 2006 WL 3010949 (Superior Court, Suffolk County) (public records requests may not be used as part of a "pattern of harassment to government officials and anyone else" with whom a party has a dispute).

950 CMR 32.06(4)(f) states that "if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor 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 may . . . relieve the custodian of its obligation to provide copies of the records sought."

In this case, Open Commonwealth has submitted 26 separate public records requests to the City of Malden within a span of ten business days starting on September 4, 2024. These requests continued the pattern of incessant, abusive, and harassing public records requests from Open Commonwealth. From January 1, 2024 to September 4, 2024, Open Commonwealth had submitted 123 public records requests to Malden. Malden

submitted 35 separate fee petitions to the Supervisor of Records out of the 123 total requests this year prior to September 4, 2024. Open Commonwealth appealed Malden's response to its public records request on 52 separate occasions. When the Supervisor approved one of Malden's fee petitions, Open Commonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. When the Supervisor denied one of Open Commonwealth's appeals, Open Commonwealth requested consideration of the denial on another 9 separate occasions. This outrageous volume of requests, appeals, and requests for reconsideration far exceeds what the Supervisor has considered "harassment" in the past. See SPR17/1390. Additionally, the volume far exceeds what other states have considered to be "harassment" in the public records context. See Department of Corrections v. McKee, 199 Wash. App. Ct. 635 (2017); City of Portage v. O'Grady, 2019AP354 (Wisc. App. Ct., April 30, 2020).

Further, Open Commonwealth's non-stop public records requests, appeals, and requests for reconsideration continue the pattern of harassment of Malden from previous years. Open Commonwealth was founded and remains operated by Bruce Friedman. Since he instituted litigation at the Bureau of Special Education Appeals in September 2019, Bruce Friedman and Open Commonwealth had made hundreds of public records requests prior to 2024. The continuing harassment of Malden is already the subject of current and active litigation. See Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, (Docket No. # 2181CV01458). Mr. Friedman's and Open Commonwealth's requests continue to request the same information that is the subject of the pending litigation. The Public Records Law is not intended to allow litigants to work around the legal process. In accordance with 950 CMR 32.08(2)(b)(1), the Supervisor consistently has rejected the obligation to turn over records in such circumstances. See, e.g., SPR19/102 ("Whereas the requested records are the subject of dispute in active litigation, and in particular the subject of a discovery request, I decline to opine on this matter.").

Moreover, upon information and belief, Bruce Friedman has also created a new email and has submitted further public records requests to Malden using the email address, data@publicschoolsdata.com. By using a separate email address, Mr. Friedman further barrages Malden with public records requests without the number of requests being added to Open Commonwealth's total.

Furthermore, as detailed below, many of these requests, including the instant 26 since September 4, 2024, are duplicative of each other and previous public records requests submitted by Open Commonwealth. To harass Malden, Open Commonwealth often requests the same information but simply changes the number of records requested, alternating between the latest 50, 75, or 100 records, despite the presence of an approved fee petition for those same records or a pending fee petition before the Supervisor. Open Commonwealth lets the Supervisor know that it has modified its request, causing the Supervisor to decline to opine on the pending fee petition, and then Open Commonwealth resubmits the same request but for a different number of records, causing Malden to have to respond and submit a new fee petition on each occasion. Similarly, as seen below, Open Commonwealth repeatedly requests the same information but for different Malden employees or officials despite the issuance of an approved fee petition from the Supervisor which authorizes a fee for a records request regarding a different employee or official.

These requests are not intended for broad dissemination to the public about government activity. Open Commonwealth has received approved fee petitions which state that the information he is requesting is exempt from disclosure, and yet continues to request the same exempt information. Even though Open Commonwealth knows a fee will be required, Open Commonwealth has paid the fee estimate on exactly one occasion this year out of 35 fee petitions, showing that Open Commonwealth almost never has any intention of actually acquiring the records requested. And, Open Commonwealth repeatedly informs the Supervisor of modified requests so that the Supervisor will drop a pending fee petition, even though the new request requires the same fee petition and more work for Malden. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees. For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide you with copies of the records you seek, then Malden will alternatively petition the Supervisor of Records to charge a fee to produce the records.

Fee Petition

Malden requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production. Malden has attached all 26 public records requests received from Open Commonwealth since September 4, 2024 and copies them in italics below, followed by an explanation of why each request needs to be reviewed for redactions and its fee estimate for each request. Malden further notes that it has identified the exemptions it believes it could be most applicable. However, it believes that any of the exemptions listed under the law could come out in actual review and therefore, its fee petition encompasses any exemption for which redactions may be necessary.

1. September 4, 2024 at 1:36 PM

Please provide the last 300 text messages containing and/or regarding official City business from the cellular devices of the following people:

Gary Christenson

Open Commonwealth already requested the last 50 text messages from this individual in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request to the last 300 text messages.

The search process here involves going one-by-one through each text sent by the Mayor until the last 300 text messages regarding official City business on the Mayor's cell phone have been identified. The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The texts may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 9 hours (3 hours per 100 texts) to search, review, and redact any responsive records.

2. September 4, 2024 at 1:37 PM

Please provide the last 100 text messages containing and/or regarding official City business from the cellular devices of the following people:

*Ronald Hogan
Maria Luise
Kathleen Manning Hall
Charles Ranaghan
Daniel Grover
Deborah Burke*

Open Commonwealth already requested the last 50 text messages from each of these individuals in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request to the last 100 text messages.

The search process here involves going one-by-one through each text sent by each individual until the last 700 text messages regarding official City business have been identified. The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as many of these employees interact with the School Department in some capacity. The texts may also contain attorney-client privileged information, as many of these employees often communicate with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public, or share such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as these employees may communicate such information to City employees, like Human Resources. If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 18 hours (3 hours per 100 texts) to search, review, and redact any responsive records.

3. September 4, 2024 at 1:40 PM

Please provide an export of the following public records for the Cellular Numbers/Devices:

*781-661-8032
781-873-9278
781-873-9605*

*The device manufacturer, model and serial number;
The last 300 phone calls Inbound and Outbound;
All applications installed on the device;*

Open Commonwealth already submitted a request for similar information in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request.

This information may contain information protected by Exemption (n) which would jeopardize the cyber security of phones used for City business, including the device manufacturer, model and serial number of each

phone and applications installed on each device. This information also may contain cell phone numbers of members of the public or other City employees which are protected by Exemption (c) and Exemption (o). Malden estimates that it will take 9 hours (3 hours per phone) to locate all responsive information and determine if they relate to City business, review, and redact any responsive records.

4. September 4, 2024 at 1:59 PM

Please provide the following email communications, in their entirety, in the format which they are regularly maintained including all metadata and all attachments:

Date: 1/25/14 22:46 From: Mayor Christenson mayor@cityofmalden.org To: Karen Hayes khayes@CITYOFMALDEN.ORG

Date: 2/4/14 18:02 From: Mayor Christenson mayor@cityofmalden.org To: James A. Norton jnorton@cityofmalden.org, Ron Hogan rhogan@CITYOFMALDEN.ORG

Date: 2/5/14 21:16 From: Mayor Christenson mayor@cityofmalden.org To: Eleanor Cushing ecushing@CITYOFMALDEN.ORG, "Robert P. Knox" rknox@CITYOFMALDEN.ORG, Maria Luise mluise@CITYOFMALDEN.ORG

Date: 2/19/14 21:49 From: Mayor Christenson mayor@cityofmalden.org To: Adam Weldai <adamweldaiXXXX.com>, N Weiss nweiss@malden.mec.edu, David DeRuosi DDeRuosi@CITYOFMALDEN.ORG

Date: 2/20/14 20:37 From: Mayor Christenson mayor@cityofmalden.org To: Kathleen Manning Hall kmanninghall@CITYOFMALDEN.ORG, Maria Luise mluise@CITYOFMALDEN.ORG

Date: 2/23/14 21:15 From: Mayor Christenson mayor@cityofmalden.org To: Maria Luise mluise@CITYOFMALDEN.ORG, Kathleen Manning Hall kmanninghall@CITYOFMALDEN.ORG

Date: 2/26/14 20:00 From: Mayor Christenson mayor@cityofmalden.org To: Adam Weldai aweldai@CITYOFMALDEN.ORG

Date: 3/5/14 19:27 From: Mayor Christenson mayor@cityofmalden.org To: Ron Hogan rhogan@CITYOFMALDEN.ORG, "Kevin J. Duffy" kduffy@CITYOFMALDEN.ORG

Date: 3/18/14 20:04 From: Mayor Christenson mayor@cityofmalden.org To: Ron Hogan rhogan@CITYOFMALDEN.ORG

Date: 3/19/14 20:21 From: Mayor Christenson mayor@cityofmalden.org To: Ron Hogan rhogan@CITYOFMALDEN.ORG, "Charles A. Ranaghan" cranaghan@CITYOFMALDEN.ORG

Date: 3/19/14 20:24 From: Mayor Christenson mayor@cityofmalden.org To: Charles A. Ranaghan cranaghan@CITYOFMALDEN.ORG

Date: 3/19/14 20:29 From: Mayor Christenson mayor@cityofmalden.org

To: Charles A. Ranaghan cranaghan@CITYOFMALDEN.ORG

Date: 4/15/14 21:12 From: Mayor Christenson mayor@cityofmalden.org
To: Charles A. Ranaghan cranaghan@CITYOFMALDEN.ORG

Date: 4/17/14 22:26 From: Mayor Christenson mayor@cityofmalden.org
To: Karen Hayes khayes@CITYOFMALDEN.ORG, Maria Luise mluise@CITYOFMALDEN.ORG

Date: 4/18/14 21:44 From: Mayor Christenson mayor@cityofmalden.org
To: Ron Cochran rcochran@CITYOFMALDEN.ORG

Date: 5/20/16 22:29 From: Mayor Christenson mayor@cityofmalden.org
To: Maria Luise mluise@CITYOFMALDEN.ORG

Date: 4/20/20 22:25 From: Mayor Christenson mayor@cityofmalden.org
To: Maria Luise mluise@CITYOFMALDEN.ORG

Date: 2/7/14 11:02 From: Karen Anderson kanderson@CITYOFMALDEN.ORG
To: MULTIPLE RECIPIENTS

Date: 2/19/14 18:52 From: Adam Weldai adamweldaiXXXXX.com
To: Mayor Christenson mayor@cityofmalden.org, N Weiss nweiss@malden.mec.edu, David DeRuosi DDeRuosi@cityofmalden.org

Date: 1/15/14 10:57 From: Christopher J. Webb cwebb@cityofmalden.org
To: Tom Walsh twalsh@CITYOFMALDEN.ORG repdonato38XXXXX.com repdonato38XXXXX.com,
"Brodeur, Paul - Rep (HOU)" Paul.Brodeur@mahouse.gov, christopher.fallon@mahouse.gov,
christopher.fallon@mahouse.gov, David DeRuosi DDeRuosi@CITYOFMALDEN.ORG

Date: 1/22/14 14:15 From: Gary J. Christenson gchristenson@CITYOFMALDEN.ORG
To: Craig Spadafora craig@craigspadafora.org, "James A. Norton" jnorton@CITYOFMALDEN.ORG, "Gary J. Christenson" gchristenson@CITYOFMALDEN.ORG, Craig Spadafora cpadafora@CITYOFMALDEN.ORG, "Charles A. Ranaghan" cranaghan@CITYOFMALDEN.ORG

Date: 1/30/14 9:06 From: Ron Hogan rhogan@CITYOFMALDEN.ORG

Date: 1/17/14 11:10 From: Mayor Christenson mayor@cityofmalden.org
To: Anthony Rodrigues arodrigues@CITYOFMALDEN.ORG

Malden likely only possesses one record responsive to this request – the requested 2020 email. Malden will need to perform a search for the requested email between the Mayor and the Special Assistant to the Mayor and review it and any attachments to determine if it contains any information protected by the attorney-client privilege, FERPA and Exemption (a), or personnel file information protected by Exemption (c). Malden estimates this process will take 15 minutes.

5. September 4, 2024 at 2:29 PM

Please provide the following email communications, in their entirety, in the format which they are regularly maintained including all metadata and all attachments:

Date/Time: 1/10/14 20:16 From: "David DeRuosi" DDeRuosi@CITYOFMALDEN.ORG To: "Adam Weldai" <adamweldaiXXXXXXXXXXXXXXXXXXXX.com>

Date/Time: 1/7/14 16:42 From: Craig Spadafora <craig10873XXXXX.com> To: "James A. Norton" jnorton@CITYOFMALDEN.ORG; "Gary J. Christenson" gchristenson@CITYOFMALDEN.ORG; Ron Hogan rhogan@CITYOFMALDEN.ORG; "Charles A. Ranaghan" cranaghan@CITYOFMALDEN.ORG; Craig Spadafora cspadafora@CITYOFMALDEN.ORG

Date/Time: 1/7/14 8:49 From: Barbara Murphy <murphyforward5XXXXX> To: Mayor Gary Christenson

Malden does not possess any records responsive to this request.

6. September 4, 2024 at 2:16 PM

From 1/1/2024 through the date you receive this request, please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), The Schools (@maldenps.org), (thus search all systems), where any email address under the control of Charles Ranaghan appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:).

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

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

Malden conducted a search which produced an extract of responsive information with 18,074 rows. The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City's Controller. As such, each line needs to be reviewed for personal email addresses to redact. Malden estimates that this will take 25.1 hours (one minute per 12 rows of email information within the extract).

7. September 5, 2024 at 4:15 AM

For the entirety of all records available, please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), where the following people send ANY email sent to a BCC: address:

Maria Luise
Ronald Hogan
Craig Spadafora
Jadeane Sica
Charles Ranaghan
Steve Winslow
Barbara Murphy

Kate Fallon

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

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

Malden will need to perform 8 separate searches to obtain the requested extracts. The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Malden estimates that this will take 10 hours based on its anticipated number of rows (one minute per 12 rows of email information within the extract).

8. September 5, 2024 at 5:03 AM

Please provide all emails sent to any email address at the "@globe.com" FQDN for the time period of January 1, 2014, through the date you receive this request.

Malden conducted a search which identified 2,535 emails which may be responsive to the request. Malden needs to review each email and any attachments for redactions pursuant to Exemption (a) and Exemption (c). The Globe communicates with Malden on potential stories. Some of the Globe's emails may contain student record information protected by FERPA, CORI information of individuals, or other statutorily protected information or information the disclosure of which would constitute an unwarranted invasion of privacy. If Malden were to produce its responses to those emails, the records would disclose information exempt under Exemption (a) or (c). Malden anticipates that it will take 42.25 hours (1 minute per email) to review and redact all responsive records.

9. September 5, 2024 at 5:25 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

CSP@CITYOFMALDEN.ORG

swinn@cityofmalden.org

citystaff@CITYOFMALDEN.ORG

gds@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails. Malden responded with a fee and time petition. See SPR 24/2365. Here, Open Commonwealth has frivolously enlarged its request to the latest 100 emails to or from the same email addresses.

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

10. September 5, 2024 at 5:49 AM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Adam Weldai.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Open Commonwealth already requested this information in a previous request. Malden responded with a fee and time petition, and the Supervisor granted Malden's fee and time petition. SPR24/2366. Here, Open Commonwealth has frivolously repeats the same request. Malden maintains its fee estimate from its previous fee petition – 53.62 hours for review and redaction of personal email addresses.

11. September 5, 2024 at 5:50 AM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Kathryn Fallon.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Open Commonwealth already requested this information in a previous request. Malden responded with a fee and time petition which is currently pending in the Supervisor's office. SPR 24/2596. Malden maintains its fee estimate from its previous fee petition – 50 hours to review and redact personal email address in the 30,000 rows of responsive information in the extract.

12. September 5, 2024 at 5:59 AM

- o Please extract all text messages of City business on any device, including any personal device of Ronald Hogan, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Ronald Hogan, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

This information was already requested in Request #2 above, dated September 4, 2024 at 1:37 PM.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Hogan, the City's Parking Director, to identify if any relate to

City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee occasionally communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

13. September 5, 2024 at 6:01 AM

- o Please extract all text messages of City business on any device, including any personal device of Maria Luise, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Maria Luise, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

This information was already requested in Request #2 above, dated September 4, 2024 at 1:37 PM.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Luise, the Special Assistant to the Mayor, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee occasionally communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

14. September 5, 2024 at 6:02 AM

- o Please extract all text messages of City business on any device, including any personal device of Charles Ranaghan, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Charles Ranaghan, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

This information was already requested in Request #2 above, dated September 4, 2024 at 1:37 PM.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Ranaghan, the City Controller, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

15. September 5, 2024 at 6:21 AM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Neal Anderson.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY CSV or XLSX form.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Anderson, the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

16. September 5, 2024 at 12:00 PM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Steve Winslow.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY CSV or XLSX form.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Winslow, the City Council President, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

17. September 6, 2024 at 7:43 AM

- o Please extract all text messages of City business on any device, including any personal device of Jennifer Spadafora, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Jennifer Spadafora, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This request specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Spadafora, a School Committee member, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain student record information protected by FERPA, as this School Committee member sometimes communicates with school parents about their children. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The texts may also contain the personal email address, personal phone number, or home address of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

18. September 6, 2024 at 9:00 AM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Steve Winslow.
- o This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.

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

This request is already submitted a day prior in Request #15 above. Malden repeats its response and fee petition.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Winslow, the City Council President, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

19. September 6, 2024 at 9:00 AM

- o *Please extract all text messages of City business on any device, including any personal device of Jadeane Sica, this request specifically seeks text messages both sent and received.*
- o *Please extract all voice mail messages of City business on any personal device of Jadeane Sica, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.*
- o *This request specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Sica, a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate about such information to City employees. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

20. September 6, 2024 at 12:56 PM

- o *Please extract all text messages of City business on any device, including any personal device of Deano Summers, this request specifically seeks text messages both sent and received.*
- o *Please extract all voice mail messages of City business on any personal device of Deano Summers, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.*

- o *This request specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Summers, a member on the City's Cannabis Licensing and Enforcement Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, like personal cell phone numbers, email addresses, and other private information of applicants for marijuana licensing. If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

21. September 6, 2024 at 6:38 PM

- o *Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Antonietta Mertz.*
- o *This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.*
- o *This request specifically requests that the export be provided in ONLY .CSV or .XLSX form.*

There are no records responsive to your request.

22. September 6, 2024 at 6:39 PM

- o *Please **extract** all text messages of City business on any device, including any personal device of Antonietta Mertz, this request specifically seeks text messages both sent and received.*
- o *Please **extract** all voice mail messages of City business on any personal device of Antonietta Mertz, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.*
- o *This request specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Mertz, the Director of Finance and Operations for Malden Public Schools, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain student record information protected by FERPA, as this employee sometimes communicates with school parents about their children. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The texts may also contain the

personal email address, personal phone number, or home address of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

23. September 7, 2024 at 9:00 AM

- o Please extract all text messages of City business on any device, including any personal device of Neal Anderson, this request specifically seeks text messages both sent and received.
- o Please extract all voice mail messages of City business on any personal device of Neal Anderson, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.
- o This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or pdf format.

Malden has no way of estimating how many responsive texts and voicemails exist without individually going through each email of Mr. Anderson, the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

24. September 8, 2024 at 9:00 AM

- o Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Craig Spadafora.
- o This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.
- o This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Spadafora, a member of the City Council to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the

personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

25. September 11, 2024 at 7:45 AM

- o Please **extract** all public records of City business on any personal device of by Gary Christenson including but not limited the device with the phone number 617-233-7001, this request specifically seeks but is not limited to documents, communications, images, and any other Public Records created, received and/or stored on any device of Gary Christenson.
- o Please **extract** all text messages of City business on any device, including any personal device of by Gary Christenson including but not limited the device with the phone number 617-233-7001, this request specifically seeks text messages both sent and received.
- o Please **extract** all voice mail messages of City business on any personal device of by Gary Christenson including but not limited the device with the phone number 617-233-7001, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Open Commonwealth already requested the last 50 text messages from the Mayor in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Then, Open Commonwealth frivolously enlarged its request to the last 100 text messages in Request #1 above on September 4, 2024 at 1:36 PM. Here, Open Commonwealth frivolously again enlarges its request.

Malden has no way of estimating how many responsive texts, voicemails, or public records exist without individually going through every text or voicemail of the Mayor, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

26. September 15, 2024 at 10:00 PM

Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date: (but not the body or attachments) from the most recent 75 emails sent to or received by the below email addresses:

swimm@cityofmaiden.org

ZCOM@CITYOFMALDEN.ORG

support@CITYOFMALDEN.ORG

SMINK@CITYOFMALDEN.ORG
CSP@CITYOFMALDEN.ORG
gds@CITYOFMALDEN.ORG
disabilitycommission@CITYOFMALDEN.ORG
kdu@CITYOFMALDEN.ORG

where the email address appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:). This request also seeks all responsive calendar items, including invitations, declinations, and/or acceptances. This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This request specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Again, Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails from or to these emails. Malden responded with a fee and time petition. See SPR 24/2365. Open Commonwealth then frivolously requested the same information from the same email addresses in Request #9 above, this time enlarged to the latest 100 emails. Here, Open Commonwealth has frivolously submitted the same request with several more email addresses originally contained in the July 18, 2024 and August 6, 2024 requests, this time requesting the last 75 emails to and from the same email addresses.

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 6 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

Grounds for Fee Estimate

General Laws c. 66, § 10(d)(iii) authorizes the District's fee petition and provides, in pertinent part, as follows:

(iii) 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 but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour; if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

l. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;

G. L. c. 66, § 10d(iii)-(iv); see also 950 CMR 32.06(4).

Calculation of Fee Estimate

To produce these records, Malden 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.

Open Commonwealth has submitted 26 public records requests within a span of ten business days, many of which have subparts as detailed above. The detailed fee estimate for each one is above. Malden argues given that many are interrelated and given the temporal proximity, they should be treated as one large request. The total estimated hours to respond to these requests is 4,126.22 hours.

After subtracting the first two (2) hours, 4,124.22 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$103,105.50. If the Supervisor disagrees and believes each should be treated individually, the fee estimates are above, and each fee estimate should have \$50 subtracted from it. To the extent a request does not meet the threshold of two hours, Malden relies on the time petition below in terms of production.

Time Petition

The Public Records Guide states the following: "If a custodian is unable to complete the request within the time provided in G.L. c. 66, § 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested record that the custodian intends to provide. A petition for an extension of time must be submitted within 20 business days of receipt of request or within 10 business days after receipt of a determination by the Supervisor that the requested record constitutes a public record." Malden has filed this request within those time periods. First, as outlined in its harassment petition above, Malden seeks relief from responding in its entirety.

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the District hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. Malden will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

Pursuant to M.G.L. c. 66, section 10(c), the District requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt of payment for all of the work, to respond to the requests.

A copy of this petition has been sent to the requestor, Open Commonwealth.

Sincerely,

/s/ James Donnelly

James Donnelly

cc: Open Commonwealth
Stephanie Muccini Burke, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

Exhibit L



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

Manza Arthur
Supervisor of Records

September 25, 2024
SPR24/2625

Carol Ann Desiderio
City Clerk
City of Malden 215 Pleasant Street, Room 220
Malden, MA 02148

Dear Ms. Desiderio:

On September 18, 2024, this office received the petition of Attorney James Donnelly on behalf of the City of Malden (City) seeking an extension of time to produce records, permission to charge for time spent segregating or redacting responsive records, and relief from the obligation to produce responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, I understand that the City furnished a copy of this petition to the requestor, Open Commonwealth ("requestor"). G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv)(2). From September 4, 2024 through September 18, 2024, the requestor "submitted 26 public records requests to the City of Malden," including requests for text messages, extracts of various data from numerous cellular devices, email communications, and extracts of data from numerous email addresses.

Petitions for an Extension of Time and to be Relieved of the Obligation to Provide Records

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

- (i) the need to search for, collect, segregate or examine records;
- (ii) the scope of redaction required to prevent unlawful disclosure;
- (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
- (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
- (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or

Carol Ann Desiderio
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municipality; and
(vi) the public interest served by expeditious disclosure.

G. L. c. 66, § 10(c).

If the Supervisor 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 may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(b).

Request for Additional Time to Produce Responsive Records

In its petition, the City requests an extension of 30 business days and provides the following information in support of its request:

[G]iven the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the [City] hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. Malden will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

I find that in light of the need to search for, collect, segregate and examine the records, the scope of redaction required to prevent unlawful disclosure, the capacity of the City to produce the numerous requests without the extension, and efforts undertaken by the City in fulfilling the current and previous requests, the City has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(iv). The City is granted an extension of 30 business days.

Petition to Assess Fees – Municipalities

The Supervisor of Records (Supervisor) may approve a petition from a municipality to charge for time spent segregating or redacting or to charge in excess of \$25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the municipality to comply with the request. G. L. c. 66, § 10(d)(iv).

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In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of \$25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. *Id.*

Fee Estimates – Municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. *Id.* A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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 a record requested, but the fee shall not be more than \$25 per hour. *Id.* However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

Petition to Assess Fees

In its petition, "Malden requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production." In its fee petition, the City copies each of the 26 requests, "followed by an explanation of why each request needs to be reviewed for redactions and its fee estimate for each

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request." In support of its request to assess fees, the City provides the following information, summarized below:

Regarding the numerous requests for text messages, the City explains the following:

The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The texts may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o).

The texts may contain attorney-client privileged information, as [each City employee named in the requests] communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o).

Regarding the numerous requests for exports from cellular devices, the City explains the following:

This information may contain information protected by Exemption (n) which would jeopardize the cyber security of phones used for City business, including the device manufacturer, model and serial number of each phone and applications installed on each device. This information also may contain cell phone numbers of members of the public or other City employees which are protected by Exemption (c) and Exemption (o).

Regarding the numerous requests for emails, the City explains the following:

Malden will need to perform a search for the requested email between the Mayor and the Special Assistant to the Mayor and review it and any attachments to determine if it contains any information protected by the attorney-client privilege, FERPA and Exemption (a), or personnel file information protected by Exemption

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(c).

Malden needs to review each email and any attachments for redactions pursuant to Exemption (a) and Exemption (c). The Globe communicates with Malden on potential stories. Some of the Globe's emails may contain student record information protected by FERPA, CORI information of individuals, or other statutorily protected information or information the disclosure of which would constitute an unwarranted invasion of privacy. If Malden were to produce its responses to those emails, the records would disclose information exempt under Exemption (a) or (c).

Regarding the numerous requests for extracts of data from emails, the City explains the following:

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City's Controller. As such, each line needs to be reviewed for personal email addresses to redact.

In light of the City's petition, I find the City has met its burden to explain how, given the nature of the responsive records, these requests could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). To the extent the responsive records contain the exempt information as described above; the City may assess a fee for the segregation and redaction of such exempt material.

Request for Relief

In its petition, the City "seeks that the Supervisor relieve the [City] of its obligation to provide copies of the records sought." In support of its petition for relief, the City argues the following:

In this case, Open Commonwealth has submitted 26 separate public records requests to the City of Malden within a span of ten business days starting on September 4, 2024. These requests continued the pattern of incessant, abusive, and harassing public records requests from Open Commonwealth. From January 1, 2024 to September 4, 2024, Open Commonwealth had submitted 123 public records requests to Malden. Malden submitted 35 separate fee petitions to the Supervisor of Records out of the 123 total requests this year prior to September 4, 2024. Open Commonwealth appealed Malden's response to its public records request on 52 separate occasions. When the Supervisor approved one of Malden's fee petitions, Open Commonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. When the Supervisor denied one of Open Commonwealth's appeals, Open Commonwealth requested consideration of the denial on another 9 separate occasions.

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Further, Open Commonwealth's non-stop public records requests, appeals, and requests for reconsideration continue the pattern of harassment of Malden from previous years. Open Commonwealth was founded and remains operated by Bruce Friedman. Since he instituted litigation at the Bureau of Special Education Appeals in September 2019, Bruce Friedman and Open Commonwealth had made hundreds of public records requests prior to 2024. The continuing harassment of Malden is already the subject of current and active litigation. See *Malden Public Schools v. Rebecca S. Murray*, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, (Docket No. # 2181CV01458). Mr. Friedman's and Open Commonwealth's requests continue to request the same information that is the subject of the pending litigation. The Public Records Law is not intended to allow litigants to work around the legal process. In accordance with 950 CMR 32.08(2)(b)(1), the Supervisor consistently has rejected the obligation to turn over records in such circumstances. See, e.g., SPR19/102 ("Whereas the requested records are the subject of dispute in active litigation, and in particular the subject of a discovery request, I decline to opine on this matter.").

Moreover, upon information and belief, Bruce Friedman has also created a new email and has submitted further public records requests to Malden using the email address, ...@publicschoolsdata.com. By using a separate email address, Mr. Friedman further barrages Malden with public records requests without the number of requests being added to Open Commonwealth's total.

Furthermore, as detailed below, many of these requests, including the instant 26 since September 4, 2024, are duplicative of each other and previous public records requests submitted by Open Commonwealth. To harass Malden, Open Commonwealth often requests the same information but simply changes the number of records requested, alternating between the latest 50, 75, or 100 records, despite the presence of an approved fee petition for those same records or a pending fee petition before the Supervisor. Open Commonwealth lets the Supervisor know that it has modified its request, causing the Supervisor to decline to opine on the pending fee petition, and then Open Commonwealth resubmits the same request but for a different number of records, causing Malden to have to respond and submit a new fee petition on each occasion. Similarly, as seen below, Open Commonwealth repeatedly requests the same information but for different Malden employees or officials despite the issuance of an approved fee petition from the Supervisor which authorizes a fee for a records request regarding a different employee or official.

These requests are not intended for broad dissemination to the public about government activity. Open Commonwealth has received approved fee petitions which state that the information he is requesting is exempt from disclosure, and yet continues to request the same exempt information. Even though Open

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Commonwealth knows a fee will be required, Open Commonwealth has paid the fee estimate on exactly one occasion this year out of 35 fee petitions, showing that Open Commonwealth almost never has any intention of actually acquiring the records requested. And, Open Commonwealth repeatedly informs the Supervisor of modified requests so that the Supervisor will drop a pending fee petition, even though the new request requires the same fee petition and more work for Malden. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

Based on the information provided in the City's petition, I find that the City has not demonstrated that the requests are frivolous and not intended for the broad dissemination of information to the public about actual or alleged government activity, as required by G. L. c. 66, § 10(c). Consequently, I cannot grant the City's petition seeking relief from its obligation to produce responsive records at this time.

Conclusion

Accordingly, I find the City has established good cause for a time extension of 30 business days as described above. Additionally, to the extent the responsive records contain the exempt information described above, the City may assess a fee for segregation and redaction. However, as noted above, I am unable to grant the City's request for relief from the obligation to produce responsive records.

Please note, the requestor has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, §§ 10(c), 10(d)(iv)(4), 10A(c).

Sincerely,



Manza Arthur
Supervisor of Records

cc: Open Commonwealth
James Donnelly, Esq.

Exhibit M

From: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>
Sent: Tuesday, October 8, 2024 4:54 PM
To: Carol Ann Desiderio; James Donnelly
Cc: SEC-DL-PREWEB; Commonwealth Transparency
Subject: SPR24/2781 Appeal Acknowledgement
Attachments: SPR24-2781.pdf

WARNING: EXTERNAL

Dear Records Custodian,

On Monday, October 7th, and today, this office received multiple emails appealing your entity's response to multiple requests for public records. Attached are further details concerning this appeal. If you are able to provide further information or have any questions relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832.

Given that the Supervisor of Records must issue a determination within ten business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Thank you,
Jeff Gottfredsen

Senior Attorney | Public Records Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719 | Boston, MA 02108
617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

Exhibit N

From: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>
Sent: Thursday, October 10, 2024 10:20 AM
To: Carol Ann Desiderio; James Donnelly; Commonwealth Transparency
Cc: SEC-DL-PREWEB
Subject: RE: SPR24/2781: Request for Extension

WARNING: EXTERNAL

Good morning,

Thank you both for agreeing to the extension.

Regards,
Jeff Gottfredsen

Senior Attorney | Public Records Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719 | Boston, MA 02108
617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

From: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>
Sent: Thursday, October 10, 2024 09:52
To: Carol Ann Desiderio <cdesiderio@cityofmaiden.org>; James Donnelly <jdonnelly@mhtl.com>; Commonwealth Transparency <info@opencommonwealth.org>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>
Subject: SPR24/2781: Request for Extension

Good afternoon,

In keeping with the timeframes described in the email chain below, the determination letter for this appeal is currently due from our office on Tuesday, October 22nd.

However, due the large number of requests involved, please let me know if you would agree to a ten business day extension until Tuesday, November 5th, for our office to issue a determination letter. This will allow our office to review the matter as thoroughly as possible.

Please reply to this email to let me know whether you are willing to agree to the extension.

Thank you,
Jeff Gottfredsen

Senior Attorney | Public Records Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719 | Boston, MA 02108
617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

From: Gottfredsen, Jeffrey (SEC) <Jeffrey.Gottfredsen@sec.state.ma.us>
Sent: Tuesday, October 8, 2024 16:54
To: Carol Ann Desiderio <cdesiderio@cityofmaiden.org>; James Donnelly <jdonnelly@mhtl.com>
Cc: SEC-DL-PREWEB <SEC-DL-PREWEB@sec.state.ma.us>; Commonwealth Transparency <info@opencommonwealth.org>
Subject: SPR24/2781 Appeal Acknowledgement

Dear Records Custodian,

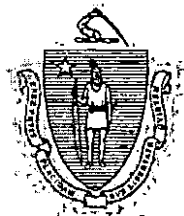
On Monday, October 7th, and today, this office received multiple emails appealing your entity's response to multiple requests for public records. Attached are further details concerning this appeal. If you are able to provide further information or have any questions relating to this matter, please contact the Public Records Division at pre@sec.state.ma.us or 617-727-2832.

Given that the Supervisor of Records must issue a determination within ten business days of receipt of the appeal petition, please provide any additional information to this office as soon as possible.

Thank you,
Jeff Gottfredsen

Senior Attorney | Public Records Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719 | Boston, MA 02108
617-727-2832 | Jeffrey.Gottfredsen@sec.state.ma.us

Exhibit O



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

Manza Arthur
Supervisor of Records

November 5, 2024
SPR24/2781

Carol Ann Desiderio
City Clerk
City of Malden
215 Pleasant Street, Room 220
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 numerous requests for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). From September 4, 2024 through September 18, 2024, the requestor submitted the following 26 requests:

[1] Please provide the last 300 text messages containing and/or regarding official City business from the cellular devices of [a named individual.]

[2] Please provide the last 100 text messages containing and/or regarding official City business from the cellular devices of the following [list of 6 individuals.]

[3] Please provide an export of the following public records for [a list of three] Cellular Numbers/Devices: . . . The device manufacturer, model and serial number; The last 300 phone calls Inbound and Outbound; All applications installed on the device[.]

[4] Please provide the following [list of 23 specified] email communications, in their entirety, in the format which they are regularly maintained including all metadata and all attachments[.]

[5] Please provide the following [list of 3 specified] email communications, in their entirety, in the format which they are regularly maintained including all metadata and all attachments[.]

[6] From 1/1/2024 through the date you receive this request, please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or

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attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), The Schools (@maldenps.org), (thus search all systems), where any email address under the control of [a named individual] appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:). This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

[7] For the entirety of all records available, please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) sent or received by any email address in the possession and/or under the control of the City of Malden, including but not limited to the City (@cityofmalden.org), where the following people send ANY email sent to a BCC: address [list of 8 individuals.] This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

[8] Please provide all emails sent to any email address at the "@globe.com" FQDN [sic] for the time period of January 1, 2014, through the date you receive this request.

[9] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses [list of 4 email addresses.] This request specifically includes calendar items, including invitations, declinations, and/or acceptances. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

[10] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, 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.

[11] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date

Carol Ann Desiderio
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and Time that the message was sent and/or received, 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.

[12] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[13] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[14] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[15] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, 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.

[16] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether or not there was an attachment, and if there was an attachment, the full name of the attachment.

Carol Ann Desiderio
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This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

[17] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[18] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, 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:

[19] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[20] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[21] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, 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.

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[22] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[23] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [the named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages. This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

[24] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual]. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields; the Date and Time that the message was sent and/or received, 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.

[25] Please extract all public records of City business on any personal device of by [a named individual] including but not limited the device with [a specified] phone number ..., this request specifically seeks but is not limited to documents, communications, images, and any other Public Records created, received and/or stored on any device of [the named individual]. Please extract all text messages of City business on any device, including any personal device of [the named individual] including but not limited the device with [a specified] phone number ..., this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of by [the named individual] including but not limited the device with [a specified] phone number ..., this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

[26] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 75 emails sent to or received by the below email addresses [list of 8 email addresses] where the email address appears as either/or both the author or recipient (To:, Cc:, and/or Bcc:). This request also seeks all responsive calendar items, including invitations,

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declinations, and/or acceptances. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Previous Petition

These requests were the subject of a previous petition from the City. See SPR24/2625 Determination of the Supervisor of Records (September 25, 2024). In my September 25th determination, I found that the City had established good cause for a time extension of 30 business days, and that the City may assess a fee for segregation and redaction of the responsive records. Concurrent with its petition, the City responded to the requestor on September 18, 2024, providing a fee estimate. Objecting to the fees, the requestor petitioned this office, and this appeal, SPR24/2781, was opened as a result.

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.

Fee Estimates - Municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the

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municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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 a record requested, but the fee shall not be more than \$25 per hour. Id. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

The City's September 18th Fee Estimate

In its September 18, 2024 response, the City provides a total fee estimate of \$103,105.50. In support of its fee estimate, the City provides the following information regarding each of the 26 requests:

[1] ... Open Commonwealth already requested the last 50 text messages from this individual in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request to the last 300 text messages.

The search process here involves going one-by-one through each text sent by the Mayor until the last 300 text messages regarding official City business on the Mayor's cell phone have been identified. The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The texts may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 9 hours (3 hours per 100 texts) to search, review, and redact any responsive records.

[2] ... Open Commonwealth already requested the last 50 text messages from each of these individuals in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open

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Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request to the last 100 text messages.

The search process here involves going one-by-one through each text sent by each individual until the last [100] text messages regarding official City business have been identified. The texts may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as many of these employees interact with the School Department in some capacity. The texts may also contain attorney-client privileged information, as many of these employees often communicate with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public, or share such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as these employees may communicate such information to City employees, like Human Resources. If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 18 hours (3 hours per 100 texts) to search, review, and redact any responsive records...

[3] ... Open Commonwealth already submitted a request for similar information in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Instead, Open Commonwealth has frivolously enlarged its request.

This information may contain information protected by Exemption (n) which would jeopardize the cyber security of phones used for City business, including the device manufacturer, model and serial number of each phone and applications installed on each device. This information also may contain cell phone numbers of members of the public or other City employees which are protected by Exemption (c) and Exemption (o). Malden estimates that it will take 9 hours (3 hours per phone) to locate all responsive information and determine if they relate to City business, review, and redact any responsive records...

[4] ... Malden likely only possesses one record responsive to this request – the requested 2020 email. Malden will need to perform a search for the requested email between the Mayor and the Special Assistant to the Mayor and review it and any attachments to determine if it contains any information protected by the attorney-client privilege, FERPA and Exemption (a), or personnel file information protected by Exemption (c). Malden estimates this process will take 15 minutes.

[5] ... Malden does not possess any records responsive to this request.

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[6] ... Malden conducted a search which produced an extract of responsive information with 18,074 rows. The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City's Controller. As such, each line needs to be reviewed for personal email addresses to redact. Malden estimates that this will take 25.1 hours (one minute per 12 rows of email information within the extract):

[7] ... Malden will need to perform 8 separate searches to obtain the requested extracts. The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Malden estimates that this will take 10 hours based on its anticipated number of rows (one minute per 12 rows of email information within the extract).

[8] ... Malden conducted a search which identified 2,535 emails which may be responsive to the request. Malden needs to review each email and any attachments for redactions pursuant to Exemption (a) and Exemption (c). The Globe communicates with Malden on potential stories. Some of the Globe's emails may contain student record information protected by FERPA, CORI information of individuals, or other statutorily protected information or information the disclosure of which would constitute an unwarranted invasion of privacy. If Malden were to produce its responses to those emails, the records would disclose information exempt under Exemption (a) or (c). Malden anticipates that it will take 42.25 hours (1 minute per email) to review and redact all responsive records.

[9] ... Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails. Malden responded with a fee and time petition. See SPR 24/2365. Here, Open Commonwealth has frivolously enlarged its request to the latest 100 emails to or from the same email addresses.

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information. ...

[10] ... Open Commonwealth already requested this information in a previous request. Malden responded with a fee and time petition, and the Supervisor

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granted Malden's fee and time petition. SPR24/2366. Here, Open Commonwealth has frivolously repeats the same request. Malden maintains its fee estimate from its previous fee petition – 53.62 hours for review and redaction of personal email addresses.

[11] ... Open Commonwealth already requested this information in a previous request. Malden responded with a fee and time petition which is currently pending in the Supervisor's office. SPR 24/2596. Malden maintains its fee estimate from its previous fee petition – 50 hours to review and redact personal email address in the 30,000 rows of responsive information in the extract.

[12] ... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the named individual], the City's Parking Director, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee occasionally communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[13] ... This information was already requested in Request #2 above.... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the named individual], the Special Assistant to the Mayor, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as, this employee occasionally communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also

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contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[14] ... This information was already requested in Request #2 above.... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the named individual], the City Controller, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate such information to City employees, like Human Resources. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records....

[15] ... Malden has no way of estimating how many responsive emails exist without individually going through each email of [the named individual], the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[16] ... Malden has no way of estimating how many responsive emails exist

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without individually going through each email of [the named individual], the City Council President, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[17] ... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the named individual], a School Committee member, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain student record information protected by FERPA, as this School Committee member sometimes communicates with school parents about their children. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The texts may also contain the personal email address, personal phone number, or home address of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[18] ... This request is already submitted a day prior in Request #15 above. Malden repeats its response and fee petition. Malden has no way of estimating how many responsive emails exist without individually going through each email of [the individual], the City Council President, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain attorney-client privileged information, as this

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individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The emails may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The emails may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the email to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[19] ... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the individual], a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this employee communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this employee may communicate about such information to City employees. The texts may also contain the personal email address, personal phone number, or home address of other City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[20] ... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the individual], a member on the City's Cannabis Licensing and Enforcement Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, like personal cell phone numbers, email addresses, and other

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private information of applicants for marijuana licensing. If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[21] ... There are no records responsive to your request.

[22] ... Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [the individual], the Director of Finance and Operations for Malden Public Schools, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The texts may contain student record information protected by FERPA, as this employee sometimes communicates with school parents about their children. The texts may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The texts may also contain the personal email address, personal phone number, or home address of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[23] ... Malden has no way of estimating how many responsive texts and voicemails exist without individually going through each email of [the named individual], the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search,

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review and redact any responsive records.

[24] ... Malden has no way of estimating how many responsive texts and voicemails exist without individually going through each email of [the named individual], the City Harbor Master, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[25] ... Open Commonwealth already requested the last 50 text messages from the Mayor in a previous request, which Malden submitted a fee petition for. The Supervisor declined to opine on the fee petition because Open Commonwealth stated it was modifying its request. See SPR 24/2320. Then, Open Commonwealth frivolously enlarged its request to the last 100 text messages in Request #1 above on September 4, 2024 at 1:36 PM. Here, Open Commonwealth frivolously again enlarges its request.

Malden has no way of estimating how many responsive texts, voicemails, or public records exist without individually going through every text or voicemail of the Mayor, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by

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Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review, and redact any responsive records.

[26] ... Again, Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails from or to these emails. Malden responded with a fee and time petition. See SPR 24/2365. Open Commonwealth then frivolously requested the same information from the same email addresses in Request #9 above, this time enlarged to the latest 100 emails. Here, Open Commonwealth has frivolously submitted the same request with several more email addresses originally contained in the July 18, 2024 and August 6, 2024 requests, this time requesting the last 75 emails to and from the same email addresses.

The responsive records may contain personal email addresses from members of the public (protected by Exemption (c)) or other employees (protected by Exemption (o)) communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 6 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

Finally, the City summarizes its entire fee estimate for all 26 requests by explaining the following:

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.

Open Commonwealth has submitted 26 public records requests within a span of ten business days, many of which have subparts as detailed above. Malden argues, given that many are interrelated and given the temporal proximity, they should be treated as one large request. The total estimated hours to respond to these requests is 4,126.22 hours.

After subtracting the first two (2) hours, 4,124.22 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$103,105.50.

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Please be advised that in Friedman v. Division of Administrative Law Appeal and Bureau of Special Education Appeals, the Suffolk Superior Court, in its Memorandum of Decision and Order on Defendants' Motion to Dismiss, stated:

[The requester] has a right to seek public records from his government, provided he does so in a reasonable manner. [The agencies], in turn, have a right not to be inundated with drain-the-ocean records requests, provided they fulfill the basic expectations of the [Public Records Law] in a fair and transparent manner.

See Friedman v. Division of Administrative Law Appeal and Bureau of Special Education Appeals, Suffolk Sup. No. 2284CV02061-C, at 3 (February 14, 2023). The Court in Friedman noted, "the extraordinary volume of records called for in this case has compelled the Defendants to produce responsive materials in a 'rolling' fashion, rather than in accordance with deadlines contemplated by the [Public Records Law]." Id. at 1.

The Court stated that:

[T]he parties shall be expected to agree upon, to the greatest extent possible, the following:

- (a) appropriate definitions, time frames, and parameters regarding substance and scope for the identification of requested documents;
- (b) appropriate search terms to be used for the retrieval of responsive documents;
- (c) a reasonable time frame for the production of requested documents, if the statute's presumptive deadlines are not realistic;
- (d) appropriate rules to govern the withholding of documents falling within the scope of a statutory privilege or privacy doctrine; and
- (e) an appropriate methodology for computing the reasonable fees that may be charged for responsive document production.

Id. at 2.

In addition, please be aware that the request must reasonably describe the specific records sought. See G. L. c. 66, § 10(a)(i). In a recent case, the Superior court found that under the Public Records Law "[t]he reasonable description requirement contemplates that a requesting party will identify documents or categories of documents with sufficient particularity that government employees will be able to understand exactly what they are looking for, and then make a prompt production." See Jaideep Chawla v. Dept of Revenue, Suffolk Sup. No. 1784CV02087, at 2 (January 23, 2019).

This office encourages the requestor and the City to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (a municipality shall 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 municipality to produce the records sought more efficiently and affordably).

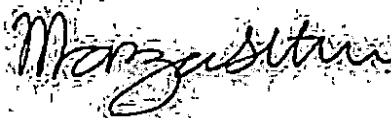
Carol Ann Desiderio
Page 18
November 5, 2024

SPR24/2781

Conclusion

If outstanding issues remain after the requestor and the City communicate further as described above, the requestor may file an appeal within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,



Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency
James Donnelly, Esq.

Exhibit P

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

October 7, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: **Response to Public Records Requests Received Since September 23, 2024**

Dear Open Commonwealth:

This office represents the City of Malden. Since September 23, 2024, Malden has received 14 public records requests from you. Malden hereby responds within ten business days of your requests.

Below, Malden responds to each of your 14 requests and provides a fee estimate for production. Malden has also submitted a harassment, fee, and time petition to the Supervisor of Records.

Response

1. September 21, 2024 at 5:51 PM

Please extract all text messages of City business on any device, including any personal device of Steve Winslow, this request specifically seeks text messages both sent and received.

Please extract all voice mail messages of City business on any personal device of Steve Winslow, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Winslow, the City Council president, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City

employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

2. September 23, 2024 at 4:02 PM

*Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Lee Kinnon.*

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Kinnon, the Chair of Malden's Licensing Board, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

3. September 24, 2024 at 7:50 AM

*Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Deano Summers.*

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Summers, a member on the City's Cannabis Licensing and Enforcement Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

4. September 24, 2024 at 3:09 PM

*Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Paul Lee.*

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Lee, the Chair of Malden's Licensing Board, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

5. September 24, 2024 at 1:19 PM

Please extract all text messages of City business on any device, including any personal device of Barbara Murphy, this request specifically seeks text messages both sent and received.

Please extract all voice mail messages of City business on any personal device of Barbara Murphy, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Murphy, Malden's Police Commissioner, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. If any responsive records were located, they would have to be reviewed for redactions. The records may contain criminal record information exempt from disclosure pursuant to Exemption (a) and G.L. c. 6, § 167, among other statutes. The records may also contain information related to internal Police Department procedures which, if disclosed, would jeopardize public safety, exempt from disclosure by Exemption (n). Additionally, the records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

6. September 25, 2024 at 9:00 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses:

SMINI@CITYOFMALDEN.ORG
disabilitycommission@CITYOFMALDEN.ORG
kdu@CITYOFMALDEN.ORG
cannabis@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails from or to these emails. Malden responded with a fee and time petition. See SPR 24/2365. Open Commonwealth then frivolously requested the same information from the same email addresses in a request on September 15, 2024, this time enlarged to the latest 75 emails. Malden responded on September 18, 2024 with a fee and time petition which was approved by the Supervisor. See SPR 24/2625. Here, Open Commonwealth has frivolously submitted the same request, this time requesting the last 100 emails to and from the same email addresses.

The approval of Malden's fee estimate in SPR 24/2625 remains intact and Malden will require payment of said fee estimate. The responsive records may contain the personal email addresses from members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

7. September 25, 2024 at 11:37 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

parkingvoicemail@CITYOFMALDEN.ORG
smucciniburke@CITYOFMALDEN.ORG
councildocket@cityofmalden.org
athletics@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Again, Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 1, 2024, August 2, 2024, and August 29, 2024. The July 18, August 1, and August 2 requests sought the most recent 50 emails, while the August 29 request sought the most recent 100 emails for the "councildocket" and "athletics" email addresses. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request for the "councildocket" and "athletics" emails, and expanded its requested for the "parkingvoicemail" and "smucciniburke" from 50 to 100 emails.

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

8. September 25, 2024 at 9:09 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Barbara Murphy.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Murphy, Malden's Police Commissioner, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. If any responsive records were located, they would have to be reviewed for redactions. The records may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

9. September 27, 2024 at 10:06 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Jadeane Sica.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Siçal, a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

10. September 27, 2024 at 9:07 PM

Please extract the author and all recipients (To, Cc, and/or Bcc) and date all personal email addresses used for City business by Marilyn Andrews.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Andrews, a member of Malden's Disability Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

11. September 28, 2024 at 8:46 AM

Please extract the author and all recipients (To, Cc, and/or Bcc) and date all personal email addresses used for City business by Rachael Running.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Running, a member of Malden's Community Preservation Committee, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by

Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

12. September 28, 2024 at 12:05 PM

Please extract the author and all recipients (To., Cc., and/or Bcc.) and date all personal email addresses used for City business by Jennifer Spadafora.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Spadafora, a member of Malden's School Committee, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

13. September 30, 2024 at 6:23 AM

Please extract all text messages of City business on any device, including any personal device of Craig Spadafora, this request specifically seeks text messages both sent and received.

Please extract all voice mail messages of City business on any personal device of Craig Spadafora, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Spadafora, a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production.

Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

14. October 7, 2024 at 8:14 AM

Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

ComplianceBureau@CITYOFMALDEN.ORG
departmentheads@CITYOFMALDEN.ORG
librarytrustees@CITYOFMALDEN.ORG
mlouis@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Yet again, Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 1, 2024, except those requested the most recent 50 emails. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request, this time enlarging its request to the most recent 100 emails.

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or of other City employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

Grounds for Fee Estimate

General Laws c. 66, § 10(d)(iii) authorizes the District's fee petition and provides, in pertinent part, as follows:

(iii) 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 but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000

people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;

G. L. c. 66, § 10d(iii)-(iv); see also 950 CMR 32.06(4).

Calculation of Fee Estimate

To produce these records, Malden 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.

Open Commonwealth has submitted 14 public records requests within a span of ten business days, many of which have subparts as detailed above. Given that many are interrelated and given the temporal proximity, Malden treats them as one large request. The total estimated hours to respond to these requests is 3,340.5 hours.

After subtracting the first two (2) hours, 3,338.5 hours for search, segregation and redaction at the rate of \$25 per-hour, yields a total fee estimate of \$83,462.50.

Please be advised that the fee estimate may be reduced if you narrow the scope of the requests. Malden will not begin its search, segregation, and redaction until it has received its fee estimate from you.

Pursuant to G.L. c. 66, § 10(b)(vi), and given the volume of records requested which require review, Malden takes an additional 15 business days to respond to the requests from the date of receipt of payment for all of the work.

Right of Appeal

You have the right of appeal to the Supervisor of Records under subsection (a) of G. L. c. 66, § 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the Superior Court under subsection (c) of G. L. c. 66, § 10A.

Respectfully,

/s/ James Donnelly
James Donnelly

cc: Supervisor of Public Records, pre@sec.state.ma.us

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

Exhibit Q

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

October 7, 2024

VIA ELECTRONIC MAIL

Supervisor of Records
Division of Public Records
One Ashburton Place, Room 1719
Boston, MA 02108
Telephone: (617) 727-2832
Fax: (617) 727-5914
Email: pre@sec.state.ma.us

**RE: Public Records Requests by Open Commonwealth/Fee Petition/Time
Petition/Harassment**

Dear Supervisor of Public Records:

This office is counsel to the City of Malden. Since September 23, 2024, Malden has received 14 public records requests from Open Commonwealth. Malden replied to all requests in a timely fashion on September 18, 2024.

Malden now submits this harassment petition to relieve it of its obligation to provide the records sought. In the alternative, Malden requests that you allow it to charge a fee of \$25 per hour to produce the records and grant it additional time to produce the records.

Harassment

Pursuant to G. L. c. 66, § 10(c), Malden considers these requests to be a part of a series of requests that is intended to harass it and thereby seeks that the Supervisor relieve the District of its obligation to provide copies of the records sought. See Erickson v. Executive Office of Environmental Affairs, 2006 WL 3010949 (Superior Court, Suffolk County) (public records requests may not be used as part of a "pattern of harassment to government officials and anyone else" with whom a party has a dispute).

950 CMR 32.06(4)(f) states that "if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor 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 may . . . relieve the custodian of its obligation to provide copies of the records sought."

In this case, Malden received 14 public records requests from Open Commonwealth within a span of ten business days starting on September 23, 2024. These requests continued the pattern of incessant, abusive, and harassing public records requests from Open Commonwealth. From January 1, 2024 to September 23, 2024, Open Commonwealth had submitted 149 public records requests to Malden, including 26 between September 4 and September 18. Malden submitted 61 separate fee petitions to the Supervisor of Records out of the 149 total requests this year prior to September 23, 2024. Open Commonwealth appealed Malden's response to its public records request on 52 separate occasions. When the Supervisor approved one of Malden's fee petitions, Open Commonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. When the Supervisor denied one of Open Commonwealth's appeals, Open Commonwealth requested consideration of the denial on another 9 separate occasions. This outrageous volume of requests, appeals, and requests for reconsideration far exceeds what the Supervisor has considered "harassment" in the past. See SPR17/1390. Additionally, the volume far exceeds what other states have considered to be "harassment" in the public records context. See Department of Corrections v. McKee, 199 Wash. App. Ct. 635 (2017); City of Portage v. O'Grady, 2019AP354 (Wisc. App. Ct., April 30, 2020).

Further, Open Commonwealth's non-stop public records requests, appeals, and requests for reconsideration continue the pattern of harassment of Malden from previous years. Open Commonwealth was founded and remains operated by Bruce Friedman. Since he instituted litigation at the Bureau of Special Education Appeals in September 2019, Bruce Friedman and Open Commonwealth had made hundreds of public records requests prior to 2024. The continuing harassment of Malden is already the subject of current and active litigation. See Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, (Docket No. # 2181CV01458). Mr. Friedman's and Open Commonwealth's requests continue to request the same information that is the subject of the pending litigation. The Public Records Law is not intended to allow litigants to work around the legal process. In accordance with 950 CMR. 32.08(2)(b)(1), the Supervisor consistently has rejected the obligation to turn over records in such circumstances. See, e.g., SPR19/102 ("Whereas the requested records are the subject of dispute in active litigation, and in particular the subject of a discovery request, I decline to opine on this matter.").

Moreover, upon information and belief, Bruce Friedman has also created a new email and has submitted further public records requests to Malden using the email address, data@publicschoolsdata.com. By using a separate email address, Mr. Friedman further barrages Malden with public records requests without the number of requests being added to Open Commonwealth's total.

Furthermore, as detailed below, many of these requests, including the instant 14 since September 23, 2024, are duplicative of each other and previous public records requests submitted by Open Commonwealth. To harass Malden, Open Commonwealth often requests the same information but simply changes the number of records requested, alternating between the latest 50, 75, or 100 records, despite the presence of an approved fee petition for those same records or a pending fee petition before the Supervisor. Open Commonwealth lets the Supervisor know that it has modified its request, causing the Supervisor to decline to opine on the pending fee petition, and then Open Commonwealth resubmits the same request but for a different number of records, causing Malden to have to respond and submit a new fee petition on each occasion. Similarly, as seen below, Open Commonwealth repeatedly requests the same information but for different Malden employees or officials despite the issuance of an approved fee petition from the Supervisor which authorizes a fee for a records request regarding a different employee or official.

These requests are not intended for broad dissemination to the public about government activity. Open Commonwealth has received approved fee petitions which state that the information he is requesting is exempt from disclosure, and yet continues to request the same exempt information. Even though Open Commonwealth knows a fee will be required, Open Commonwealth has paid the fee estimate on exactly one occasion this year out of 61 fee petitions, showing that Open Commonwealth almost never has any intention of actually acquiring the records requested. And, Open Commonwealth repeatedly informs the Supervisor of modified requests so that the Supervisor will drop a pending fee petition, even though the new request requires the same fee petition and more work for Malden. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees. For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide you with copies of the records you seek, then Malden will alternatively petition the Supervisor of Records to charge a fee to produce the records.

Fee Petition

Malden requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production. Malden has copied all requests received from Open Commonwealth since September 23, 2024 in italics below, followed by an explanation of why each request needs to be reviewed for redactions and its fee estimate for each request. Malden further notes that it has identified the exemptions it believes it could be most applicable. However, it believes that any of the exemptions listed under the law could come out in actual review and therefore, its fee petition encompasses any exemption for which redactions may be necessary.

1. September 21, 2024 at 5:51 PM

Please extract all text messages of City business on any device, including any personal device of Steve Winslow, this request specifically seeks text messages both sent and received.

Please extract all voice mail messages of City business on any personal device of Steve Winslow, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Winslow, the City Council president, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

2. September 23, 2024 at 4:02 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Lee Kinnon.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Kinnon, the Chair of Malden's Licensing Board, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

3. September 24, 2024 at 7:50 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Deano Summers.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Summers, a member on the City's Cannabis Licensing and Enforcement Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

4. September 24, 2024 at 3:09 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Paul Lee.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Mr. Lee, the Chair of Malden's Licensing Board, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

5. September 24, 2024 at 1:19 PM

Please extract all text messages of City business on any device, including any personal device of Barbara Murphy, this request specifically seeks text messages both sent and received.

Please extract all voice mail messages of City business on any personal device of Barbara Murphy, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Ms. Murphy, Malden's Police

Commissioner, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. If any responsive records were located, they would have to be reviewed for redactions. The records may contain criminal record information exempt from disclosure pursuant to Exemption (a) and G.L. c. 6, § 167, among other statutes. The records may also contain information related to internal Police Department procedures which, if disclosed, would jeopardize public safety, exempt from disclosure by Exemption (n). Additionally, the records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

6. September 25, 2024 at 9:00 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses:

SMINI@CITYOFMALDEN.ORG
disabilitycommission@CITYOFMALDEN.ORG
kdu@CITYOFMALDEN.ORG
cannabis@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024; except those requests only requested the last 50 emails from or to these emails. Malden responded with a fee and time petition. See SPR 24/2365. Open Commonwealth then frivolously requested the same information from the same email addresses in a request on September 15, 2024, this time enlarged to the latest 75 emails. Malden responded on September 18, 2024 with a fee and time petition which was approved by the Supervisor. See SPR 24/2625. Here, Open Commonwealth has frivolously submitted the same request, this time requesting the last 100 emails to and from the same email addresses.

The approval of Malden's fee estimate in SPR 24/2625 remains intact and Malden will require payment of said fee estimate. The responsive records may contain the personal email addresses from members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous response, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's August 1 request for similar information.

7. September 25, 2024 at 11:37 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

parkingvoicemail@CITYOFMALDEN.ORG
smucciniburke@CITYOFMALDEN.ORG
councildocket@cityofmalden.org
athletics@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Again, Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 1, 2024, August 2, 2024, and August 29, 2024. The July 18, August 1, and August 2 requests sought the most recent 50 emails, while the August 29 request sought the most recent 100 emails for the "councildocket" and "athletics" email addresses. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request for the "councildocket" and "athletics" emails, and expanded its requested for the "parkingvoicemail" and "smucciniburke" from 50 to 100 emails.

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

8. September 25, 2024 at 9:09 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Barbara Murphy.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Murphy, Malden's Police Commissioner, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. If any responsive records were located, they would have to be reviewed for redactions. The records may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

9. September 27, 2024 at 10:06 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Jadeane Sica.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Sica, a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

10. September 27, 2024 at 9:07 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Marilyn Andrews.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Andrews, a member of Malden's Disability Commission, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions.

The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

11. September 28, 2024 at 8:46 AM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Rachael Running.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Running, a member of Malden's Community Preservation Committee, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

12. September 28, 2024 at 12:05 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by Jennifer Spadafora.

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

Malden has no way of estimating how many responsive emails exist without individually going through each email of Ms. Spadafora, a member of Malden's School Committee, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

13. September 30, 2024 at 6:23 AM

Please extract all text messages of City business on any device, including any personal device of Craig Spadafora, this request specifically seeks text messages both sent and received.

*Please **extract** all voice mail messages of City business on any personal device of Craig Spadafora, this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.*

Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of Mr. Spadafora, a member of the City Council, to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy; as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

14. October 7, 2024 at 8:14 AM

*Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:*

ComplianceBureau@CITYOFMALDEN.ORG
departmentheads@CITYOFMALDEN.ORG
librarytrustees@CITYOFMALDEN.ORG
mlouis@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Yet again, Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 1, 2024; except those requested the most recent 50 emails. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request, this time enlarging its request to the most recent 100 emails.

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or of other City employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

Grounds for Fee Estimate

General Laws c. 66, § 10(d)(iii) authorizes the District's fee petition and provides, in pertinent part, as follows:

(iii) 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 but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;

G. L. c. 66, § 10d(iii)-(iv); see also 950 CMR 32.06(4).

Calculation of Fee Estimate

To produce these records, Malden 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.

Open Commonwealth has submitted 14 public records requests within a span of ten business days, many of which have subparts as detailed above. Given that many are interrelated and given the temporal proximity, Malden treats them as one large request. See SPR 24/2625. The total estimated hours to respond to these requests is 3,340.5 hours.

After subtracting the first two (2) hours, 3,338.5 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$83,462.50. If the Supervisor disagrees and believes each should be treated individually, the fee estimates are above, and each fee estimate should have \$50 subtracted from it. To the extent a request does not meet the threshold of two hours, Malden relies on the time petition below in terms of production.

Time Petition

The Public Records Guide states the following: “If a custodian is unable to complete the request within the time provided in G.L. c. 66, § 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested record that the custodian intends to provide. A petition for an extension of time must be submitted within 20 business days of receipt of request or within 10 business days after receipt of a determination by the Supervisor that the requested record constitutes a public record.” Malden has filed this request within those time periods. First, as outlined in its harassment petition above, Malden seeks relief from responding in its entirety.

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the District hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. Malden will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

Pursuant to M.G.L. c. 66, section 10(c), the District requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt of payment for all of the work, to respond to the requests.

A copy of this petition has been sent to the requestor, Open Commonwealth.

Sincerely,

/s/ James Donnelly
James Donnelly

cc: Open Commonwealth
Stephanie Muccini Burke, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

Exhibit R



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

Manza Arthur
Supervisor of Records

October 15, 2024
SPR24/2777

Carol Ann Desiderio
City Clerk
City of Malden
215 Pleasant Street, Room 220
Malden, MA 02148

Dear Ms. Desiderio:

On October 7, 2024, this office received the petition of Attorney James Donnelly, on behalf of the City of Malden (City) seeking an extension of time to produce records, permission to charge for time spent segregating or redacting responsive records, and relief from the obligation to produce responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, I understand that the City furnished a copy of this petition to the requestor, Open Commonwealth ("requestor"). G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv)(2). From September 23, 2024 through October 7, 2024, the requestor submitted 14 public records requests, seeking data extracts of text messages, voicemails, and emails for numerous City employees, and for numerous City group email addresses. In an email to this office on October 7, 2024, the requestor objects to the City's petition.

Petitions for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality, not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

- (i) the need to search for, collect, segregate or examine records;
- (ii) the scope of redaction required to prevent unlawful disclosure;
- (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
- (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
- (v) whether the request, either individually or as part of a series of requests from

Carol Ann Desiderio
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the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
(vi) the public interest served by expeditious disclosure.

G. L. c. 66, § 10(c).

If the Supervisor 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 may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought: Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(b).

Request for Additional Time to Produce Responsive Records

In its petition, the City requests an extension of 30 business days and provides the following information in support of its request:

[G]iven the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the [City] hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. Malden will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

I find that in light of the need to search for, collect, segregate and examine the records, the scope of redaction required to prevent unlawful disclosure, and the capacity of the City to produce the request without the extension, the City has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(iv). The City is granted an extension of 30 business days.

Petition to Assess Fees – Municipalities

The Supervisor of Records (Supervisor) may approve a petition from a municipality to charge for time spent segregating or redacting or to charge in excess of \$25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the municipality to comply with the request. G. L. c. 66, § 10(d)(iv).

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In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of \$25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. *Id.*

Fee Estimates – Municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. *Id.* A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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 a record requested, but the fee shall not be more than \$25 per hour. *Id.* However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). *See* G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

Current Petition to Assess Fees

In its petition, the City "requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production."

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Regarding the numerous requests for extracts of text messages and voicemail messages, the City explains the following:

The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o).

...

The records may contain criminal record information exempt from disclosure pursuant to Exemption (a) and G.L. c. 6, § 167, among other statutes. The records may also contain information related to internal Police Department procedures which, if disclosed, would jeopardize public safety, exempt from disclosure by Exemption (n). Additionally, the records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o).

Regarding the numerous requests for extracts of data from emails, the City explains that “the emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o).”

In light of the City’s petition, I find the City has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. See G. L. c. 66, § 10(d)(iv). To the extent the responsive records contain the exempt information as described above, the City may assess a fee for the segregation and redaction of such exempt material.

As some of the requests seek records from Police Department personnel, the City is reminded that the current language of Exemption (c) prohibits its application to records related to law enforcement misconduct investigations. See G. L. c. 4, § (26)(c).

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SPR24/2777

Request for Relief

In its petition, the City “seeks that the Supervisor relieve the [City] of its obligation to provide copies of the records sought.” In support of its request, the City argues the following:

In this case, Malden received 14 public records requests from Open Commonwealth within a span of ten business days starting on September 23, 2024. These requests continued the pattern of incessant, abusive, and harassing public records requests from Open Commonwealth. From January 1, 2024 to September 23, 2024, Open Commonwealth had submitted 149 public records requests to Malden, including 26 between September 4 and September 18. Malden submitted 61 separate fee petitions to the Supervisor of Records out of the 149 total requests this year prior to September 23, 2024. Open Commonwealth appealed Malden’s response to its public records request on 52 separate occasions. When the Supervisor approved one of Malden’s fee petitions, Open Commonwealth requested reconsideration of the Supervisor’s determination on 9 separate occasions. When the Supervisor denied one of Open Commonwealth’s appeals, Open Commonwealth requested consideration of the denial on another 9 separate occasions. This outrageous volume of requests, appeals, and requests for reconsideration far exceeds what the Supervisor has considered “harassment” in the past. See SPR17/1390. Additionally, the volume far exceeds what other states have considered to be “harassment” in the public records context. See Department of Corrections v. McKee, 199 Wash. App. Ct. 635 (2017); City of Portage v. O’Grady, 2019AP354 (Wisc. App. Ct., April 30, 2020).

Further, Open Commonwealth’s non-stop public records requests, appeals, and requests for reconsideration continue the pattern of harassment of Malden from previous years. Open Commonwealth was founded and remains operated by Bruce Friedman. Since he instituted litigation at the Bureau of Special Education Appeals in September 2019, Bruce Friedman and Open Commonwealth had made hundreds of public records requests prior to 2024. The continuing harassment of Malden is already the subject of current and active litigation. See Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, (Docket No. # 2181CV01458). Mr. Friedman’s and Open Commonwealth’s requests continue to request the same information that is the subject of the pending litigation. The Public Records Law is not intended to allow litigants to work around the legal process. In accordance with 950 CMR 32.08(2)(b)(1), the Supervisor consistently has rejected the obligation to turn over records in such circumstances. See, e.g., SPR19/102 (“Whereas the requested records are the subject of dispute in active litigation, and in particular the subject of a discovery request, I decline to opine on this matter.”).

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Moreover, upon information and belief, Bruce Friedman has also created a new email and has submitted further public records requests to Malden using the email address, [specified email address]@publicschoolsdata.com. By using a separate email address, Mr. Friedman further barrages Malden with public records requests without the number of requests being added to Open Commonwealth's total.

Furthermore, as detailed below, many of these requests, including the instant 14 since September 23, 2024, are duplicative of each other and previous public records requests submitted by Open Commonwealth. To harass Malden, Open Commonwealth often requests the same information but simply changes the number of records requested, alternating between the latest 50, 75, or 100 records, despite the presence of an approved fee petition for those same records or a pending fee petition before the Supervisor. Open Commonwealth lets the Supervisor know that it has modified its request, causing the Supervisor to decline to opine on the pending fee petition, and then Open Commonwealth resubmits the same request but for a different number of records, causing Malden to have to respond and submit a new fee petition on each occasion. Similarly, as seen below, Open Commonwealth repeatedly requests the same information but for different Malden employees or officials despite the issuance of an approved fee petition from the Supervisor which authorizes a fee for a records request regarding a different employee or official.

These requests are not intended for broad dissemination to the public about government activity. Open Commonwealth has received approved fee petitions which state that the information he is requesting is exempt from disclosure, and yet continues to request the same exempt information. Even though Open Commonwealth knows a fee will be required, Open Commonwealth has paid the fee estimate on exactly one occasion this year out of 61 fee petitions, showing that Open Commonwealth almost never has any intention of actually acquiring the records requested. And, Open Commonwealth repeatedly informs the Supervisor of modified requests so that the Supervisor will drop a pending fee petition, even though the new request requires the same fee petition and more work for Malden. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees. For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

Based on the information provided in the City's petition, I find that the City has not demonstrated that the requests are frivolous and not intended for the broad dissemination of information to the public about actual or alleged government activity, as required by G. L. c. 66, § 10(c). Consequently, I cannot grant the City's petition seeking relief from its obligation to produce responsive records at this time.

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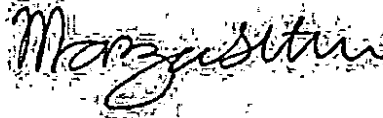
SPR24/2777

Conclusion

Accordingly, I find the City has established good cause for a time extension of 30 business days as described above. Additionally, to the extent the responsive records contain the exempt information described above, the City may assess a fee for segregation and redaction. However, as noted above, I am unable to grant the City's request for relief from the obligation to produce responsive records:

Please note, Open Commonwealth has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, §§ 10(c), 10(d)(iv)(4), 10A(c).

Sincerely,



Manza Arthur
Supervisor of Records

cc: Open Commonwealth
James Donnelly, Esq.

Exhibit S



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

Manza Arthur
Supervisor of Records

October 28, 2024
SPR24/2832

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"/Open Commonwealth) 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). From September 23, 2024 through October 7, 2024, the requestor submitted the following requests:

[1.] Please extract all text messages of City business on any device, including any personal device of [a named individual]; this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [a named individual]; this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

[2.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[3.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[4.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[5.] Please extract all text messages of City business on any device, including any personal device of [a named individual]; this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [a named individual]; this request specifically seeks both the voice recording and any renderings of said recordings including but

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October 28, 2024

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not limited to transcriptions, text messages and/or email messages.

[6.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses... This request specifically includes calendar items, including invitations, declinations, and/or acceptances. This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This request specifically requests that the export be provided in ONLY .CSV or .XLSX form.

[7.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses... This request specifically includes calendar items, including invitations, declinations, and/or acceptances. This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This request specifically requests that the export be provided in ONLY .CSV or .XLSX form.

[8.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[9.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[10.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[11.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[12.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:) and date all personal email addresses used for City business by [a named individual].

[13.] Please extract all text messages of City business on any device, including any personal device of [a named individual], this request specifically seeks text messages both sent and received. Please extract all voice mail messages of City business on any personal device of [a named individual], this request specifically seeks both the voice recording and any renderings of said recordings including but not limited to transcriptions, text messages and/or email messages.

[14.] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses... This request specifically includes calendar items,

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including invitations, declinations, and/or acceptances. This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This requests specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Prior Petition

This request was the subject of a prior petition. See SPR24/2777 Determination of the Supervisor of Records (October 15, 2024). In my October 15th determination, I found that the City had established good cause for a time extension of 30 business days and that the City may assess a fee for segregation and redaction. However, I was unable to grant the City's request for relief from the obligation to produce responsive records.

The City responded on October 7, 2024, providing a fee estimate. Unsatisfied with the City's response, the requestor petitioned this office and this appeal, SPR24/2832, was opened as a result.

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.

Fee estimate – municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

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Municipalities may not assess a fee for the first (two) 2 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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 a record requested, but the fee shall not be more than \$25 per hour. Id. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

The City's October 7th Response

In its October 7, 2024 response, the City provided a fee estimate of \$83,462.50 and stated the following:

[1.] Malden has no way of estimating how many responsive texts and voicemails exists without individually going through each text and voicemail message of [a named individual] to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production.

[2.] Malden has no way of estimating how many responsive emails exist without individually going through each email of [a named individual] to identify if any relate to City business. Malden anticipates that this search process will be very time extensive. If any responsive records were located, they would have to be reviewed for redactions. The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review, and redact any responsive records.

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[3.] ... The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[4.] ... The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[5.] ... If any responsive records were located, they would have to be reviewed for redactions. The records may contain criminal record information exempt from disclosure pursuant to Exemption (a) and G.L. c. 6, § 167, among other statutes. The records may also contain information related to internal Police Department procedures which, if disclosed, would jeopardize public safety, exempt from disclosure by Exemption (n). Additionally, the records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production. Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[6.] Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 6, 2024, except those requests only requested the last 50 emails from or to these emails. Malden responded with a fee and time petition... Open Commonwealth then frivolously requested the same information from the same email addresses in a request on September 15, 2024, this time enlarged to the latest 75 emails... Here, Open Commonwealth has frivolously submitted the same request, this time requesting the last 100 emails to and from the same email addresses... The responsive records may contain the personal email addresses from members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City employees listed in the request. As such, each line needs to be reviewed for personal email addresses to redact.

[7.] Open Commonwealth requested this information in previous requests on July 18, 2024, August 1, 2024, August 2, 2024, and August 29, 2024. The July 18,

Carol Ann Desiderio
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August 1, and August 2 requests sought the most recent 50 emails, while the August 29 request sought the most recent 100 emails for the "councildocket" and "athletics" email addresses... Here, Open Commonwealth has frivolously submitted the same exact request for the "councildocket" and "athletics" emails, and expanded its request for the "parkingvoicemail" and "smucciniburke" from 50 to 100 emails. The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request.

[8.] ... The records may contain the personal email address of members of the public, information protected by Exemption (c), or of City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[9.] The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records:

[10.] ... The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[11.] ... The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[12.] ... The emails may contain the personal email address of members of the public, information protected by Exemption (c), or of other City employees, information protected by Exemption (o). Malden conservatively estimates that it will take 300 hours to search, review and redact any responsive records.

[13.] The records may contain attorney-client privileged information, as this individual communicates with City attorneys for the purpose of obtaining legal advice, which has not been shared with the public, or shares such information with other Malden employees. The records may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as this individual may communicate about such information with City employees. The records may also contain the personal email address, personal phone number, or home addresses of members of the public, information protected by Exemption (c), or of City employees,

Carol Ann Desiderio
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information protected by Exemption (o). If any redactions are required, Malden will have to screenshot the text, convert the screenshot to a pdf, and redact the pdf before production.

[14.] Yet again, Open Commonwealth already requested this information in previous requests on July 18, 2024 and August 1, 2024, except those requested the most recent 50 emails. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request, this time enlarging its request to the most recent 100 emails. The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or of other City employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact.

....
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.

[The requestor] has submitted 14 public records requests within a span of ten business days... Given that many are interrelated and given the temporal proximity, Malden treats them as one large request. The total estimated hours to respond to these requests is 3,340.5 hours.

After subtracting the first two (2) hours, 3,338.5 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$83,462.50.

Current Appeal

In his appeal petition, the requestor states the following:

Open Commonwealth requests that the SPR find and Order the following:

[1.] That the City of Malden retrieve and maintain the public records that exist on the requested email address(es).

[2.] That Malden search for and provide the responsive records once they collect, manage and maintain same.

[3.] That Malden provide the responsive records without delay and without charge as they failed to provide a good-faith response within 10 business days as required under Massachusetts Public Records Law M.G.L. c66, §§ 10-10A

Carol Ann Desiderio
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In Friedman v. Division of Administrative Law Appeal and Bureau of Special Education Appeals, the Suffolk Superior Court, in its Memorandum of Decision and Order on Defendants' Motion to Dismiss, stated:

[The requester] has a right to seek public records from his government, provided he does so in a reasonable manner. [The agencies], in turn, have a right not to be inundated with drain-the-ocean records requests, provided they fulfill the basic expectations of the [Public Records Law] in a fair and transparent manner.

See Friedman v. Division of Administrative Law Appeal and Bureau of Special Education Appeals; Suffolk Sup. No. 2284CV02061-C, at 3 (February 14, 2023). The Court in Friedman noted, "the extraordinary volume of records called for in this case has compelled the Defendants to produce responsive materials in a 'rolling' fashion, rather than in accordance with deadlines contemplated by the [Public Records Law]." Id. at 1.

The Court stated that:

[T]he parties shall be expected to agree upon, to the greatest extent possible, the following:

- (a) appropriate definitions, time frames, and parameters regarding substance and scope for the identification of requested documents;
- (b) appropriate search terms to be used for the retrieval of responsive documents;
- (c) a reasonable time frame for the production of requested documents, if the statute's presumptive deadlines are not realistic;
- (d) appropriate rules to govern the withholding of documents falling within the scope of a statutory privilege or privacy doctrine; and
- (e) an appropriate methodology for computing the reasonable fees that may be charged for responsive document production.

Id. at 2.

In addition, please be aware that the request must reasonably describe the specific records sought. See G. L. c. 66, § 10(a)(i). In a recent case, the Superior court found that under the Public Records Law "[t]he reasonable description requirement contemplates that a requesting party will identify documents or categories of documents with sufficient particularity that government employees will be able to understand exactly what they are looking for, and then make a prompt production." See Jaideep Chawla v. Dept of Revenue, Suffolk, Sup. No. 1784CV02087, at 2 (January 23, 2019).

This office encourages the requestor and the City to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii) (a municipality shall 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 municipality to produce the records sought more efficiently and affordably).

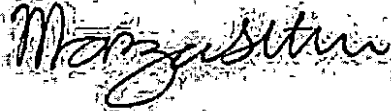
Carol Ann Desiderio
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Conclusion.

If outstanding issues remain after the requestor and the City communicate further as described above, the requestor may file an appeal within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in cursive script, appearing to read "Manza Arthur".

Manza Arthur
Supervisor of Records:

cc: Commonwealth Transparency

Exhibit T

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtf.com

October 22, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: Response to Public Records Requests Received Since September 23, 2024

Dear Open Commonwealth:

This office represents the City of Malden. On October 7, 2024, Malden responded to 14 public records requests from you submitted between September 23, 2024 and October 7, 2024. Also on October 7, 2024, Malden submitted a harassment, fee and time petition with respect to those 14 requests, and the Supervisor of Records approved Malden's fee and time petition in SPR24/2777. After Malden prepared its response and harassment, fee and time petition for those 14 requests, Malden received two additional public records requests from you that same day, on October 7, 2024. Malden hereby responds within ten business days of your two additional October 7, 2024 public records requests.

Below, Malden responds to your two additional October 7, 2024 requests and provides a fee estimate for production. Malden has also submitted a harassment, fee, and time petition to the Supervisor of Records.

Response

1. October 7, 2024 at 3:04 PM

Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses:

info@CITYOFMALDEN.ORG
Help@cityofmalden.org
ZCOM@CITYOFMALDEN.ORG
support@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

This requests specifically seeks, the To:, From:, Cc:, and Bcc: address fields; the Date and Time that the message was sent and/or received, and whether there was or was not an attachment.

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

Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 2, 2024, August 6, 2024, and August 29, 2024. The July 18, August 2, and August 6 requests sought the most recent 50 emails, while the August 29 request sought the most recent 100 emails for the "info" and "Help" email addresses. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request for the "info" and "Help" emails, and expanded its request for the "ZCOM" and "support" emails from 50 to 100 emails.

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

2. October 7, 2024 at 3:04 PM

Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

aac@CITYOFMALDEN.ORG
APGroup@CITYOFMALDEN.ORG
BOHResponse@CITYOFMALDEN.ORG
ffax@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Again, Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 2, 2024, and August 29, 2024. The July 18 and August 2 requests sought the most recent 50 emails, while the August 29 request sought the same exact recent 100 emails for the above 4 email addresses. Malden has repeatedly responded with a consistent fee and time petition, and its September 05, 2024 fee and time petition was approved by the Supervisor. See SPR 24/2512. Here, Open Commonwealth has frivolously submitted the same request, the last 100 emails to and from the same email addresses.

The approval of Malden's fee estimate in SPR 24/2512 remains intact and Malden will require payment of said fee estimate. The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

Grounds for Fee Estimate

General Laws c. 66, § 10(d)(iii) authorizes Malden's fee petition and provides, in pertinent part, as follows:

(iii) 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 but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;

G. L. c. 66, § 10d(iii)-(iv); see also 950 CMR 32.06(4).

Calculation of Fee Estimate

To produce these records, Malden 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.

Open Commonwealth submitted these two public records requests along with 14 others within a span of ten business days, many of which have subparts as detailed above. Malden has already received approval of its fee and time petition for the first 14 requests. See SPR24/2777. Given that these two requests are interrelated and given the temporal proximity to the other 14 requests within ten business days, Malden treats them as one large request. The total estimated hours to respond to these requests is 3,346.5 hours.

After subtracting the first two (2) hours, 3,344.5 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$83,612.50.

Please be advised that the fee estimate may be reduced if you narrow the scope of the requests. Malden will not begin its search, segregation, and redaction until it has received its fee estimate from you.

Pursuant to G.L. c. 66, § 10(b)(vi), and given the volume of records requested which require review, Malden takes an additional 15 business days to respond to the requests from the date of receipt of payment for all of the work.

Right of Appeal

You have the right of appeal to the Supervisor of Records under subsection (a) of G. L. c. 66, § 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the Superior Court under subsection (c) of G. L. c. 66, § 10A.

Respectfully,

/s/ James Donnelly
James Donnelly

cc: Supervisor of Public Records, pre@sec.state.ma.us

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

Exhibit U

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

October 22, 2024

VIA ELECTRONIC MAIL

Supervisor of Records
Division of Public Records
One Ashburton Place, Room 1719
Boston, MA 02108
Telephone: (617) 727-2832
Fax: (617) 727-5914
Email: pre@sec.state.ma.us

**RE: Public Records Requests by Open Commonwealth/Fee Petition/Time
Petition/Harassment**

Dear Supervisor of Public Records:

This office is counsel to the City of Malden. On October 7, 2024, Malden responded to 14 public records requests from Open Commonwealth submitted between September 23, 2024 and October 7, 2024. Also on October 7, 2024, Malden submitted a harassment, fee and time petition with respect to those 14 requests, and the Supervisor of Records approved Malden's fee and time petition in SPR24/2777. After Malden prepared its response and harassment, fee and time petition for those 14 requests, Malden received two additional public records requests from Open Commonwealth that same day, on October 7, 2024. Malden replied to these two additional requests in a timely fashion on October 22, 2024.

Malden now submits this harassment petition to relieve it of its obligation to provide the records sought. In the alternative, Malden requests that you allow it to charge a fee of \$25 per hour to produce the records and grant it additional time to produce the records.

Harassment

Pursuant to G. L. c. 66, § 10(c), Malden considers these requests to be a part of a series of requests that is intended to harass it and thereby seeks that the Supervisor relieve the District of its obligation to provide copies of the records sought. See Erickson v. Executive Office of Environmental Affairs, 2006 WL 3010949 (Superior Court, Suffolk County) (public records requests may not be used as part of a "pattern of harassment to government officials and anyone else" with whom a party has a dispute).

950 CMR 32.06(4)(f) states that "if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor 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 may . . . relieve the custodian of its obligation to provide copies of the records sought.”

In this case, Malden received 2 additional public records requests on October 7, 2024 after responding and seeking a harassment, time, and fee petition for the other 14 public records requests from Open Commonwealth within the same span of ten business days starting on September 23, 2024. These 2 additional public records requests exemplify the pattern of frivolous and harassing public records requests from Open Commonwealth. As detailed in its fee petition below, the instant 2 requests are duplicative of each other and previous public records requests submitted by Open Commonwealth. To harass Malden, Open Commonwealth often requests the same information but simply changes the number of records requested, alternating between the latest 50, 75, or 100 records, despite the presence of an approved fee petition for those same records or a pending fee petition before the Supervisor. Open Commonwealth lets the Supervisor know that it has modified its request, causing the Supervisor to decline to opine on the pending fee petition, and then Open Commonwealth resubmits the same request but for a different number of records, causing Malden to have to respond and submit a new fee petition on each occasion.

These 2 requests are not intended for broad dissemination to the public about government activity. Open Commonwealth has received approved fee petitions which state that the information he is requesting is exempt from disclosure, and yet continues to request the same exempt information. Even though Open Commonwealth knows a fee will be required, Open Commonwealth has paid the fee estimate on exactly one occasion this year out of 62 fee petitions, showing that Open Commonwealth almost never has any intention of actually acquiring the records requested. And, Open Commonwealth repeatedly informs the Supervisor of modified requests so that the Supervisor will drop a pending fee petition, even though the new request requires the same fee petition and more work for Malden. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

Furthermore, these requests continued the pattern of incessant, abusive, and harassing public records requests from Open Commonwealth. From January 1, 2024 to September 23, 2024, Open Commonwealth had submitted 149 public records requests to Malden, including 26 between September 4 and September 18. Malden submitted 61 separate fee petitions to the Supervisor of Records out of the 149 total requests this year prior to September 23, 2024. Open Commonwealth appealed Malden's response to its public records request on 52 separate occasions. When the Supervisor approved one of Malden's fee petitions, Open Commonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. When the Supervisor denied one of Open Commonwealth's appeals, Open Commonwealth requested reconsideration of the denial on another 9 separate occasions. This outrageous volume of requests, appeals, and requests for reconsideration far exceeds what the Supervisor has

considered “harassment” in the past. See SPR17/1390. Additionally, the volume far exceeds what other states have considered to be “harassment” in the public records context. See Department of Corrections v. McKee, 199 Wash. App. Ct. 635 (2017); City of Portage v. O’Grady, 2019ÁP354 (Wisc. App. Ct., April 30, 2020).

Further, Open Commonwealth’s non-stop public records requests, appeals, and requests for reconsideration continue the pattern of harassment of Malden from previous years. Open Commonwealth was founded and remains operated by Bruce Friedman. Since he instituted litigation at the Bureau of Special Education Appeals in September 2019, Bruce Friedman and Open Commonwealth had made hundreds of public records requests prior to 2024. The continuing harassment of Malden is already the subject of current and active litigation. See Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, (Docket No. # 2181CV01458). Mr. Friedman’s and Open Commonwealth’s requests continue to request the same information that is the subject of the pending litigation. The Public Records Law is not intended to allow litigants to work around the legal process. In accordance with 950 CMR 32.08(2)(b)(1), the Supervisor consistently has rejected the obligation to turn over records in such circumstances. See, e.g., SPR19/102 (“Whereas the requested records are the subject of dispute in active litigation, and in particular the subject of a discovery request, I decline to opine on this matter.”).

Moreover, upon information and belief, Bruce Friedman has also created a new email and has submitted further public records requests to Malden using the email address, data@publicschoolsdata.com. By using a separate email address, Mr. Friedman further barrages Malden with public records requests without the number of requests being added to Open Commonwealth’s total.

For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide you with copies of the records you seek, then Malden will alternatively petition the Supervisor of Records to charge a fee to produce the records.

Fee Petition

Malden requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production. Malden has copied the 2 additional requests received from Open Commonwealth on October 7, 2024 in italics below, followed by an explanation of why each request needs to be reviewed for redactions and its fee estimate for each request. Malden further notes that it has identified the exemptions it believes could be most applicable. However, it believes that any of the

exemptions listed under the law could come out in actual review and therefore, its fee petition encompasses any exemption for which redactions may be necessary.

1. October 7, 2024 at 3:04 PM

Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses:

info@CITYOFMALDEN.ORG

Help@cityofmalden.org

ZCOM@CITYOFMALDEN.ORG

support@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 2, 2024, August 6, 2024, and August 29, 2024. The July 18, August 2, and August 6 requests sought the most recent 50 emails, while the August 29 request sought the most recent 100 emails for the "info" and "Help" email addresses. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request for the "info" and "Help" emails, and expanded its request for the "ZCOM" and "support" emails from 50 to 100 emails.

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

2. October 7, 2024 at 3:04 PM

Please **extract** the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

aac@CITYOFMALDEN.ORG

APGroup@CITYOFMALDEN.ORG
BOHResponse@CITYOFMALDEN.ORG
ffax@CITYOFMALDEN.ORG

This request specifically includes calendar items, including invitations, declinations, and/or acceptances.

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

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

Again, Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 2, 2024, and August 29, 2024. The July 18 and August 2 requests sought the most recent 50 emails, while the August 29 request sought the same exact recent 100 emails for the above 4 email addresses. Malden has repeatedly responded with a consistent fee and time petition, and its September 05, 2024 fee and time petition was approved by the Supervisor. See SPR 24/2512. Here, Open Commonwealth has frivolously submitted the same request, the last 100 emails to and from the same email addresses.

The approval of Malden's fee estimate in SPR 24/2512 remains intact and Malden will require payment of said fee estimate. The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

Grounds for Fee Estimate

General Laws c. 66, § 10(d)(iii) authorizes Malden's fee petition and provides, in pertinent part, as follows:

(iii) 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 but the fee (A) shall not be more than \$25 per hour unless such rate is approved by the supervisor of records under clause (iv); (B) shall not be assessed for the first 2 hours of work performed where the responding municipality has a population of over 20,000 people; and (C) shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records under clause (iv);

(iv) the supervisor of records may approve a petition from an agency or municipality to charge for time spent segregating or redacting, or a petition from a municipality to charge in excess of \$25 per hour, if the supervisor of records determines that (A) the request is for a commercial

purpose; or (B) the fee represents an actual and good faith representation by the agency or municipality to comply with the request; the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records; provided, however, that:

1. in making a determination regarding any such petition, the supervisor of records shall consider the public interest served by limiting the cost of public access to the records, the financial ability of the requestor to pay the additional or increased fees and any other relevant extenuating circumstances;

G. L. c. 66, § 10d(iii)-(iv); see also 950 CMR 32.06(4).

Calculation of Fee Estimate

To produce these records, Malden 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.

Open Commonwealth submitted these two public records requests along with 14 others within a span of ten business days, many of which have subparts as detailed above. Malden has already received approval of its fee and time petition for the first 14 requests. See SPR24/2777. Given that these two requests are interrelated and given the temporal proximity to the other 14 requests within ten business days, Malden treats them as one large request. The total estimated hours to respond to these requests is 3,346.5 hours.

After subtracting the first two (2) hours, 3,344.5 hours for search, segregation and redaction at the rate of \$25 per hour, yields a total fee estimate of \$83,612.50.

If the Supervisor disagrees with consolidating all 16 public records requests from Open Commonwealth within the span of ten business days, the fee estimates for each request are above, and \$50 can be removed from the total aggregate estimate.

Time Petition

The Public Records Guide states the following: "If a custodian is unable to complete the request within the time provided in G.L. c. 66, § 10(b)(vi), it may petition the Supervisor for an extension of the time to furnish copies of the requested record that the custodian intends to provide. A petition for an extension of time must be submitted within 20 business days of receipt

of request or within 10 business days after receipt of a determination by the Supervisor that the requested record constitutes a public record." Malden has filed this request within those time periods. First, as outlined in its harassment petition above, Malden seeks relief from responding in its entirety.

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the District hereby petitions for an extension of time to respond to the request, given that the scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. Malden will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

Pursuant to M.G.L. c. 66, section 10(c), the District requests an additional 30 business days beyond the time specified under the statute (25 business days) – for a total of 55 business days from the date of receipt of payment for all of the work, to respond to the requests.

A copy of this petition has been sent to the requestor, Open Commonwealth.

Sincerely,

/s/ James Donnelly
James Donnelly

cc: Open Commonwealth
Stephanie Muccini Burke, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

Exhibit V



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

Mañza Arthur
Supervisor of Records

October 28, 2024
SPR24/2901

Carol Ann Desiderio
City Clerk
City of Malden
215 Pleasant Street, Room 220
Malden, MA 02148

Dear Ms. Desiderio:

On October 22, 2024, this office received the petition of Attorney James Donnelly on behalf of the City of Malden (City) seeking an extension of time to produce records, permission to charge for time spent segregating or redacting responsive records, and relief from the obligation to produce responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv); see also 950 C.M.R. 32.06(4). As required by law, I understand that the City furnished a copy of this petition to the requestor, Commonwealth Transparency ("requestor"). G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv)(2). On October 7, 2024, the requestor sought the following records:

- [1] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to or received by the below email addresses:

[four specified email addresses]

This request specifically includes calendar items, including invitations, declinations, and/or acceptances. This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was sent and/or received, and whether there was or was not an attachment. This request specifically requests that the export be provided in ONLY .CSV or .XLSX form.

- [2] Please extract the author and all recipients (To:, Cc:, and/or Bcc:), date (but not the body or attachments) from the most recent 100 emails sent to AND the most recent 100 emails received by the below email addresses:

[four specified email addresses]

This request specifically includes calendar items, including invitations, declinations, and/or acceptances. This request specifically seeks, the To:, From:, Cc:, and Bcc: address fields, the Date and Time that the message was

Carol Ann Desiderio
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sent and/or received, and whether there was or was not an attachment. This request specifically requests that the export be provided in ONLY .CSV or .XLSX form.

Petitions for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

- (i) the need to search for, collect, segregate or examine records;
- (ii) the scope of redaction required to prevent unlawful disclosure;
- (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
- (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
- (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
- (vi) the public interest served by expeditious disclosure.

G. L. c. 66, § 10(c).

If the Supervisor 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 may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. *Id.*

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(b).

Request for Additional Time to Produce Responsive Records

In its petition, the City requests an extension of 30 business days and provides the following information in support of its request:

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden submits that it is not reasonable to require it to produce the responsive records within 10 business days. Therefore, the District hereby petitions for an extension of time to respond to the request, given that the

Carol Ann Desiderio

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scope of redaction required to prevent unlawful disclosure is significant. Additionally, the employee who will perform the search and recovery, segregation and redaction process has many other responsibilities which they cannot ignore. Malden will be unable to complete its review, redaction, and production of records during normal business hours of operation without an extension.

I find that in light of the need to search for, collect, segregate and examine the records; the scope of redaction required to prevent unlawful disclosure; the capacity of the City to produce the request without the extension; and the efforts undertaken by the City in fulfilling previous requests, the City has established good cause to permit an extension of time. G. L. c. 66, § 10(c)(i)-(iv). The City is granted an extension of 30 business days.

Petition to Assess Fees - Municipalities

The Supervisor of Records (Supervisor) may approve a petition from a municipality to charge for time spent segregating or redacting or to charge in excess of \$25 per hour, if the Supervisor determines that 1) the request is for a commercial purpose or 2) the fee represents an actual and good faith representation by the municipality to comply with the request. G. L. c. 66, § 10(d)(iv).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation or fee in excess of \$25 per hour; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Fee Estimates - Municipalities

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

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Municipalities may not assess a fee for the first 2 (two) hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities 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 a record requested, but the fee shall not be more than \$25 per hour. *Id.* However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). *See* G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

Current Petition

In its petition, the City "requests that the Supervisor authorize it to charge a fee to produce the records sought, as set forth below, because the responsive records implicate several exemptions under the Public Records Law, and will require detailed review and redaction prior to production." In support of its request, the City explains the following:

The responsive records may contain the personal email addresses of members of the public, protected by Exemption (c), or other employees, protected by Exemption (o), communicating with the City email addresses listed in the request. As such, each line needs to be reviewed for personal email addresses to redact. Consistent with its previous responses, Malden requires payment of its \$262.50 search time fee for the previous request and estimates that it will take 3 more hours to review and redact the responsive records based on a sample performed on Open Commonwealth's previous request for similar information.

In light of the City's petition, I find the City has met its burden to explain how, given the nature of the responsive records, the request could not prudently be completed without redaction or segregation. *See* G. L. c. 66, § 10(d)(iv). To the extent the responsive records contain the exempt information as described above, the City may assess a fee for the segregation and redaction of such exempt material.

Request for Relief

In its petition, the City states that "Malden considers these requests to be a part of a series of requests that is intended to harass it and thereby seeks that the Supervisor relieve the [City] of its obligation to provide copies of the records sought." The City provides the following in support of its request:

In this case, Malden received 2 additional public records requests on October 7, 2024 after responding and seeking a harassment, time, and fee petition for the other 14 public records requests from Open Commonwealth within the same span

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of ten business days starting on September 23, 2024. These 2 additional public records requests exemplify the pattern of frivolous and harassing public records requests from Open Commonwealth. As detailed in its fee petition below, the instant 2 requests are duplicative of each other and previous public records requests submitted by Open Commonwealth. To harass Malden, Open Commonwealth often requests the same information but simply changes the number of records requested, alternating between the latest 50, 75, or 100 records, despite the presence of an approved fee petition for those same records or a pending fee petition before the Supervisor. Open Commonwealth lets the Supervisor know that it has modified its request, causing the Supervisor to decline to opine on the pending fee petition; and then Open Commonwealth resubmits the same request but for a different number of records, causing Malden to have to respond and submit a new fee petition on each occasion.

These 2 requests are not intended for broad dissemination to the public about government activity. Open Commonwealth has received approved fee petitions which state that the information he is requesting is exempt from disclosure; and yet continues to request the same exempt information. Even though Open Commonwealth knows a fee will be required, Open Commonwealth has paid the fee estimate on exactly one occasion this year out of 62 fee petitions, showing that Open Commonwealth almost never has any intention of actually acquiring the records requested. And, Open Commonwealth repeatedly informs the Supervisor of modified requests so that the Supervisor will drop a pending fee petition, even though the new request requires the same fee petition and more work for Malden. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

Furthermore, these requests continued the pattern of incessant, abusive, and harassing public records requests from Open Commonwealth. From January 1, 2024 to September 23, 2024, Open Commonwealth had submitted 149 public records requests to Malden, including 26 between September 4 and September 18. Malden submitted 61 separate fee petitions to the Supervisor of Records out of the 149 total requests this year prior to September 23, 2024. Open Commonwealth appealed Malden's response to its public records request on 52 separate occasions. When the Supervisor approved one of Malden's fee petitions, Open Commonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. When the Supervisor denied one of Open Commonwealth's appeals, Open Commonwealth requested reconsideration of the denial on another 9 separate occasions. This outrageous volume of requests, appeals, and requests for reconsideration far exceeds what the Supervisor has considered "harassment" in the past. See *SPR17/1390*. Additionally, the volume far exceeds what other states have considered to be "harassment" in the public records context. See *Department of Corrections v. McKee*, 199 Wash. App. Ct. 635 (2017); *City of Portage v. O'Grady*, 2019AP354 (Wisc. App. Ct., April 30, 2020).

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Further, Open Commonwealth's non-stop public records requests, appeals, and requests for reconsideration continue the pattern of harassment of Malden from previous years. Open Commonwealth was founded and remains operated by Bruce Friedman. Since he instituted litigation at the Bureau of Special Education Appeals in September 2019, Bruce Friedman and Open Commonwealth had made hundreds of public records requests prior to 2024. The continuing harassment of Malden is already the subject of current and active litigation. See Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, (Docket No. # 2181CV01458). Mr. Friedman's and Open Commonwealth's requests continue to request the same information that is the subject of the pending litigation. The Public Records Law is not intended to allow litigants to work around the legal process. In accordance with 950 CMR 32.08(2)(b)(1), the Supervisor consistently has rejected the obligation to turn over records in such circumstances. See, e.g., SPR19/102 ("Whereas the requested records are the subject of dispute in active litigation, and in particular the subject of a discovery request, I decline to opine on this matter.").

Moreover, upon information and belief, Bruce Friedman has also created a new email and has submitted further public records requests to Malden using the email address, data@publicschoolsdata.com. By using a separate email address, Mr. Friedman further barrages Malden with public records requests without the number of requests being added to Open Commonwealth's total.

Additionally, with regard to Item 1 of the request, the City explains the following:

Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 2, 2024, August 6, 2024, and August 29, 2024. The July 18, August 2, and August 6 requests sought the most recent 50 emails, while the August 29 request sought the most recent 100 emails for the "info" and "Help" email addresses. Malden has repeatedly responded with a consistent fee and time petition. Here, Open Commonwealth has frivolously submitted the same exact request for the "info" and "Help" emails, and expanded its request for the "ZCOM" and "support" emails from 50 to 100 emails.

With regard to Item 2 of the request, the City also explains the following:

Again, Open Commonwealth is frivolously requesting the same information which Malden has already provided a response to and received permission to charge for. Open Commonwealth requested this information in previous requests on July 18, 2024, August 2, 2024, and August 29, 2024. The July 18 and August 2 requests sought the most recent 50 emails, while the August 29 request sought the same exact recent 100 emails for the above 4 email addresses. Malden has

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repeatedly responded with a consistent fee and time petition, and its September 05, 2024 fee and time petition was approved by the Supervisor. See SPR 24/2512. Here, Open Commonwealth has frivolously submitted the same request, the last 100 emails to and from the same email addresses.

Based on the information provided in the City's petition, I find that the City has not demonstrated that the requests are frivolous and not intended for the broad dissemination of information to the public about actual or alleged government activity, as required by G. L. c. 66, § 10(c). Consequently, I cannot grant the City's petition seeking relief from its obligation to produce responsive records at this time. Please note, this office may deny an appeal if, in the opinion of the Supervisor of Records, the request is designed or intended to harass, intimidate, or assist in the commission of a crime. See 950 C.M.R. 32.08(2)(b)(2).

Conclusion:

Accordingly, I find the City has established good cause for a time extension of 30 business days as described above. Additionally, to the extent the responsive records contain the exempt information described above, the City may assess a fee for segregation and redaction.

Please note, the requestor has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, §§ 10(c), 10(d)(iv)(4); 10A(c).

Sincerely,



Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency
James Donnelly, Esq.