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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR CIVIL COURT DEPARTMENT

_____)
 Bruce Friedman, A.K.A. OpenCommonwealth.org,)
 Plaintiff,)
 v.)
 The Malden Community Fund Committee , Inc.,)
 and Maria Luise, Ronald Hogan, Deborah Burke as)
 individuals,)
 Defendants,)
 _____)

CIVIL ACTION NO. 25-740

3/25/25

RECEIVED

INTRODUCTION

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

JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties.
2. The Court has jurisdiction over this dispute pursuant to the provisions of M. G. L. c. 231A and M. G. L. c. 66 §§ 10-10A.
3. Venue is proper under M. G. L. c. 231A and M. G. L. c.66 §§ 10-10A.

PARTIES

4. Plaintiff is a citizen journalist, who publishes news, and publishes public records sought from across the Commonwealth. Plaintiff is an individual who resides in Malden, Massachusetts.
5. Defendant MCFCI is a corporation, registered with the Secretary of Massachusetts, claiming to be a charitable organization in its articles of incorporation (**Exhibit A**) with a principal place of business at 1410 Eastern Avenue Malden, Massachusetts.
6. Individual defendants Maria Luise, Ronald Hogan and Deborah Burke are the sole directors of MCFCI (**Exhibit A**), serve in its only corporate roles, President, Clerk and Treasurer respectively, defendants Luise and Hogan are full-time employees of the City of Malden ("City"), and work for and directly report to the Mayor's Office of Malden. Defendant Burke recently retired as a full-time employee of the City, and also directly reported to the Mayor of Malden, Mr. Gary Christenson.

ALLEGATIONS

7. The MCFCI scheme was a plan hatched by the individual defendants and others.
8. The MCFCI Scheme was setup to absorb, launder and then distribute public monies received by the City into a private corporation where policies of the Commonwealth like the Anti-Aid amendment to the constitution, and where the proper appropriation of public monies under the City Charter requires appropriation includes the City Council could be skirted and the Individual Defendants who all work under the direct supervision of the Mayor can use these laundered funds without oversight.
9. The MCFCI scheme was created to avoid public scrutiny and oversight, including and specifically by circumventing the open meeting law and the Commonwealth's public records laws.

FACTS

10. Defendant MCFCI has received its only funding from public monies. These public monies derive from the Encore Casino in Everett, MA ("Encore"), under a legal and

binding agreement (**Exhibit B**) whereby Encore pays the City of Malden an annually increasing amount starting at \$1,000,000.00, of which an increasing portion thereof, starting at \$100,000.00 annually is to be directed to the “Malden Community Fund” (**Exhibit B, 6.-6.2.B**).

11. Defendant MCFCI was setup and is managed in its entirety on City equipment, computers, network and security infrastructure and even their physical location and address until it was recently changed in November of 2024.
12. Defendant MCFCI’s records were created on and are managed and maintained on the City’s public infrastructure.
13. Defendant MCFCI’s work is and was performed by City personnel and using City time.
14. MCFCI is exclusively controlled by government officials.
15. MCFCI is a “public entity”, subject to Massachusetts Public Records Law.
16. MCFCI is a “public body”, subject to Massachusetts Open Meeting Law.
17. The records requested in Plaintiff’s Requests are public records as defined in M. G. L. c. 66 §§ 10-10A.
18. The records requested are not subject to exemption(s) articulated in M. G. L. c. 66 §§ 10-10A.
19. Defendants failed to properly respond to Plaintiffs proper and correct originally filed May 29, 2024 (**Exhibit C**).
20. Defendants failed to properly respond to Plaintiffs proper and correct Public Records Request (“PRR”) originally filed June 12, 2024 (**Exhibit F**).
21. Defendants were Ordered by the Secretary of Public Records (“SPR”) to properly respond to the June 13, 2024, PRR within 10 business days on July 15, 2024.
22. Defendants have failed to abide the July 15, 2024, SPR decision for the June 13, 2024, PRR.
23. Defendants continue to refuse and fail to comply with orders issued by the Supervisor of Records and otherwise continues to ignore the requests from Plaintiff and the Supervisor of Records.
24. By simply ignoring the Plaintiff’s Requests and the Supervisory of Records, the Defendants “did not act in good faith” as that phrase is defined in G.L. c. 66, § 10A(d)(4).
25. Plaintiff is entitled to attorney fees, costs, and punitive damages.

Binding Case Law Determining Subjectivity to Public Records Law

26. The Supreme Judicial Court has developed a five factor test to determine whether an organization is considered a “public entity” for purposes of the Public Records Law. *See Massachusetts Bay Transp. Auth. Retirement Bd. v. State Ethics Comm’n (Board I), 414 Mass. 582, 589-91 (1993) (outlining the multi-factor test); see also Globe Newspaper Co. v. Massachusetts Bay Transp. Auth. Retirement Bd. (Board II), 416 Mass. 1007 (1993) (applying the test in the context of the Public Records Law).*
27. The five factors are as follows:
- a. the means by which the entity was created;
 - b. whether the entity performs an essentially governmental function;
 - c. whether the entity receives or expends public funds;
 - d. the involvement of private interests; and
 - e. the extent of control and supervision exercised by government officials, agencies, or authorities over the entity.
28. Defendant MCFCI’s factors are:
- a. Under a binding contract with the Encore Casino under state law administered by the Massachusetts Gaming Commission. (by the legislature) **(Exhibit B)**.
 - b. The only function of the MCFCI is “...to provide ongoing support to the many important non-profit organizations throughout the City of Malden.” by establishing “... a Committee or Board tasked with reviewing requests for assistance from qualified organizations and making determinations on the awarding of any portion of the Community Fund Payment.” (distribute public funds received from Encore to community applicants) **(Exhibit B (6.1) and (6.2.B))**
 - c. MCFCI only receives public funds and only distributes public funds. **(Exhibit B (6))**
 - d. There is no involvement by any private interest. **(Exhibits A and B)**

- e. The entirety of the MCFCI was created and exclusively controlled by City of Malden employees and appointees, and to this day is controlled by the same three people. **(Exhibit A)**

Codification of "Public Body"

29. M. G. L. c. 30A § 18 “ “Public body”, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.”

30. Defendant MCFCI is:

- a. A multi-member “committee or board” (Exhibit B 6.2.B); and;
- b. Within the City of Malden; and;
- c. To serve the public purpose of providing “...ongoing support to the many important non-profit organizations throughout the City of Malden.” by establishing “... a Committee or Board tasked with reviewing requests for assistance from qualified organizations and making determinations on the awarding of any portion of the Community Fund Payment.” (distribute public funds received from Encore to community applicants) **(Exhibit B (6.1) and (6.2.B))**

The Public Records Law

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

may, as soon as practical and within 20 business days after initial receipt of the request, or within 10 business days after receipt of a determination by the supervisor of public records that the requested record constitutes a public record, petition the supervisor of records for an extension of the time for the agency or municipality to furnish copies of the requested record, or any portion of the requested record, that the agency or municipality has within its possession, custody or control and intends to furnish.” G. L. c. 66 § 10(c).

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

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

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

The May 29, 2024, Request

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

58. On June 10, 2024, the President and Director, the Individual Defendant, Ms. Luise (who is a licensed member of the Massachusetts Bar, BBO# 557353) responded to the SPR in her official capacity as the “Special Assistant to Mayor Gary Christenson, City of Malden – Office of the Mayor” (**Exhibit I**) where she makes the following claims:
- a. “[an] organization that is not a public entity (The Malden Community Fund).”
 - b. “It is our position that the records of this organization are not subject to public records laws.”
59. A true and accurate copy of Defendant Luise’s response is attached hereto as **Exhibit I**.
60. On June 11, 2024, the SPR modified the appeal 24-1754 to be directed to the City instead of to the defendants (**Exhibit J**), likely as a result of communications with the Defendants and the City.
61. A true and accurate copy of the revised appeal is attached hereto as **Exhibit J**.
62. On June 26, 2024, the SPR made findings and issued an Order in her determination of 24-1754 (**Exhibit K**). In her findings and Order, she states that the City provided all the records responsive to the request and has indicated same to her through assertions in writing and verbally; “...the City has provided records in its possession, custody, or control that are responsive to the request, I find the City properly responded to this PRR. Further, based upon a telephone conference between a staff attorney of the Public Records Division and a representative of the City, the City confirmed that all responsive records have been provided.”
63. On July 3, 2024, another unaffiliated media company, Malden News Network (“MNN”) received responsive documents to a different PRR from the City which are and were responsive to the plaintiff’s May 29, 2024, PRR which were withheld. (**Exhibit L**)
64. On July 3, 2024, the plaintiff requested that the SPR reconsider her June 26, 2024, findings, Order and determination based in part on the documents released to MNN and in part on the information within those requests that prove that the City’s systems, employees and infrastructure was and is utilized to create, manage and maintain the records if the Defendants and thus are public records of the City (**Exhibit M**)
65. A true and accurate copy of the request for reconsideration is attached hereto as Exhibit M.
66. On July 5, the SPR agreed to reconsider 24-1754 (**Exhibit N**).

67. On July 26, 2024, the SPR reconsidered her June 26, 2024, determination and found and ordered that the City must provide all responsive records (**Exhibit O**).
68. A true and accurate copy of the reconsideration is attached hereto as **Exhibit O**.
69. On August 2, 2024, defendant Luise provided a partial and incomplete response to this request.
70. As of the time of this filing, the Defendants have failed to completely and properly respond to plaintiff's PRR and to the SPR's July 15, 2024, orders.

The June 12, 2024, Request

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

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

81. A true and accurate copy of the determination is attached hereto as **Exhibit R**.
82. On August 2, 2024, defendant Luise provided a partial and incomplete response to this request.
83. As of the time of this filing, the Defendants have failed to completely and properly respond to plaintiff’s PRR and to the SPR’s July 15, 2024, Orders.

COUNT I
Declaratory Judgment
M. G. L. c. 231A

1. Plaintiff repeats, realleges, and incorporates herein the allegations contained in Paragraphs 1 through 83 of this Complaint as if each were set forth here and in their entirety.
2. There is an actual controversy between the plaintiff and the defendants regarding their failure to produce the requested public records.
3. Pursuant to G.L.231A and the public records statute, Plaintiff is entitled to declarations that the records he requested are public records which should have been produced, and that individual defendants and the defendant MCFCI have violated the public records statute by failing to timely produce the requested records.
4. Pursuant to G.L.231A and the public records statute, plaintiff is entitled to declarations that defendant MCFCI is a “public entity” and is subject to the Massachusetts Public Records Law.
5. Pursuant to G.L.231A plaintiff is entitled to declarations that defendant MCFCI is a public body and subject to open meeting law.

COUNT II

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

6. Plaintiff repeats, realleges, and incorporates herein the allegations contained in Paragraphs 1 through 83 of this Verified Complaint as if each were set forth here and in their entirety.
7. As to Public Record Request of *May 29th, 2024*, the individual Defendants and the Defendant MCFCI have and continue to fail to produce all requested public records, in violation of G.L. c. 66 §§ 10 and 10A.
8. As to Public Record Request of *May 29th, 2024*, the individual Defendants and the Defendant MCFCI have and continue to fail to completely and properly respond to an order of the Supervisor of Records, in violation of G.L. c. 66 §§ 10 and 10A.
9. The failure of individual Defendants and the Defendant MCFCI to produce all public records was not reasonably in reliance on any published opinion of an appellate court or the attorney general. Plaintiff's request was not designed to harass or intimidate, and it was not made for any commercial purpose.
10. The individual defendants and the defendant MCFCI did not act in good faith in withholding and failing to furnish all of the requested public records.

COUNT III

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

11. Plaintiff repeats, realleges, and incorporates herein the allegations contained in Paragraphs 1 through 83 of this Verified Complaint as if each were set forth here and in their entirety.
12. As to Public Record Request of *June 12th, 2024*, the individual Defendants and the Defendant MCFCI have and continue to fail to produce all of the requested public records, in violation of G.L. c. 66 §§ 10 and 10A.

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

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

1. Issue a declaratory judgment that defendant MCFCI is a "public entity" and is subject to the Massachusetts Public Records law codified as M. G. L. c. 66 §§ 10-10A.; and;
2. Issue a declaratory judgment that Defendant MCFCI is a public body as defined under M. G. L. c. 30A § 18 and is subject to the open meeting law; and;
3. Issue a declaratory judgment that the individual defendants and that defendant MCFCI have violated the public records law by failing to produce all requested public records; and;
4. Issue an order compelling the individual defendants and defendant MCFCI to abide all current and future orders of the Supervisor of Public Records; and;
5. Issue an order requiring the individual Defendants and the Defendant MCFCI to produce all requested public records and abide the Supervisor's orders without charge and without delay; and;
6. Enjoin the individual defendants and the defendant MCFCI from further violations of G.L c. 66 §§ 10 and 10A.; and;
7. Award to plaintiff reasonable attorneys' fees and other litigation costs incurred in seeking these records, and waive all fees assessed by individual defendants and the defendant MCFCI to produce all requested public records; and;
8. Order the individual defendants and Defendant MCFCI to pay punitive damages; and;

9. Grant such other relief as is just and equitable.

Respectfully Submitted

March 25th, 2025

/s/ Bruce Friedman .
Bruce Friedman – Pro-Se
8 Marvin Street
Malden, MA. 02148
(617) 952-3183
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VERIFICATION

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

Signed this 25th day of March 2025, under the pains and penalties of perjury.

/s/ Bruce Friedman. .
Bruce Friedman Pro-Se