

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

CITY OF MALDEN

v.

SUPERVISOR OF RECORDS,  
SECRETARY OF THE  
COMMONWEALTH, and  
OPEN COMMONWEALTH  
AND BRUCE FRIEDMAN

MIDDLESEX SUPERIOR COURT  
DOCKET NO.: 2481CV03069

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION TO STRIKE**

Comes now, Defendant Bruce Friedman of Malden, MA (“Defendant Friedman”), Pro-Se, and files his opposition to the Plaintiff’s Motion to Strike the Defendants Affidavit of March 21, 2025.

Defendant Friedman requests the court to take judicial notice of his status as a Pro-Se litigant, and all relevant case law and guidance regarding his fundamental right to be heard, his entitlement to present his case in court despite his limited legal knowledge, and his right to a fair hearing process that accommodates his self-representation; under the principle of due process under the law. Defendant Friedman asks the court to make reasonable accommodations to help him to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law and to construe his pleadings liberally.

Defendant Friedman has now been sued by Plaintiff Malden (“Malden”) **FOUR** (4) times. (The City of Malden sued me in September 2024, November 2024 (this case), and in December 2024. The Malden Public Schools sued me in July of 2021 (filed in Middlesex Superior Court, Docket Number 2181-CV-01458)). All of these cases are related to public records requests and are cases of first impression in the Commonwealth of Massachusetts. All the cases seek judicial intervention to prevent Defendant Friedman from obtaining public records

that the co-defendant, the Supervisor of Public Records (“SPR”), ordered be produced. This strategic litigation involving serial lawsuits ensnaring Defendant Friedman are an ongoing campaign to silence him and stop his efforts to assure governmental transparency. Plaintiff’s actions in this regard are a direct insult to Defendant Friedman’s constitutionally-protected rights, both those granted federally and under the Commonwealth’s Constitution. Malden’s litigations violate the right to a free press, free speech, and Defendant Friedman’s right to petition the government.

### **DEFENDANT’S OPPOSITION**

Defendant Friedman filed the attached Affidavit (“Exhibit I”) properly with the Clerk of the Court on March 21, 2025. The affidavit was properly added to the docket as File Reference Number 20 on March 21, 2025.

Defendant Friedman’s Affidavit intends to inform the Court about the practices of both Plaintiff Malden and Counsel that represents Plaintiff Malden in four separate lawsuits which Plaintiff Malden has filed against Defendant Friedman. Defendant Friedman is well within his rights as a litigant and as a self-represented litigant to inform the court through an affidavit, which was signed under the pains and penalties of perjury.

Further, Defendant Friedman’s Affidavit of March 21, 2025, was filed and expressly in support of his Special Motion to dismiss under G.L.c. 231 § 59H, which again Defendant Friedman as a litigant and as a self-represented litigant is **entitled** to do.

Plaintiff Malden cites no Rule, no codified law, and no binding case law to support their motion to strike, and that is because no such Rule, law or determination by the Massachusetts Appels Court or Supreme Judicial Court exists.

Plaintiff Malden curiously wishes to bring the affidavit to further attention of the Court, lacking any standing or legal merit to do so.

Currently in Massachusetts there is no requirement for Defendant follow any specific Superior Court Rule to inform the court via an affidavit.

### **PLAINTIFF MALDEN'S INTENT**

In their Motion to Strike Defendant Friedman's Affidavit, Malden's Counsel makes the following statement: "The Affidavit again fails to address Maiden's substantial claims for certiorari review from arbitrary and capricious determinations by the Defendant Supervisor of Records ("Supervisor"), and instead focuses on attempting to establish some nefarious intent by Malden. Maiden's intent<sup>4</sup> is not relevant to the anti-SLAPP analysis under the Bristol framework, and as such, the irrelevant Affidavit should be stricken. See Bristol, 493 Mass. at 539, 548, and 555-56".

" 4 As stated in its Opposition, Maiden's actual intent is to "correct the Supervisor's arbitrary standard for 'harassment' which is incompatible with the Public Records Law and put an end to Defendant Friedman's targeted, frivolous, and harassing conduct masquerading under the guise of the Public Records Law."

A plain reading of the position advertised in this statement cannot be misinterpreted, that is "... to put an end to Defendant Friedman's targeted, frivolous and harassing conduct masquerading under the guise of Public Records Law."

Plaintiff's admitted intent must be considered and is properly weighed under G.L.c. 231 § 59H.

In Bristol, 493 Mass. at 539, the SJC found "We thus conclude, as we originally did in Duracraft, 427 Mass. at 166-168, that these powerful procedural protections were intended to be employed in a limited context: to ensure the expeditious elimination of meritless lawsuits based on petitioning activities alone."

The framework further developed under Bristol delineates the problems before this Court very well. In the issue of the first element of the framework analysis, this Court indicated in the hearing of the Defendants Special Motion for relief under G.L.c. 231 § 59H that filing public

records requests and appealing the responses or non-responses of a records holder to the Supervisor of Public Records is demonstrable and de facto petitioning activity.

In *Bristol*, the SJC renders the second element of analysis as “Accordingly, under the simplified framework we set forth today (and as was the case prior to *Blanchard I*), a proponent of a special motion to dismiss under § 59H must “make a threshold showing through the pleadings and affidavits that the claims against it are ‘based on’ the [party’s] petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.” *Id.* at 167-168. Thus, to survive this first stage, the proponent must show that the challenged count has no substantial basis in conduct other than or in addition to the special motion proponent’s alleged petitioning activity. If the proponent cannot make the requisite threshold showing, the special motion to dismiss is denied. If the threshold showing is made, the second stage of analysis follows (more on this below).”

Malden in their Motion to Strike plainly admits that their “actual intent” is to “...put an end to Defendant Friedman’s targeted, frivolous, and harassing conduct masquerading under the guise of the Public Records Law.”

There can be no mistake here, Malden has plainly admitted and thereby assented to and established the second element of the *Bristol* framework, as they intend to “end” Defendant Friedman’s petitioning activities and the only issues before the Court in this case are those which involve Defendant Friedman’s protected petitioning activities in the form of both public records requests and of appealing the responses of Plaintiff Malden to the co-defendant Supervisor of Public Records.

Wherefore Defendant Friedman requests a separate and subsequent hearing on the Plaintiff’s Motion to Strike his sworn Affidavit of March 21, 2025, as his right under Superior Court Rules 9A-9E.

Respectfully Submitted by Defendant,

Dated: April 7<sup>th</sup>, 2025

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this Affidavit was served upon the counsel for the City of Malden, Ms. Felicia Vasudevan; [fvasudevan@mhtl.com](mailto:fvasudevan@mhtl.com) and to counsel for Co-Defendants Supervisor of Records and Secretary of the Commonwealth at Julie.Frohlich@mass.gov electronically via email.

Dated: April 7<sup>th</sup>, 2025

# Exhibit I

COMMONWEALTH OF MASSACHUSETTS

RECEIVED

3/21/2025

MIDDLESEX, SS.

CITY OF MALDEN

v.

SUPERVISOR OF RECORDS,  
SECRETARY OF THE  
COMMONWEALTH, and  
OPEN COMMONWEALTH  
AND BRUCE FRIEDMAN

MIDDLESEX SUPERIOR COURT  
DOCKET NO.: 2481CV03069

**AFFIDAVIT OF DEFENDANT BRUCE FRIEDMAN REGARDING MISLEADING  
STATEMENTS MADE BY PLAINTIFF'S COUNSEL BEFORE THE COURT ON  
MARCH 12, 2025.**

I, Bruce Friedman hereby depose and state the following based upon personal knowledge:

1. On March 12, 2025, I, Bruce Friedman appeared pro-se in the Middlesex Superior Court, courtroom 710 at approximately 3:00PM.
2. Counsel for co-defendant Supervisor of Public Records and Secretary of the Commonwealth, Ms., Julie Frolich appeared and has filed an appearance in this case.
3. Two counsels for the Plaintiff, Ms. Felicia Simone Vasudevan, and Mr. James R. Donnelly, appeared and both have filed appearances in this case.
4. The Honorable Judge Barry-Smith entered a line of questioning regarding the possible consolidation of the three cases filed by the Plaintiff in the last quarter of 2024. [Exhibit A – Page 23-Line 17 through Page 24-Line 3]
5. Attorney Donnelly appearing for the Plaintiff denied that either of the other two outstanding cases filed in 2024 buy the Plaintiff were about harassment. Attorney

Vasudevan did not directly deny this but also intimated that the only claims were regarding fee petitions reasonableness of a fee estimate.

6. **[Exhibit A - Page 24 Lines 14-21]:**

“MR. DONNELLY: Yep. Then there's two additional cases filed at the end of last year by the City relating to specific determinations by the supervisor about -- **not about harassment.**

But about other --

THE COURT: Specific requests.

MS. VASUDEVAN: A Fee Petition, I believe. It's – Your Honor, I believe it's about a Fee Petition and the reasonableness of a fee estimate.”

7. In **Exhibit B**, the complaint from 2481CV02456 (City of Malden v. Bruce Friedman et al), **[Count II, Line 37, on Page 6, Count III, Line 45, on Page 6, Count III line 48, on Page 7, and in their relief sought (d)(ii)]**, harassment is specifically plead and relief from harassment is specifically sought.
8. In **Exhibit C**, the complaint from 2481CV03277 (City of Malden v. Bruce Friedman et al), **[Count II, Line 31, on Page 5, Count III, Line 38, on Page 6, Count III line 41, on Page 6, and in their relief sought (d)(ii) on page 6]**, harassment is specifically plead and relief from harassment is specifically sought.
9. It is important that this Court and all courts considering the four (4) outstanding cases where the Plaintiff has sued the Defendant, to understand that harassment is the thrust and method/tactic employed by the Plaintiff in a warfare level attempt to deny the Defendant his constitutionally protected petitioning activities of filing public records requests and of appealing the responses or lack of responses of the Plaintiff to the Co-Defendant Supervisor of Public Records. This is the very heart of their Strategic Litigation Against Public Participation against the Defendant.

Signed under the pains and penalties of perjury this 21<sup>st</sup>, day of March 2025;

/s/ Bruce Friedman  
Bruce Friedman – Pro-Se  
8 Marvin Street  
Malden, MA. 02148



(617) 952-3183  
bruce@amyandbruce.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this Affidavit was served upon the counsel for the City of Malden, Ms. Felicia Vasudevan; [fvasudevan@mhtl.com](mailto:fvasudevan@mhtl.com) and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at [Julie.Frohlich@mass.gov](mailto:Julie.Frohlich@mass.gov) electronically via email and by email sent by the undersigned and through efile and serve.

Dated: March 21<sup>st</sup>, 2025

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

# Exhibit A

Volume I  
Pages: 1-33  
Exhibits: 0

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\*\*\*\*\*

CITY OF MALDEN \*

Plaintiff \*

v. \*

DOCKET NUMBER 2481CV03069

\*

SECRETARY OF MASSACHUSETTS \*

ET AL \*

Defendant \*

\*\*\*\*\*

HEARING

BEFORE THE HONORABLE CHRISTOPHER K. BARRY-SMITH

APPEARANCES:

For the Plaintiff:

Murphy, Hesse, Toomey and Lehane

50 Braintree Hill Office Park

Suite 410

Braintree, Massachusetts 02184

By: Felicia Simone Vasudevan, Esq.

James R. Donnelly, Esq.

For the Defendant:

Massachusetts Attorney General's Office

One Ashburton Place

20th Floor

Boston, Massachusetts 02108

By: Julie Ann Frohlich, Esq.

Bruce Friedman, Pro Se

Malden, Massachusetts

Courtroom 710

March 12, 2025

Recording produced by digital audio recording system. Transcript  
produced by Approved Court Transcriber, Donna Dominguez

**I N D E X**

**WITNESS**

**DIRECT**

**CROSS**

**REDIRECT**

**RECROSS**

None - Hearing

P R O C E E D I N G S

(Court called to order 2:59:39 p.m.)

THE CLERK: Your Honor, we have all parties here on Docket Number 2481CV03069, City of Malden v. William Francis Galvin, Secretary of Commonwealth et al.

If parties could please stand and identify yourself for the Court and the record, starting with the Plaintiff.

MR. DONNELLY: Good afternoon, Your Honor. James Donnelly for the City of Malden.

MS. VASUDEVAN: Good afternoon, Your Honor. Felicia Vasudevan on behalf of the City of Malden.

THE COURT: Good afternoon.

MR. FRIEDMAN: Good afternoon, Your Honor. Bruce Friedman, pro se.

THE COURT: Good afternoon.

MS. FROHLICH: Good afternoon, Your Honor. Julie Froelich for Manza Art -- Manza Arthur and William Francis Galvin.

THE COURT: Good afternoon.

All right. We're here for the Anti-SLAPP Motion by Mr. Friedman. Let me first ask, does Counsel for the Secretary's Office want to be heard on this motion or --

MS. FROHLICH: No, Your Honor.

THE COURT: -- are you on the sidelines?

MS. FROHLICH: We take no position.

THE COURT: Okay. In that case -- I'll hear -- I've --

1 I've read all your papers, so I guess I'll -- I'll observe that  
2 this is very unusual anti-SLAPP motion simply because the case  
3 is an Administrative Appeal in a Certiorari Action. I'm not  
4 familiar with any law that takes up anti-SLAPP in that context.  
5 And here's the challenge that it raises. I'll just tell you up  
6 front that on the first argument that Malden makes, the notion  
7 that asking for and appealing Public Records Requests doesn't  
8 qualify as Petitioning, I couldn't -- I couldn't disagree more.  
9 It didn't -- it -- it's a new form of Petitioning, statutory.  
10 But when you're asking the Government something, I -- I view  
11 that as Petitioning. So that doesn't mean there's not an issue  
12 about -- solely based on Petitioning. But this is why I  
13 consider this such an unusual issue.

14 The -- Mr. Friedman's conduct I view as Petitioning.  
15 However, the reason I point out that I'm not familiar with any  
16 case law that applies anti-SLAPP in -- in the Administrative  
17 Appeal context is that even when someone is Petitioning, anti-  
18 SLAPP suits usually involve -- or alleged anti-SLAPP suits  
19 usually involve a lawsuit against you, Mr. Friedman. That's the  
20 -- that's the normal paradigm for whatever it might be, for  
21 whatever form of damages. And that's when anti-SLAPP kicks in  
22 because we don't like people who are exercising their Petition  
23 rights to be on the hook for money damages for doing that.

24 But this case doesn't involve damages. It involves an  
25 Administrative Appeal of the Secretary's action. And in that

1 context, it strikes me as the -- Malden's not after you in this  
2 regard. They want the Secretary to do what they think is the  
3 Secretary's job. I guess that's what the underlying lawsuit is  
4 about. We're here -- we're here about anti-SLAPP today, but  
5 that's what they're after. It seems to me the thrust of this  
6 lawsuit brought by Malden is to get the Secretary to interpret  
7 harassment in the way that in -- in -- I was going to say in the  
8 way that they want. Actually, it's in a -- in the proper way.  
9 We'll just say that.

10 Okay. So I'll stop talking. We'll hear from the moving  
11 party after I asked Malden this question. In a case like this,  
12 why is Mr. Friedman a Defendant? The relief you're seeking is  
13 the Secretary to do their job differently, or actually, I guess  
14 more accurately, me to rule that the Secretary's doing its job  
15 in the first instance wasn't proper, was unlawful or arbitrary  
16 and capricious. So I don't know the answer to this question,  
17 but is it -- is it -- I know that Mr. Friedman's rights would be  
18 affected if you're successful against the Secretary, but why are  
19 -- why are they a Defendant in an Administrative Appeal or a  
20 Certiorari Action? Is it because we know that he'd like to be  
21 heard, or is it a statutory requirement? And I'm not -- I'm not  
22 being rhetorical, I don't know the answer to that question.  
23 Because if -- if he weren't a Defendant, we wouldn't be here for  
24 an anti-SLAPP motion.

25 MR. DONNELLY: Thank you, Your Honor. And -- and I think

1 your -- your acknowledgement of the uniqueness of this  
2 situation, this is a -- this is the first time this -- this is a  
3 Case of First Impression, so there's no previous authority that  
4 we can rely on as we're proceeding through this. I think that  
5 the reason that Open Commonwealth is named is because they're  
6 the requester and because their rights are affected. In other  
7 words, the -- they're basically a -- a necessary party. And --  
8 and yes, we --

9 THE COURT: If you didn't name Mr. Friedman, we could  
10 predict, and you don't have to agree with this or not, that he'd  
11 want to intervene and say, I don't want the Secretary to roll  
12 over and agree with the Municipality. I want to be heard, too,  
13 because I have a much more -- I have a much greater interest in  
14 protecting these rights than the -- arguably than the Secretary  
15 does.

16 MR. DONNELLY: That's what we assumed --

17 THE COURT: Okay.

18 MR. DONNELLY: -- and that's why we named Open  
19 Commonwealth. And I think that you're right, Your Honor, that  
20 the core of this action is a Certiorari Action from an  
21 Administrative Appeal against an action from the supervisor.  
22 And that Open Commonwealth is named because their interests are  
23 affected.

24 THE COURT: Okay. You're not seeking money damage from Mr.  
25 Friedman --



1 MR. DONNELLY: No.

2 THE COURT: -- in this case. I suppose you might get the  
3 Secretary to do their job differently and he might have -- he  
4 might have to pay costs or something. But in this case, it's  
5 not -- it's not a tort. It's not a claim for damages against  
6 Mr. Friedman. He's named because you -- you presumed he'd want  
7 to be heard since his rights could be affected if you're  
8 successful.

9 MR. DONNELLY: Correct. What -- what the City is seeking  
10 is, as you said, the proper interpretation of the standard of  
11 harassment under the Public Records Law to be applied to the  
12 relevant public records determinations from the supervisor --

13 THE COURT: Right.

14 MR. DONNELLY: -- at issue here.

15 THE COURT: Okay. Everyone can sit down. I'm going to  
16 return to the normal process and hear from the moving party  
17 first. But I wanted to understand the answer to that question  
18 because I could imagine -- and I'm not saying they did anything  
19 wrong. I think Malden could have brought this case just against  
20 the Agency involved because it's an Administrative Appeal. But  
21 I was trying to think of analogies, and -- and I just don't know  
22 the answer. It's -- it's reasonable to make sure the effective  
23 party, if the Plaintiff is successful, is -- is also involved.  
24 I don't know if that means that they're a Defendant or not, but  
25 you're here as a Defendant. You filed anti-SLAPP. I already

1 agree with you that your conduct vis-à-vis Municipalities  
2 asking for information qualifies as Petitioning. I could be  
3 wrong. That might be a -- I don't know if that's a -- that's  
4 been held to be the case, but that's my view.

5 But I think the challenge under anti-SLAPP is here we have  
6 a Plaintiff that is not seeking something from you. They're  
7 exercising their lawful right to appeal an Administrative Agency  
8 action. Why should that result in a dismissal? If you're  
9 right, they get dismissed and they pay your attorney's fees.  
10 They're just doing what the law allows them to do. So let's  
11 accept that I don't think there's any case that deals with this  
12 scenario. Why should you be successful?

13 MR. FRIEDMAN: Can I backtrack just a little bit and tell  
14 you that as a -- as a -- I can say with confidence to this Court  
15 that if they had filed directly and that excluded me, I would  
16 have moved to intervene.

17 THE COURT: Okay.

18 MR. FRIEDMAN: The -- that is not the relief that they  
19 seek, Your Honor. They seek, and it's plainly spelled out, they  
20 speak -- they seek to have a Permanent Injunction plastered  
21 against me to make any Public Records Requests that I file in  
22 the future subject to being dismissed immediately because of --  
23 I have been found as a harasser. They bypassed the entire  
24 process of Public Records Law. And I agree that this case  
25 should not be brought under Administrative Review or Certiorari

1 because there is a statutory framework established under Chapter  
2 66 of -- of Section 10, or Section 66 of Chapter 10 that  
3 specifically outlines how public records litigation plays out.  
4 It does not entitle them to any suit. And if they don't -- if  
5 they are not able to sue, nothing happens to them. If the  
6 supervisor of public records indicates that they're forced to  
7 turn over these records and they do nothing, nothing happens to  
8 them. There's no injury. The only way that anything happens to  
9 them is if I file suit as the Public Records Requester or the  
10 Attorney General files suit to enforce the supervisor's orders.  
11 In both cases, they enjoy a better standard of review under the  
12 Public Records Law. They have completely subverted Public  
13 Records Law and tried to go outside of the Public Records Law to  
14 seek and sue a Public Records Requester, which is also a Case of  
15 First Impression in the State of Massachusetts.

16 THE COURT: Well, hold -- but -- but in this case, I would  
17 agree with you if there was no Statutory Provision that  
18 mentioned this concept of harassment; right? But there is. And  
19 what --

20 MR. FRIEDMAN: Well --

21 THE COURT: -- what their case is saying, as I understand  
22 it, is this notion of harassment that can -- I don't -- I guess  
23 I didn't perceive it to be a Permanent Injunction. I sort of  
24 thought it was a request by a request type thing --

25 MR. FRIEDMAN: Verbatim in there.

1           THE COURT: -- but I could be wrong. Since there's a  
2 Statutory concept of harassment that in some way can reign in a  
3 requester, since it exists, they're basically saying it's got to  
4 mean something, and the Secretary of State hasn't -- hasn't  
5 given it the life it deserves. I don't know. That's what the  
6 underlying case is about; right?

7           MR. FRIEDMAN: Yeah.

8           THE COURT: So that strikes me as it's an unusual Chapter  
9 30A Administrative Appeal of an Agency's decision. It's unusual  
10 because I haven't seen it before. I don't know if it's happened  
11 before, but that's what Administrative Appeals are. When  
12 there's an action by an Agency, all sorts of people can appeal  
13 it. In this case, they -- they want to -- they want to make  
14 that concept of a Harassment Order mean something, and they  
15 think that the Secretary's been arbitrary and capricious. Why -  
16 - why can't they do that?

17          MR. FRIEDMAN: Because the law in the -- inside of the  
18 codified Public Records Law specifies the process that only a  
19 requester can bring suit, only a requester can seek redress with  
20 the Courts. And it parallels what happens with Open Meeting Law  
21 in reverse. It's -- it's about transparency, and the chilling  
22 effect that would be allowed in the State of Massachusetts would  
23 be massive if as soon as a Public Records Requester receives --  
24 or as soon as the public records holder receives a request they  
25 don't like, it's a \$250 fee to come down and file a -- a

1 lawsuit. That's a -- that's a simple, easy way to chill the  
2 entire process of Public Records Requests. And that's  
3 effectively what they want to do, Your Honor. There is a very  
4 specific guideline in -- in Section 10, Subchapter C that  
5 discusses exactly what the Legislature defined as harassment.  
6 And it's really clear what it is and it's really clear why the  
7 supervisor -- and she has made some very thoughtful, long winded  
8 discussions about why their -- their argument fails. So they  
9 have done an end run around the Public Records Law. They --  
10 they suffered no injury. They have not been able to claim any  
11 injury. The injury that they have today is that they have to  
12 respond to Public Records Requests, which they're mandated to by  
13 the law.

14 THE COURT: Right. But -- but getting back to -- so you  
15 might be right in what you just described, that the Secretary's  
16 actions as to whether they should have got more traction on  
17 their request for a Harassment Order, you might be right. I  
18 actually haven't seen the decision that says something like, yes  
19 -- yes on the fees, but no on the Harassment Order or -- or  
20 something like that. I haven't read that yet. I've read your  
21 pleadings. I haven't read all the Administrative Record yet.  
22 You might be right. It could be thoughtful, true to the  
23 Statute, and correct. That means they will be unsuccessful in  
24 this action, and there won't be any relief from it.

25 I don't think they're asking in this action directly for me

1 to tell you, Mr. Friedman, you can't do any more public work  
2 requests. I think they're asking me to say the Secretary's  
3 interpretation of this harassment concept has been arbitrary and  
4 capricious. And I guess I could say either -- I probably most  
5 likely say, so give it more attention and do it more carefully  
6 and don't be arbitrary and capricious. I suppose I could decide  
7 on my own, but that's not normally my approach. And I don't  
8 think the Judiciary generally, if an Administrative Agency is  
9 tasked with it initially, if there's been an error of law or  
10 something that's arbitrary and capricious, we typically say go  
11 back and do it again. That would all be consistent with the  
12 Statutory scheme that you're describing.

13 I -- I confess I -- I looked at the Complaint carefully to  
14 see if this Plaintiff was asking me to do -- to -- to restrict  
15 you by Court Order, and I didn't perceive that to be the case.  
16 They're asking me to get the Secretary to do something  
17 differently.

18 MR. FRIEDMAN: And in the final part of their pleading,  
19 subsection three, they're asking this Court to modify the  
20 supervisor's determination to reflect that Public Records  
21 Requests made by Open Commonwealth, Mr. Friedman, and any other  
22 organization operated by Mr. Friedman, including the first,  
23 second, and third harassment Petitions, are intended to harass  
24 Malden; and, B, Malden is relieved of its obligation to provide  
25 copies of the records sought; and, C, Malden is relieved of its

1 obligation to respond to requests in the future from Mr.  
2 Friedman, Open Commonwealth, and any other organization operated  
3 by Mr. Friedman. That is the intent of this suit, and that's  
4 why it's a SLAPP suit, Your Honor, because they not only want to  
5 -- they not only want to hold me accountable in their mind to  
6 the supervisor of records, but they absolutely want to silence  
7 me. And I think that's the part of this that this Court must  
8 recognize. This is -- this is an exercise of me seeking records  
9 that have been politically damaging, and we can get into those.  
10 And I -- and the beauty of this is that I file Counterclaims,  
11 Your Honor, so they will have a better standard of review under  
12 my Counterclaims to go into the nuts and bolts of what's  
13 happening here, but from a -- from a basic process, they are  
14 trying to silence me today, tomorrow, and forever. And they  
15 want to be able to go to the supervisor of records anytime  
16 something comes close to Bruce Friedman, Open Commonwealth or  
17 Open Malden, and say, uh-uh, you -- you -- we appeal this, and  
18 it's because he's a harasser. He's been deemed to be harassed  
19 by Judge -- I'm sorry, Barry-Smith. And -- and so he no longer  
20 has the right to file Public Records Requests and use a  
21 supervisor as a tool to extract those from us when we decide not  
22 to issue the public records that were requested.

23 THE COURT: Okay. That's a good -- that's a good  
24 opportunity for segue. I want to hear from the Plaintiff.

25 So you heard my description, and Mr. Friedman's just

1 pointed to this Clause C, which asks for the Court to enter a  
2 Permanent Injunction.

3 Now, I understand it says to do so by modifying the  
4 supervisor's determination, but I've -- I've just given you a  
5 lot of credit for pursuing your Administrative Appellate Rights,  
6 and this C actually does seem to go a little beyond that and ask  
7 me to make the determination to silence Mr. Friedman, which  
8 starts to wander into the type of territory where anti-SLAPP  
9 matters. So what -- how -- how should I think about that?

10 MR. DONNELLY: Well, Your Honor, the City isn't denying  
11 that Mr. Friedman's rights are implicated here. That's exactly  
12 why Open Commonwealth is named as a Defendant. In -- in the  
13 relief we're seeking, we're seeking the proper interpretation  
14 for the standard of harassment. And under the Public Records  
15 Law, one of the remedies for harassment is to re -- relieve the  
16 records custodian of the obligation to produce the records  
17 sought.

18 So what we're seeking is the correct standard of harassment  
19 and the remedy outlined in the Public Records Law, when there is  
20 harassment.

21 THE COURT: Is the relieving of the obligation to respond,  
22 is it as to -- so there was like, you know, 17 and 6 and 1;  
23 right? If you're successful, if I did exactly what you asked,  
24 does that mean you're relieved of your obligation as to the  
25 group that was the basis for number one, the group that was the



1 basis for number two, and the group that was the basis for  
2 number three, or forevermore?

3 MR. DONNELLY: We're asking for both. They're --

4 THE COURT: All right.

5 MR. DONNELLY: -- I think, in B and C -- let's see. Yeah.  
6 So B is to produce -- relieved of its obligation to provide  
7 copies of the records sought, so the records that were requested  
8 in the instant requests, and then C is looking to the future.  
9 So the -- there's no denying that Open Commonwealth and Mr.  
10 Friedman's interests are implicated here. But for the purposes  
11 of the anti-SLAPP analysis, what -- what matters is whether  
12 they're the only -- they're the only activities on which the  
13 claims are based.

14 If you look at the -- the second factor in the Bristol --  
15 in the framework that was established by the Bristol case, that  
16 second factor is whether the special motion proponent in this  
17 case, Mr. Friedman, has shown that the opponent's claim is based  
18 on this Petitioning Activity alone, with no substantial basis  
19 other than or in addition to said Petitioning Activity.

20 THE COURT: Right. So what -- yeah, I know, but this is  
21 why --

22 MR. DONNELLY: So --

23 THE COURT: This is why I think that the anti-SLAPP process  
24 does not suit the analysis in this case very well because I read  
25 your brief saying just asking for -- asking the Government under

1 the Public Records Act for -- for records doesn't qualify as a  
2 statement that's protected. And I -- I just disagree. When  
3 you're interacting with the Government, asking for something  
4 that a Statute gives you the right to ask for, I could be wrong,  
5 I view that as Petitioning. I know this concept of -- of we  
6 overlay on top of it whether it's protected speech, that's often  
7 at issue. I just don't think it's an issue here because he's  
8 asking the Government for something where there's a Statutory  
9 framework to do so. I think that's Petitioning.

10 So this is the problem. It's really hard to say that, as  
11 to Mr. Friedman, the lawsuit is not based on Petitioning because  
12 I think everything he does is -- is asking for -- everything I  
13 read about at least is asking for public records.

14 The problem is, I think you're entitled to appeal the  
15 Secretary's approach to the request that you're making. And so  
16 it's not really the type of lawsuit that deserves anti-SLAPP  
17 protection or otherwise, your important rights would be  
18 suppressed in a way that I don't think they're supposed to.

19 So this is the problem. The framework that -- that the SJC  
20 has given you under anti-SLAPP isn't especially effective for  
21 your particular circumstances, in my opinion.

22 MR. DONNELLY: And Your Honor, that -- that's exactly why  
23 the framework -- that's exact -- exactly why the SJC revised the  
24 framework in Bristol, because under the previous analysis, it  
25 was going one by one through all the different claims in the

1 case, knocking out individual claims against specific -- against  
2 specific Defendants. And the SJC said, no, we're simplifying  
3 the framework. We don't want to overreach with this powerful  
4 anti-SLAPP provision, which is automatic dismissal with costs.  
5 So in order to prevent capturing legitimate claims like our  
6 claim against the supervisor, in -- in order to prevent  
7 capturing those claims and dismissing them outright, we're going  
8 to amend this framework. If there's a substantial basis for the  
9 claims other than Petitioning Activity, the case proceeds, and  
10 you evaluate it on the merits. We're not going to apply the  
11 anti-SLAPP Statute to those types of claims. And -- and the  
12 reason why it's so important for the City and public records  
13 custodians to have the right to appeal from a supervisor of  
14 records determination is -- is best exemplified in a case that  
15 the Malden Public Schools had previously against Mr. Friedman,  
16 where the Court found that the supervisor's interpretation of  
17 business days in the Statute was arbitrary and capricious and  
18 remanded that back to the supervisor.

19 Again, in that -- in that case, where -- where Malden  
20 Public Schools is -- is pursuing relief from a determination by  
21 the supervisor that a custodial index is required. So -- and  
22 the Attorney General has indicated that they think that is  
23 erroneous.

24 THE COURT: Was Mr. Friedman a Defendant in that lawsuit in  
25 addition --

1 MR. DONNELLY: Yes.

2 THE COURT: -- to the supervisor? Okay.

3 MR. DONNELLY: Yes.

4 THE COURT: And I take it --

5 MR. DONNELLY: And -- and in that case --

6 THE COURT: -- this issue didn't come up?

7 MR. DONNELLY: -- the -- this Court specifically found that  
8 public records custodians had the right to pursue Certiorari  
9 Actions through Administrative Appeals.

10 THE COURT: I -- I don't have any doubt about that, only  
11 because I -- I've seen them with regularity, you know, a few  
12 every year. So I just understood public records, even though  
13 it's relatively new, to have the same judicial review. And  
14 that's what you're -- that's what you're seeking here. I mean,  
15 I've -- I've -- I've -- I've tried to identify what I perceive  
16 the problem. The SJC has been through all these iterations of  
17 how to analyze anti-SLAPP and then we get the new one, and I  
18 believe it doesn't quite work here because I think it's hard for  
19 you to identify a substantial basis beyond Petitioning, if you  
20 accept my version of Petitioning includes requesting and  
21 appealing and the like. Once -- if I'm right on the definition  
22 of Petitioning, I don't know that Mr. Friedman's done anything  
23 else that you -- that's the subject of the lawsuit. But tell me  
24 if you think I'm wrong.

25 Usually I see sort of like, you know, yes, we complained to

1 the City Inspector, but I was also doing an email campaign to my  
2 fellow tenants or something like that. And then it's easy to  
3 say, well, there's a bunch of other stuff besides the  
4 Petitioning. Here, I think everything you're complaining -- and  
5 I under -- I understand. I think you know how I feel about  
6 this, that you have a right to appeal. I just think the anti-  
7 SLAPP analysis is really hard to apply because I think  
8 everything Mr. Friedman's done is Petitioning. Is there  
9 anything else besides my version of Petitioning?

10 MR. DONNELLY: So even if we disagree about whether Mr.  
11 Friedman's activity is Petitioning, that's that first factor.

12 THE COURT: I know. The problem with getting --

13 MR. DONNELLY: He also --

14 THE COURT: -- to the second is then I have to say  
15 everything he's done is frivolous and caused you harm. I think  
16 the harm is a low hurdle because of the money involved in  
17 responding. But to say that, I mean, one problem with so many  
18 requests is how can I say they're all lacking factual or legal  
19 merit?

20 Again, the -- the -- the analytical framework doesn't  
21 especially fit this case if I agree that you have the right to  
22 appeal.

23 MR. DONNELLY: So in -- in that -- in the framework, right,  
24 there's two steps, and within each step, there's two questions.  
25 Right. In step one, with the two questions, the first question

1 is, is there Petitioning Activity, and the second question is  
2 whether there's a substantial basis for the claims other than  
3 the Petitioning Activity; right? So even if we disagree on the  
4 first question about whether there's Petitioning Activity here,  
5 Mr. Friedman still -- it's his burden to establish the second  
6 question, that they're only based on his Petitioning Activity.  
7 And I think you're exactly right, Your Honor. This can apply to  
8 Administrative Appeals precisely because there's a substantial  
9 basis for the claims other than the Petitioning Activity.

10 THE COURT: I'm worried -- I'm -- I shouldn't say I'm  
11 worried.

12 MR. DONNELLY: And --

13 THE COURT: I feel like the answer to this might be the  
14 Administrative Appellant, like Malden in this situation, should  
15 be careful to just sue the supervisor and then make the affected  
16 party request intervention. And then you haven't sued them and  
17 they've injected themselves in. Now, I'm not -- I'm not  
18 suggesting you should have thought of that because I -- this is  
19 an unusual circumstance, but that might be the solution.  
20 Heretofore anybody exercising their defensive public records  
21 rights by way of Administrative Appeal, don't sue the effective  
22 party because you'll get hit with anti-SLAPP because everything  
23 they've been doing is anti -- is Petitioning.

24 MR. DONNELLY: Which -- which we're happy to do, Your  
25 Honor. We're happy to dismiss Mr. -- or we're happy to dismiss

1 --

2 THE COURT: Voluntary -- a voluntary dismissal. The  
3 problem with that, I -- and I guess I'll put that on the table  
4 as a potential result of this hearing. I'm supposed to consider  
5 the anti-SLAPP. You know, once it's raised, I'm supposed to  
6 come to a decision on it.

7 MR. DONNELLY: I -- I would just say, Your Honor, that  
8 we're happy to dismiss Open Commonwealth and have Open  
9 Commonwealth file a Motion to Intervene. The anti-SLAPP  
10 provision can't be applied to this case because -- to the entire  
11 case, because we're proceeding -- we're -- we have claims  
12 against the supervisor.

13 THE COURT: Right. Okay. So, Mr. Friedman, you've heard a  
14 lot of how I'm thinking. I -- I actually think the analysis  
15 under anti-SLAPP largely supports you. I think it would be a  
16 wrong result, though, to dismiss their case because then they're  
17 deprived of their right to challenge the Secretary's actions.

18 MR. FRIEDMAN: I'll go back again, Your Honor, and I -- I  
19 may not -- I'm pro se. I'm sorry. I'm not as articulate as I  
20 should be. But at the end of the day, if everything sits as it  
21 is, they are -- suffer no injury. If the -- if the  
22 determination of the supervisor stands still and you never hear  
23 anything and they do nothing, and I do nothing, and the AG does  
24 nothing, they suffer no injury, which means it can't be subject  
25 to Certiorari on its face. The -- there's no injury for them to

1 suffer. They -- they -- they were served a Public Records  
2 Request. They responded, or they didn't respond. The  
3 supervisor issued an order. That's what happens. Barring me  
4 suing or the AG suing, there's no injury.

5 THE COURT: Fair point. I think what Mr. Donnelly would  
6 say is this is not so much about overruling any particular Order  
7 requiring production of records. It's getting the right that  
8 the Statute gives them of this Harassment Order, whatever it is,  
9 you know --

10 MR. FRIEDMAN: Yeah, I -- I -- I understand their position.  
11 I think that this is perfect for SLAPP because it defines  
12 exactly what they're trying to do. I have won 83% of my appeals  
13 at the supervisor level. That's real math. I have won over 90%  
14 of my Open Meeting Law Complaints against the City of Malden.  
15 That's real math. There is things going on there that they  
16 don't want exposed. This is the classic -- this is the classic  
17 confluence of I'm writing things that they're uncomfortable  
18 with, that they don't like. And I've got example after example  
19 of things that have been published. The Superintendent of  
20 Malden, who claimed she had a doctorate that they refused to  
21 turn over the records on because we did Public Records Requests.  
22 Hundreds of thousands of dollars that are missing from the  
23 Encore Casino that are paid to the City of Malden. Don't know  
24 where they are, but some of them ended up in a private company  
25 that gave that money to a -- to several religious organizations,



1 despite the Anti Aid Amendment of the -- of the Constitution of  
2 the State of Massachusetts. The -- there's example after  
3 example after example where they need to silence me. And we're  
4 on the cusp of some really big things. Most of the records that  
5 we're seeking here are records from private cell phones,  
6 including that of the Mayor, who have never maintained a public  
7 record about those phones. Private email addresses that are  
8 used widely throughout the City, pervasively throughout the  
9 City, to hide public records from the public so that we can't  
10 tell if they broke Open Meeting Law by communicating on the back  
11 end, because it was all done in private email addresses.

12 There is -- there are some real watershed moments headed  
13 towards the City of Malden. And this is their best play. And  
14 you heard them say it. They are not looking to -- to look at  
15 these specific requests or have the merits of why I'm asking for  
16 the records ever examined. They want to silence me permanently.

17 THE COURT: All right. Well, you've both presented your  
18 positions well. I -- I -- I'm -- I think this is a real  
19 quandary, and I'll do my best to figure -- figure out what to  
20 do, and I'll try to do it promptly.

21 Let me ask you this. The other three act -- I'm not  
22 interested in the 2021 Action, but this action concerns three  
23 different instances of, you say, improper application of this  
24 Harassment Order concept; right? What are the other two 2024  
25 Actions? I'm asking because should there be three Judges in

1 this Courthouse considering litigation between Malden and this -  
2 - and this side of the table, or -- or should they be  
3 consolidated? Are they different stuff?

4 MR. DONNELLY: So for clarity, Your Honor, that -- we have  
5 this case --

6 THE COURT: I'm sorry, Mr. Friedman. For a moment, I  
7 forgot your name. That's why I was --

8 MR. FRIEDMAN: It's okay.

9 THE COURT: -- saying -- okay. Mr. Friedman.

10 MR. DONNELLY: We have this case. There's the suit from  
11 2021 involving the Malden Public Schools for Mr. Friedman that  
12 continues.

13 THE COURT: I'm just going to consider that separate.

14 MR. DONNELLY: Yep. Then there's two additional cases  
15 filed at the end of last year by the City relating to specific  
16 determinations by the supervisor about -- not about harassment.  
17 But about other --

18 THE COURT: Specific requests.

19 MS. VASUDEVAN: A Fee Petition, I believe. It's -- Your  
20 Honor, I believe it's about a Fee Petition and the  
21 reasonableness of a fee estimate.

22 THE COURT: Okay. All right.

23 MR. DONNELLY: Correct.

24 THE COURT: Okay. So I will -- I will say they are unique,  
25 and they could be considered separately. Has anyone given

1 thought to whether all -- all of the disputes should be before  
2 one Judge? I'm not asking for the job because I'm not going to  
3 be here the rest of the year.

4 MR. FRIEDMAN: They don't represent Malden in the other two  
5 cases, Your Honor. That case -- those cases are represented by  
6 the City Solicitor, and she moved to consolidate the two cases  
7 that she has; however, one is currently in front of the Appeals  
8 Court, so she can't consolidate those two. But they -- they  
9 have not been --

10 THE COURT: Oh, okay. They're wasn't --

11 MR. FRIEDMAN: One of the huge issues we're trying to get  
12 to is how they're paid and who's authorizing their pay. And  
13 they have not been authorized to take on the two other suits.  
14 They've burdened that on the City Solicitor.

15 THE COURT: Or -- or had the City's own budget pay for it  
16 instead of an outside attorney. Yeah.

17 MR. FRIEDMAN: Yeah.

18 THE COURT: It's two sides of the coin.

19 MR. FRIEDMAN: Yeah.

20 THE COURT: Okay.

21 MR. FRIEDMAN: And harassment is -- is part of their claims  
22 as well, so --

23 THE COURT: All right. I guess this one is unique, and I'm  
24 not going to -- I'm not going to sua sponte consolidate them  
25 all. I wanted to raise the issue because -- well, when I first

1 saw the three lawsuits, I thought, oh, is there one for each of  
2 these different harassment? But I see that you put them all  
3 together in one case. So any party is allowed -- you know,  
4 allowed to move if they think that makes sense. But I won't do  
5 it on my own. That's why I wanted to ask about that.

6 So, last question, Mr. Friedman, because this is where I  
7 keep coming -- this is where I keep coming back to. The anti-  
8 SLAPP remedy is so dramatic, if you are correct, and everything  
9 you've done is Petitioning, and their lawsuit, to the extent it  
10 names you, is based purely on Petitioning, and you're entitled  
11 to the anti-SLAPP remedy, the remedy says shall be dismissed.  
12 And -- and that's the lawsuit. Or -- or do you take that to  
13 mean you should be dismissed?

14 MR. FRIEDMAN: Oh, the lawsuit, Your Honor. I've asked for  
15 the lawsuit to be dismissed with prejudice.

16 THE COURT: Right. Okay. And that would -- that would --  
17 I use the word deprive, not -- not with judgment. That would  
18 deprive this Plaintiff of the right to get an appeal of the  
19 supervisor's decision.

20 MR. FRIEDMAN: And -- and my answer's going to be the same.  
21 They -- they suffer no injury, Your Honor. They -- they have --  
22 they continue to claim, oh, we're injured. Oh, we're damaged.  
23 Oh, this is horrible. They have suffered no injury other than  
24 what they are required under Statute to do, which is to respond  
25 to Public Records Requests. This -- this -- the supervisor of

1 public records has no enforcement mechanism. None. She has no  
2 -- she writes an Order and they either follow it or they don't.  
3 And in many cases, in this case, you will find they don't. And  
4 there are supplicant orders and supplicate orders where they're  
5 ordered to do something and they don't. So there -- there is no  
6 injury.

7 THE COURT: The -- you -- you did mention one other level  
8 of enforcement, as on occasion, I think the Secretary's office  
9 and the AG meet and they determine --

10 MR. FRIEDMAN: Correct.

11 THE COURT: -- whether there's some of the orders that --

12 MR. FRIEDMAN: Correct.

13 THE COURT: -- warrant the resources to enforce; right?

14 MR. FRIEDMAN: And the Statutory framework of the Public  
15 Records Law affords them a much better standard of review, de  
16 novo review, whereas today the standard is arbitrary and  
17 capricious.

18 THE COURT: Okay. Is it a potential remedy for the anti-  
19 SLAPP that I dismiss you as a Defendant?

20 MR. FRIEDMAN: No.

21 THE COURT: But not the lawsuit?

22 MR. FRIEDMAN: No.

23 THE COURT: Well, I know you don't want it, but that is a  
24 potential approach; isn't it?

25 MR. FRIEDMAN: No, it isn't, it isn't, because -- because

1 this isn't about -- again, at the end of the day, what they are  
2 asking for is a permanent remedy that tramples on my rights.  
3 What they're asking for is a permanent remedy to preclude me  
4 from being able to request public records from the City of  
5 Malden. And don't be at all -- let me be very clear. Murphy,  
6 Hesse, Toomey, and Lehane will take that and give that to every  
7 other Municipality which they serve as they do most things, and  
8 say, if Mr. Friedman, Open Commonwealth, or anything to do with  
9 Mr. Friedman ever files a Public Records Request, let us know.  
10 We'll take your \$55 and run down and file a lawsuit against him,  
11 and you will never have another problem again.

12 The chilling effect of saying a records holder can sue a  
13 records requester flies in the face of every other Public  
14 Records Law in the state and including in the Supreme Court. In  
15 1979, they decided that nobody can do this.

16 THE COURT: I agree with much of what you've been saying.  
17 One of the reasons I view it through a different lens is if I  
18 hear the underlying case, I would be unlikely to enter that type  
19 of order. I would be more likely to say if they were  
20 persuasive, that the denial -- the -- the consideration of this  
21 concept of a Harassment Order was arbitrary and capricious and  
22 send it back and do it more carefully. That's probably as far  
23 as -- well, if it were before me, that's probably as far as I  
24 would go. You'd still run the risk of getting that type of  
25 Order, but it would come --

1           MR. FRIEDMAN: The supervisor is extraordinarily  
2 conservative in the way she interprets the law, Your Honor. So  
3 in this case, I have documented to the Court, they have gone  
4 forward on completely separate Public Records Requests and said,  
5 you should not give anything because we are currently in  
6 litigation with Mr. Friedman, to which the supervisor agreed.  
7 And throughout any -- she failed to opine on it. It's in front  
8 of you. It's in the record. So they use this case about  
9 records that are not at issue in this case to shield themselves  
10 from subsequent records and actions of the supervisor of public  
11 records. So what will happen if you took a very tailored  
12 approach to this and you determined that in this case, they  
13 would take that paperwork and they would go to the supervisor of  
14 records, say he's a harasser, he was found a harasser. Here's  
15 the case. We don't have to respond to him. And the risk is,  
16 this is a public op -- this is an -- an appointed office. It's  
17 politically sensitive. It has a lot of pressure on it from both  
18 sides of the fence acting conservatively, what is going to  
19 happen is the floodgates of litigation are going to open up. We  
20 you're going to chill everybody who wants to request public  
21 records because they're going to be afraid they're going to get  
22 sued, they're going to be found to be a harasser, and then  
23 they're going to be thrown out. And every other case where this  
24 happens and they say he was found a harasser three times before,  
25 so he has to be a harasser now. My only remedy then is to come

1 to you.

2 THE COURT: Yeah. Well, I'll -- I'll just share with you -  
3 - it's not really before me right now. The concept of a  
4 lifelong harasser that can't use the Public Records Law,  
5 especially someone in the -- in the world of putting things up  
6 on websites that doesn't pass muster to me. I -- I don't think  
7 --

8 MR. FRIEDMAN: I -- I appreciate that.

9 THE COURT: I don't think the supervisor would take that  
10 position because, as I understand the concept of harassment, at  
11 least as these Plaintiffs are putting it forward, it relates to  
12 volume and breadth and burden and that type of -- it's not --  
13 it's not just that we get a lot, you know, and -- and -- and it  
14 would have to be a lot more than that. But I don't know what  
15 the concept of harassment is. I just know that they're  
16 challenging the Secretary's application of it.

17 MR. FRIEDMAN: Yeah.

18 THE COURT: We've talked a lot about the Secretary. Do you  
19 want to add anything to our conversation? You want to save that  
20 for a later hearing?

21 MS. FROHLICH: Your Honor, we would reserve for a later  
22 hearing. Thank you.

23 THE COURT: Okay. Anything you want to say before I  
24 adjourn?

25 MR. DONNELLY: If I could just have one last word, Your



1 Honor. I just want to focus Your Honor on the -- Mr. Friedman  
2 just made a lot of arguments. I want to focus your attention to  
3 what's relevant to the anti-SLAPP motion, and Mr. Friedman's  
4 arguments about Malden not having the ability to pursue  
5 Certiorari Review of the supervisor's determinations, first of  
6 all, that -- that's just not true. And second of all, that's  
7 not relevant to the anti-SLAPP analysis which outlines the  
8 factors, the -- the four questions to go through and -- and  
9 concretely applies them.

10 And Mr. Friedman has not established his burden at all with  
11 respect to the factors that he carries the burden on.

12 The anti -- the SJC is very clear about being careful about  
13 overreach with the anti-SLAPP provision and where it can't be  
14 applied, it -- it can't be applied.

15 So we're respectfully requesting that you can't dismiss the  
16 -- the entire lawsuit here on an anti-SLAPP basis. Thank you.

17 THE COURT: Okay. I agree with much of what both sides  
18 have said. And so I'll have to -- but -- but in different ways;  
19 right? So I'll have to determine how to proceed. I'll try to  
20 do that promptly. And then if the case survives, it's a -- it's  
21 a Judgment on the pleadings. It's an Administrative Appeal  
22 where I get Briefs from both sides; right?

23 MR. FRIEDMAN: I'm going to start with 12B, Your Honor.

24 THE COURT: Okay.

25 MR. FRIEDMAN: And then -- and then I fully intend to open

1 discovery. There's a lot of things that need to be brought to  
2 your attention.

3 THE COURT: We'll leave that for another day because  
4 generally, Administrative Appeals are on the record. I don't  
5 know if I have the full record. That would be the Secretary's  
6 job to file the record.

7 MR. FRIEDMAN: 11,000 pages you got Friday, I believe.

8 THE COURT: Oh, is that coming that soon?

9 MR. FRIEDMAN: It's already there.

10 MS. FROHLICH: It's been filed.

11 I'm sorry, Your Honor, it's already been filed.

12 THE COURT: Okay. Well, there you have it. All right,  
13 thanks everybody. I'll get your decision as soon as I can.  
14 Might take a while because I find this to be a unique issue.

15 MR. DONNELLY: Thank you, Your Honor.

16 MS. FROHLICH: Thank you, Your Honor.

17 MR. FRIEDMAN: Thank you, Your Honor.

18  
19  
20  
21  
22  
23  
24  
25 (Adjourned)



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<p><b>wander</b> <sup>[1]</sup> <b>14:</b>8</p> <p><b>want</b> <sup>[24]</sup> <b>3:</b>21 <b>5:</b>2,8 <b>6:</b>11,11,12 <b>7:</b>6 <b>10:</b>13,13 <b>11:</b>3 <b>13:</b>4,5,6,15,24 <b>17:</b>3 <b>22:</b>16 <b>23:</b>16 <b>27:</b>23 <b>30:</b>19,19,23 <b>31:</b>1,2</p> <p><b>wanted</b> <sup>[3]</sup> <b>7:</b>17 <b>25:</b>25 <b>26:</b>5</p> <p><b>wants</b> <sup>[1]</sup> <b>29:</b>20</p> <p><b>warrant</b> <sup>[1]</sup> <b>27:</b>13</p> <p><b>was</b> <sup>[20]</sup> <b>5:</b>7,15 <b>7:</b>21 <b>9:</b>17,24 <b>12:</b>14 <b>14:</b>22,25,25 <b>15:</b>1,15 <b>16:</b>25 <b>17:</b>17,24 <b>19:</b>1 <b>23:</b>11 <b>24:</b>7 <b>28:</b>21 <b>29:</b>14,24</p> <p><b>wasn't</b> <sup>[2]</sup> <b>5:</b>15 <b>25:</b>10</p> <p><b>watershed</b> <sup>[1]</sup> <b>23:</b>12</p> <p><b>way</b> <sup>[9]</sup> <b>5:</b>7,8,8 <b>9:</b>8 <b>10:</b>2 <b>11:</b>1 <b>16:</b>18 <b>20:</b>21 <b>29:</b>2</p> <p><b>ways</b> <sup>[1]</sup> <b>31:</b>18</p> <p><b>we</b> <sup>[31]</sup> <b>3:</b>3,24 <b>4:</b>22 <b>5:</b>20,23 <b>6:</b>4,8,9,16,18 <b>8:</b>5 <b>12:</b>10 <b>13:</b>9,17,21 <b>16:</b>5 <b>17:</b>3 <b>18:</b>17,25 <b>19:</b>10 <b>20:</b>3 <b>21:</b>11 <b>22:</b>21 <b>23:</b>9 <b>24:</b>4,10 <b>29:</b>5,15,19 <b>30:</b>13,21</p> <p><b>websites</b> <sup>[1]</sup> <b>30:</b>6</p> <p><b>well</b> <sup>[13]</sup> <b>9:</b>16,20 <b>14:</b>10 <b>15:</b>24 <b>19:</b>3 <b>23:</b>17,18 <b>25:</b>22,25 <b>27:</b>23 <b>28:</b>23 <b>30:</b>2 <b>32:</b>12</p> <p><b>we'll</b> <sup>[4]</sup> <b>5:</b>9,10 <b>28:</b>10 <b>32:</b>3</p> <p><b>were</b> <sup>[5]</sup> <b>13:</b>22 <b>15:</b>7 <b>22:</b>1 <b>28:</b>19,23</p> <p><b>we're</b> <sup>[23]</sup> <b>3:</b>19 <b>5:</b>4,4 <b>6:</b>4 <b>14:</b>13,13,18 <b>15:</b>3 <b>17:</b>2,7,10</p>			
<hr/> <p style="text-align: center;"><b>V</b></p> <hr/>			

# Keyword Index

<p><b>20:</b>24,25,25 <b>21:</b>8,11,11 <b>23:</b>3,5 <b>25:</b>11 <b>26:</b>22,22 <b>31:</b>15</p> <p><b>weren't</b> <sup>[1]</sup> <b>5:</b>23</p> <p><b>we've</b> <sup>[1]</sup> <b>30:</b>18</p> <p><b>what</b> <sup>[38]</sup> <b>5:</b>2,3,5 <b>6:</b>16 <b>7:</b>9,9 <b>8:</b>10 <b>9:</b>19,21 <b>10:</b>5,11,20 <b>11:</b>3,5,6,15 <b>14:</b>9,18,23 <b>15:</b>11,11,20 <b>18:</b>14,14,15 <b>22:</b>3,5,12 <b>23:</b>19,24 <b>26:</b>24 <b>28:</b>1,3,16 <b>29:</b>11,18 <b>30:</b>14 <b>31:</b>17</p> <p><b>whatever</b> <sup>[3]</sup> <b>4:</b>20,21 <b>22:</b>8</p> <p><b>what's</b> <sup>[2]</sup> <b>13:</b>12 <b>31:</b>3</p> <p><b>when</b> <sup>[8]</sup> <b>4:</b>10,17,21 <b>10:</b>11 <b>13:</b>21 <b>14:</b>19 <b>16:</b>2 <b>25:</b>25</p> <p><b>where</b> <sup>[13]</sup> <b>14:</b>8 <b>16:</b>8 <b>17:</b>16,19,19 <b>22:</b>24 <b>23:</b>3 <b>26:</b>6,7 <b>27:</b>4 <b>29:</b>23 <b>31:</b>13,22</p> <p><b>whereas</b> <sup>[1]</sup> <b>27:</b>16</p> <p><b>whether</b> <sup>[9]</sup> <b>11:</b>16 <b>15:</b>11,16 <b>16:</b>6 <b>19:</b>10 <b>20:</b>2,4 <b>25:</b>1 <b>27:</b>11</p> <p><b>which</b> <sup>[13]</sup> <b>9:</b>14 <b>11:</b>12 <b>14:</b>1,7 <b>15:</b>12 <b>17:</b>4 <b>20:</b>24,24 <b>21:</b>24 <b>26:</b>24 <b>28:</b>7 <b>29:</b>6 <b>31:</b>7</p> <p><b>while</b> <sup>[1]</sup> <b>32:</b>14</p> <p><b>who</b> <sup>[4]</sup> <b>4:</b>22 <b>22:</b>20 <b>23:</b>6 <b>29:</b>20</p> <p><b>who's</b> <sup>[1]</sup> <b>25:</b>12</p> <p><b>why</b> <sup>[21]</sup> <b>4:</b>12 <b>5:</b>12,18,19 <b>6:</b>18 <b>8:</b>8,12 <b>10:</b>15,16 <b>11:</b>6,8 <b>13:</b>4 <b>14:</b>12 <b>15:</b>21,23 <b>16:</b>22,23 <b>17:</b>12 <b>23:</b>15 <b>24:</b>7 <b>26:</b>5</p> <p><b>widely</b> <sup>[1]</sup> <b>23:</b>8</p> <p><b>will</b> <sup>[8]</sup> <b>11:</b>23 <b>13:</b>11 <b>24:</b>24,24 <b>27:</b>3 <b>28:</b>6,11 <b>29:</b>11</p> <p><b>william</b> <sup>[2]</sup> <b>3:</b>4,17</p> <p><b>winded</b> <sup>[1]</sup> <b>11:</b>7</p> <p><b>with</b> <sup>[34]</sup> <b>3:</b>7 <b>4:</b>4,15 <b>6:</b>10,12 <b>8:</b>1,11,14 <b>9:</b>17 <b>10:</b>19,20 <b>12:</b>9,11 <b>15:</b>18 <b>16:</b>3 <b>17:</b>3,4 <b>18:</b>11 <b>19:</b>12,17,25 <b>20:</b>22 <b>21:</b>3 <b>22:</b>18 <b>26:</b>15,17 <b>28:</b>8,16 <b>29:</b>6 <b>30:</b>2 <b>31:</b>10,13,17,23</p> <p><b>within</b> <sup>[1]</sup> <b>19:</b>24</p> <p><b>won</b> <sup>[2]</sup> <b>22:</b>12,13</p> <p><b>won't</b> <sup>[2]</sup> <b>11:</b>24 <b>26:</b>4</p> <p><b>word</b> <sup>[2]</sup> <b>26:</b>17 <b>30:</b>25</p> <p><b>words</b> <sup>[1]</sup> <b>6:</b>7</p>	<p><b>work</b> <sup>[2]</sup> <b>12:</b>1 <b>18:</b>18</p> <p><b>world</b> <sup>[1]</sup> <b>30:</b>5</p> <p><b>worried</b> <sup>[2]</sup> <b>20:</b>10,11</p> <p><b>would</b> <sup>[23]</sup> <b>5:</b>17 <b>8:</b>15 <b>9:</b>16 <b>10:</b>22,22 <b>12:</b>11 <b>16:</b>17 <b>21:</b>7,15 <b>22:</b>5 <b>26:</b>16,16,17 <b>28:</b>18,19,24,25 <b>29:</b>13,13 <b>30:</b>9,14,21 <b>32:</b>5</p> <p><b>wouldn't</b> <sup>[1]</sup> <b>5:</b>23</p> <p><b>writes</b> <sup>[1]</sup> <b>27:</b>2</p> <p><b>writing</b> <sup>[1]</sup> <b>22:</b>17</p> <p><b>wrong</b> <sup>[6]</sup> <b>7:</b>19 <b>8:</b>3 <b>10:</b>1 <b>16:</b>4 <b>18:</b>24 <b>21:</b>16</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yeah</b> <sup>[9]</sup> <b>10:</b>7 <b>15:</b>5,20 <b>22:</b>10 <b>25:</b>16,17,19 <b>30:</b>2,17</p> <p><b>year</b> <sup>[3]</sup> <b>18:</b>12 <b>24:</b>15 <b>25:</b>3</p> <p><b>yep</b> <sup>[1]</sup> <b>24:</b>14</p> <p><b>yes</b> <sup>[6]</sup> <b>6:</b>8 <b>11:</b>18,19 <b>18:</b>1,3,25</p> <p><b>yet</b> <sup>[2]</sup> <b>11:</b>20,21</p> <p><b>you</b> <sup>[83]</sup> <b>3:</b>23 <b>4:</b>5,19 <b>5:</b>1,25 <b>6:</b>9,10 <b>7:</b>2,6,6,10,25 <b>8:</b>1,6,12,14 <b>9:</b>17 <b>11:</b>14,15,17,22 <b>12:</b>1,1,15 <b>13:</b>17,17,25 <b>14:</b>4,22,23 <b>15:</b>14 <b>16:</b>4,20 <b>17:</b>10 <b>18:</b>11,19,19,23,24,25 <b>19:</b>5,6,15,21 <b>20:</b>16,18 <b>21:</b>5,15,22 <b>22:</b>9 <b>23:</b>14,21,23 <b>26:</b>2,3,8,10,12,13 <b>27:</b>3,7,7,19,23 <b>28:</b>11 <b>29:</b>5,8,11,12 <b>30:</b>1,2,13,18,19,22,23 <b>31:</b>15,16 <b>32:</b>7,12,15,16,17</p> <p><b>you'd</b> <sup>[1]</sup> <b>28:</b>24</p> <p><b>you'll</b> <sup>[1]</sup> <b>20:</b>22</p> <p><b>your</b> <sup>[49]</sup> <b>3:</b>3,8,10,13,16,22 <b>4:</b>1 <b>5:</b>25 <b>6:</b>1,1,19 <b>8:</b>1,9,19 <b>11:</b>3,20 <b>13:</b>4,11 <b>14:</b>5,10,24 <b>15:</b>25 <b>16:</b>17,21,22 <b>20:</b>7,24 <b>21:</b>7,18 <b>23:</b>17 <b>24:</b>4,7,19 <b>25:</b>5 <b>26:</b>14,21 <b>28:</b>10 <b>29:</b>2 <b>30:</b>21,25 <b>31:</b>1,2,23 <b>32:</b>2,11,13,15,16,17</p> <p><b>you're</b> <sup>[20]</sup> <b>4:</b>10 <b>5:</b>12,18 <b>6:</b>19,24 <b>7:</b>7,25 <b>8:</b>8 <b>12:</b>12 <b>14:</b>23,24 <b>16:</b>3,14,15 <b>18:</b>14,14 <b>19:</b>4 <b>20:</b>7 <b>26:</b>10 <b>29:</b>20</p>	<p><b>yourself</b> <sup>[1]</sup> <b>3:</b>6</p> <p><b>you've</b> <sup>[4]</sup> <b>21:</b>13 <b>23:</b>17 <b>26:</b>9 <b>28:</b>16</p>
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# Exhibit B

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss**

**SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.**

2481CV 2456

**CITY OF MALDEN,  
Plaintiff**

**RECEIVED**

9/13/2024

MG

**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),  
Defendants.**

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**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 a determination by Defendant, Manza Arthur the Supervisor of Records and Defendant, Francis Galvin, Secretary of the Commonwealth regarding Malden's response to a public records request submitted by Defendant, OpenCommonwealth ("OC"). Malden seeks relief from this Court 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 of G.L. c. 231A.
3. Venue is proper under of G.L. c. 30A § 14(1).



## **PARTIES**

4. The Plaintiff, City of Malden ("Malden"), is a municipality organized and operating under the laws of the Commonwealth of Massachusetts with a place of business at 215 Pleasant Street in the City of Malden, MA.
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, 17<sup>th</sup> Floor, Boston, MA 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 and is legislatively assigned the duty to adjudicate administrative appeals under the Massachusetts Public Records Law, of G.L. c. 66 § 10A. The Supervisor is being sued in her official capacity as Supervisor of Records. Her usual place of employment is One Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02108.
7. Defendant, OpenCommonwealth, ("OC") states it is a media organization run by Bruce Friedman doing business in the Commonwealth of Massachusetts, in Middlesex County, Malden, Massachusetts.

## **FACTS**

8. The Massachusetts Public Records Law and its Regulations provide that each person has a right of access to public information.
9. Included in this right of access is the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.
10. G.L. c. 66, § 10(a) provides in part:

A records access officer appointed pursuant to section 6A, or a designee shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-six of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...

11. of G.L. c. 66, § 10(b) provides in part:

If the agency or municipality does not intend to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request, or of multiple requests from the same requestor, unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality is unable to do so within the timeframe established in subsection (a), the agency or municipality shall inform the requestor in writing not later than *10 business days after the initial receipt of the request for public records. (Emphasis added).*

12. G.L. c. 66, § 10(d) provides in part, “A records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection.”.
13. A records access officer (“RAO”) is an employee designated within a governmental entity to coordinate responses to requests for access to public records, assisting individuals seeking public records in identifying the records requested and preparing guidelines that enable requestors to make informed requests regarding the availability of such public records electronically or otherwise.
14. G.L. c. 66, § 10 does not include a definition of the phrase, “business day”.
15. The Public Records Law Regulations defines Business Day as “Monday through Friday. Business days do not include Saturdays, Sundays, *legal holidays*, or other weekdays where a custodian’s office is closed unexpectedly.”. (*Emphasis added*).
16. On May 20, 2024 at 10:33 pm, OC submitted a public records request to Malden. (**See Exhibit A**).
17. OC requested, in relevant part, the following:

Please provide the following documents/records in the possession or under the control of town/city for the period **any time prior to and through May 21, 2024:**

Time

Any and all electronic mail and calendar information exclusively for the [XXX] account including any draft and any deleted items:

We are aware that [XXX] has at least a cityofmalden.org and a maldenps.org account, and perhaps others.

18. OC's request was made through the City of Malden's email.
19. Malden responded timely to the request on May 28, 2024 stating OC's request was overly broad and therefore, was not compliant with the Public Records Law. (**See Exhibit B**).
20. Unsatisfied with Malden's response, OC filed an appeal with the Supervisor on May 28, 2024 reiterating that Malden should comply with his request. (**See Exhibit C**).
21. Malden provided the Supervisor with additional information. Particularly that a precursory search revealed at least **Forty-Nine Thousand, (49,000)** emails. (**See Exhibit D**).
22. On June 4, 2024 OC emailed the Supervisor stating that Malden failed to provide a good faith fee petition at the close of business on the "*10<sup>th</sup> Business day*" (emphasis added). (**See Exhibit E**).
23. On June 5, 2024, the 10<sup>th</sup> Business Day, Malden filed a Fee Petition with the Supervisor, (**See Exhibit F**), with a copy to OC. (**See Exhibit G**).
24. On June 12, 2024 the Supervisor denied Malden's request, stating that Malden had not demonstrated it had submitted the Fee Petition within ten (10) business days after receipt. (**See Exhibit H**).
25. Malden requested the Supervisor to reconsider its decision and submitted a chart which indicated that Monday, May 27, 2024 was Memorial Day, and should not have been counted as a Business Day because holidays are not included per the Public Records Law Regulations. As such, Malden Fee Petition should be allowed as Malden responded within ten (10) business days after receipt of the Request. (**See Exhibit I**).
26. OC responded to Malden's request for reconsideration stating, among other things, that in Malden's original response on May 28, 2024 acknowledged that Malden had "received" the request on May 20, 2024 at 10:33 pm. (**See Exhibit J**).
27. The Supervisor sent a request to Malden asking Malden to clarify the discrepancy in its two responses: (1) that Malden "received" the request on May 20, 2024 at 10:33 pm and (2) that OC "sent" the request on May 20, 2024 at 10:33 pm. (**See Exhibit K**)

28. Malden responded attaching the original request to its email, explaining it was received on May 20 2024 at 10:33 PM, thus the receive date would be May 21, 2024, the following day. (**See Exhibit L**).
29. On July 3, 2024, the Supervisor denied Malden's request for reconsideration. (**See Exhibit M**).

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

30. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 29 of this Verified Complaint.
31. The Supervisor's Determination (a) exceeds the statutory authority or jurisdiction of the Supervisor (b) is based on an error of law; (c) is made upon unlawful procedure; and (d) is arbitrary or capricious, and abuse of discretion, or otherwise not in accordance with law and fundamental fairness.
32. 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.
33. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that the original response was made in a timely fashion, and thus, Malden may charge a fee to produce the records sought in the Request.

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

34. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 33 of this Verified Complaint.
35. The Public Records Appeal process before the Supervisor regarding the Original Response constitutes a judicial or quasi-judicial proceeding.

36. 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 experience.
37. Malden has suffered a substantial injury or injustice arising from the proceeding before the Supervisor because it has been prevented from charging a fee of \$25 per hour to review, redact and produce records sought in the Request, because Malden is being forced to act as OC's private investigator and segregate records without a fee and is being forced to respond to a public record request designed to harass Malden.
38. 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.
39. The Court should issue an injunction preventing the Supervisor from taking any action to enforce her Determination.
40. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that the original response was made in a timely fashion, and thus, Malden may charge a fee to produce the records sought in the Request.

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

41. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 40 of this Verified Complaint.
42. Malden responded to the Request within ten (10) business days in accordance with G.L. c. 66, § 10(a).
43. Thus, Malden was entitled to its fees since the reason given by the Supervisor was that Malden had not petitioned the Supervisor within ten (10) business days after receipt.
44. The Request seeks documents that are exempt from disclosure by state and federal law.
45. The Request was intended to harass Malden.
46. The Supervisor's Determination reflects a continuing dispute and an actual controversy between the parties with the meaning of G.L. c. 231A.

47. Malden seeks, and is entitled to a binding declaration of right, duty, status and other legal relations within the meaning of G.L. c. 231A in the manner herein described.
48. Malden respectfully requests that this Honorable Court declare that (a) the Original Fee Petition on June 5, 2024 was made in a timely fashion, thus allowing Malden to charge a fee to produce the records sought in the Request; and (b) the Request was intended to harass Malden.

WHEREFORE, Malden prays that this Court award the following relief:

- a. Set aside the Supervisor's Determination;
- b. Issue a stay, under G.L. c. 30A, § 14(3) that Malden is relieved from the production of any records in response to the Request;
- c. Issue an injunction under G.L. c. 249, § 4 ordering the Supervisor not to take any action to enforce the Determination;
- d. Modify the Supervisor's Determination to reflect that:
  - i. The June 5, 2024 Fee Petition was made in a timely fashion, and therefore, Malden may charge a fee to review, redact, segregate and produce the records sought in the Request; and
  - ii. The Request was intended to harass Malden.
- e. Grant such other relief as is just and equitable.

City of Malden  
By its Attorney

/s/ *Alicia A. McNeil*

---

Alicia A. McNeil, Esq.  
City Solicitor  
City of Malden  
Legal Department  
215 Pleasant Street, 4<sup>th</sup> Floor  
Malden, MA 01248  
781-397-7106  
BBO# 632134  
[amcneil@cityofmalden.org](mailto:amcneil@cityofmalden.org)

Date: 9.13.2024

# Exhibit C

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss**

**SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 24CV3277**

**CITY OF MALDEN,  
Plaintiff**

**RECEIVED**

12/16/24

tc

**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 A/K/A  
OPENCOMMONWEALTH.ORG),  
Defendants.**

---

**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.**

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**JURISDICTION AND VENUE**

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



## **PARTIES**

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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, 17<sup>th</sup> Floor, Boston, MA 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 and is legislatively assigned the duty to adjudicate administrative appeals under the Massachusetts Public Records Law, of G.L. c. 66 § 10A. The Supervisor is being sued in her official capacity as Supervisor of Records. Her usual place of employment is One Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02108.
7. Defendant, OpenCommonwealth, (“OC”) states it is a media organization run by Bruce Friedman doing business in the Commonwealth of Massachusetts, in Middlesex County, Malden, Massachusetts.

## **FACTS**

8. The Massachusetts Public Records Law and its Regulations provide that each person has a right of access to public information.
9. Included in this right of access is the right to inspect, copy or have a copy of records provided upon the payment of a reasonable fee, if any.
10. G.L. c. 66, § 10(a) provides in part:

A records access officer appointed pursuant to section 6A, or a designee shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-six of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request...

11. of G.L. c. 66, § 10(b) provides in part:

If the agency or municipality does not intend to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request, or of multiple requests from the same requestor, unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality is unable to do so within the timeframe established in subsection (a), the agency or municipality shall inform the requestor in writing not later than *10 business days after the initial receipt of the request for public records. (Emphasis added).*

12. G.L. c. 66, § 10(d) provides in part, “A records access officer may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection.”.

13. A records access officer (“RAO”) is an employee designated within a governmental entity to coordinate responses to requests for access to public records, assisting individuals seeking public records in identifying the records requested and preparing guidelines that enable requestors to make informed requests regarding the availability of such public records electronically or otherwise.

14. G.L. c. 66, § 10 does not include a definition of the phrase, “business day”.

15. The Public Records Law Regulations defines Business Day as “Monday through Friday. Business days do not include Saturdays, Sundays, *legal holidays*, or other weekdays where a custodian’s office is closed unexpectedly.”. (*Emphasis added*).

16. On August 30, 2024 between 7:08 pm and 7:16 pm, OC submitted four public records request to Malden. (**See Exhibit A**).

17. OC requested the following:

- a. 7:08 PM- 7/18/24 – Present: Extract-To/From/CC/BCC/Date/any attachment for various “mayor accounts” as per 2 above and [Individual 1] and [Individual 2]
- b. 7:11 PM-7/18/24-Present: Extract -To/From/CC/BCC/Date/Subject/any attachment for [Individual 2]
- c. 7:13 PM-7/18/24-Present: Extract -To/From/CC/BCC/Date/any attachment for [3 Email accounts]

d. 7:16-1/1/24-Present: Extract -To/From/CC/BCC/Date/any attachment  
for [Individual 3]

18. OC's request was made through the City of Malden's email.
19. Malden responded timely to the request on September 17, 2024 with a Fee Estimate and informing OC that "the City has been overwhelmed by FOIA requests and would be petitioning the Supervisor for a time extension. (**See Exhibit B**).
20. Malden petitioned the Supervisor to allow Malden to charge a fee, as well as petitioning the Supervisor for a time extension. (**See Exhibit C**).
21. The Supervisor denied Malden's request, stating that Malden had not demonstrated it had submitted a timely Fee Petition. (**See Exhibit D**).
22. Malden requested the Supervisor to reconsider its decision indicating that Monday, September 2, 2024 was Labor Day, and should not have been counted as a Business Day because holidays are not included per the Public Records Law Regulations. As such, Malden Fee Petition should be allowed as Malden responded within ten (10) business days after receipt of the Request. (**See Exhibit E**).
23. On October 15, 2024, the Supervisor denied Malden's request for reconsideration. (**See Exhibit F**).

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

24. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 23 of this Complaint.
25. The Supervisor's Determination (a) exceeds the statutory authority or jurisdiction of the Supervisor (b) is based on an error of law; (c) is made upon unlawful procedure; and (d) is arbitrary or capricious, and abuse of discretion, or otherwise not in accordance with law and fundamental fairness.
26. 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.

27. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that the original response was made in a timely fashion, and thus, Malden may charge a fee to produce the records sought in the Request.

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

28. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 27 of this Complaint.
29. The Public Records Appeal process before the Supervisor regarding the Original Response constitutes a judicial or quasi-judicial proceeding.
30. 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 experience.
31. Malden has suffered a substantial injury or injustice arising from the proceeding before the Supervisor because it has been prevented from charging a fee of \$25 per hour to review, redact and produce records sought in the Request, because Malden is being forced to act as OC's private investigator and segregate records without a fee and is being forced to respond to a public record request designed to harass Malden.
32. 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.
33. The Court should issue an injunction preventing the Supervisor from taking any action to enforce her Determination.
34. The Court should set aside the Supervisor's Determination. Alternatively, the Court should modify the Supervisor's Determination to reflect that the original response was made in a timely fashion, and thus, Malden may charge a fee to produce the records sought in the Request.

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

35. Malden, restates, realleges and incorporates the allegations contained in paragraphs 1 through 34 of this Complaint.
36. Malden responded to the Request within ten (10) business days in accordance with G.L. c. 66, § 10(a).
37. Thus, Malden was entitled to its fees since the reason given by the Supervisor was that Malden had not petitioned the Supervisor within ten (10) business days after receipt.
38. The Request made by OC was intended to harass Malden.
39. The Supervisor's Determination reflects a continuing dispute and an actual controversy between the parties with the meaning of G.L. c. 231A.
40. Malden seeks, and is entitled to a binding declaration of right, duty, status and other legal relations within the meaning of G.L. c. 231A in the manner herein described.
41. Malden respectfully requests that this Honorable Court declare that (a) the Original Fee Petition on September 17, 2024 was made in a timely fashion, thus allowing Malden to charge a fee to produce the records sought in the Request; and (b) the Request was intended to harass Malden.

WHEREFORE, Malden prays that this Court award the following relief:

- a. Set aside the Supervisor's Determination;
- b. Issue a stay, under G.L. c. 30A, § 14(3) that Malden is relieved from the production of any records in response to the Request;
- c. Issue an injunction under G.L. c. 249, § 4 ordering the Supervisor not to take any action to enforce the Determination;
- d. Modify the Supervisor's Determination to reflect that:
  - i. The September 17, 2024 Fee Petition was made in a timely fashion, and therefore, Malden may charge a fee to review, redact, segregate and produce the records sought in the Request; and
  - ii. The Request was intended to harass Malden.

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

**PLAINTIFF CLAIMS A TRIAL BY JURY ON ALL ISSUES.**

City of Malden  
By its Attorney

*/s/ Alicia A. McNeil*

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Date: 12.16.2024