COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

MIDDLESEX, ss.

Appeals Court
No. 2025-P-0235
No. 2025-P-0796
No. 2025-P-0807

CITY OF MALDEN, Plaintiff-Appellee

v.

BRUCE FRIEDMAN, Defendant-Appellant

Motion for Consolidation of Appellate Cases
and Petition/Application for Direct Appellate Review
of Consolidated Case

On Behalf of Bruce Friedman, Pro Se

Bruce Friedman, Pro Se
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8 Marvin Street
Malden, MA. 02148
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Date: July 3, 2025

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REQUEST FOR CONSOLIDATION AND DIRECT APPELLATE REVIEW

Appellant Bruce Friedman ("Appellant Friedman") is a journalist consistent with the definition of same found in the Supreme Judicial Court Rule 1:19, who through his website, OpenCommonwealth.org ("OpenCommonwealth") and electronic repository regularly publishes articles and records primarily relating to Massachusetts, the courts in Massachusetts, the public schools in Massachusetts, rights of the disabled in Massachusetts and public records and transparency in Massachusetts. OpenCommonwealth has hundreds of thousands of interactions with the general public, including downloads of records and court proceedings. The Plaintiff/Appellee, City of Malden ("Malden") is a municipal government in Massachusetts, which includes many departments, most significantly for the cases relevant to this petition the Malden Public Schools. Co-Defendant Supervisor of Public Records and Secretary of Massachusetts are not currently involved in the above captioned appeals.

Appellant Friedman respectfully asks this Court to consolidate the above captioned cases and then grant direct appellate review of these cases together.

As to consolidation, all three cases, have the exact same plaintiff and defendants, in all three cases, the causes of action and claims for relief are identical, relief from providing public records and barring Appellant Friedman from requesting public records. The only differences between the cases are fact specific.

Malden has sued the same defendants a total of four times, three of which occurred in a four-month period of 2024. All three cases present significant

questions of first impression in Massachusetts and are subject of tis petition and the underlying appeals:

First, does filing a special motion to dismiss under Massachusetts G. L. c. 231, § 59H require the proponent of said motion to strictly comply with Superior Court Rule 9A?

Second, is requesting public records in Massachusetts, a protected petitioning activity under Massachusetts G. L. c. 231, § 59H?

Third, does the opponent of the Special Motion to Dismiss under Massachusetts G. L. c. 231, § 59H have to make specific claims and seek specific relief outside of protected petitioning activities to survive the proponents Special Motion to Dismiss or does simply alleging or espousing other non-protected activities negate an otherwise successful special motion to dismiss?

Fourth, does a holder of public records in Massachusetts have the right to seek judicial review of a decision of the Supervisor of Public Records ("SPR") under either administrative review pursuant to G.L. c. § 30A or under certiorari review pursuant to G. L. c. 249, § 4. or should such records holder be restricted to the four corners of the Massachusetts Public Records Laws, codified under Massachusetts G.L. c. 66, §§ 10-10A?

Fifth, does a holder of public records in Massachusetts have the right to sue a requestor of public records under either administrative review pursuant to G.L. c. § 30A or under certiorari review pursuant to G. L. c. 249, § 4. or should such

records holder be restricted to the four corners of the Massachusetts Public Records Laws ("PRL"), codified under Massachusetts G.L. c. 66, §§ 10-10A?

Malden has sued Appellant Friedman 4 (four) times over public records requests. This is a series of harassing lawsuits which consistently seek to prevent the release of requested public records and to permanently bar Appellant Friedman from requesting public records by having him deemed and labeled "A harasser". Each one of these cases are cases of first impression in Massachusetts, that being a public records holder suing a public records requestor.

The chilling effect of successful efforts by Malden cannot be overstated. Currently no state or territory of the United States allows this type of action and the states where it has come to court actions, including the federal government of the United States have barred suing a public records requestor.

Malden sued Appellant Friedman four times, three of which are the subject of this petition and were all filed between September and December of 2024. Further in each of these cases, Malden attempted to force Appellant Friedman to hire counsel to represent him through bogus and unfounded claims that his website was a party and required representation. The actions of Malden cannot be viewed in any other light than that of strategic litigation to prevent his requesting public records.

Malden has attempted to end-run the public records laws of Massachusetts by applying inappropriate and unfounded legal tactics, principally those of administrative review pursuant to G.L. c. § 30A and under certiorari review pursuant to G. L. c. 249, § 4. The public records law in Massachusetts was crafted

and specifically codified with the legislative intent of a fundamentally independent legal process. These laws mirror and resemble the federal law known as the freedom of information act ("FOIA").

The public records laws of Massachusetts establish a framework which is strictly timed to promote rapid access by the public to governmental records. They also create an administrative process of appeals and petitions to the Supervisor of Public Records ("SPR") who is a co-defendant in all four actions filed by Malden against Appellant Friedman. The SPR is a department within the Secretary of the Commonwealth, who is also a co-defendant in all four cases. This administrative process is neither quasi-judicial nor is the exhaustion of this process required for ***only*** a ***requestor*** to bring suit against a public records holder.

Also of first impression are several aspects of Massachusetts G. L. c. 231, § 59H as it applies or does not apply to the cases subject to this petition.

STATEMENT OF PRIOR PROCEEDINGS

Case #2481CV02456 – Appeal Docket #2025-P-0235

Appellant Friedman filed a single public records request on May 20, 2024. This request was subject to several appeals and determinations of the co-defendant SPR. Malden sued Appellant Friedman and the co-defendants on September 13, 2024. Appellant Friedman was never served, he learned of this case when he was served on the second case below on December 5, 2024 and immediately filed his appearance and a request to extend his answer date which was denied, he then filed his answer and counterclaims on December 10, 2024. Appellant Friedman timely

filed his special motion to dismiss under G. L. c. 231, § 59H on January 24, 2025 which was denied on January 29, 2025 for failure to conform with Superior Court Rule 9A. He timely filed his notice of appeal on February 4, 2025. This case has been fully briefed.

Case #2481CV03069 – Appeal Docket #2025-P-0807

Appellant Friedman filed several public records requests between September 4, 2024 and October 7, 2024. These requests were subject to several appeals, petitions and determinations of the co-defendant SPR. Malden sued Appellant Friedman and the co-defendants on November 21, 2024. Appellant Friedman was served on December 5, 2024 and immediately filed his appearance and a request to extend his answer date which was allowed. Appellant Friedman timely filed his special motion to dismiss under G. L. c. 231, § 59H on January 22, 2025. He filed his answer and counterclaims on February 17, 2025. The trial court held a hearing on his special motion to dismiss on March 12, 2025, which was denied on May 14, 2025. He timely filed his notice of appeal on May 15, 2025.

Case #2481CV03277 – Appeal Docket #2025-P-0796

Appellant Friedman filed four public records requests on August 30, 2024. These requests were subject to several appeals, petitions and determinations of the co-defendant SPR. Malden sued Appellant Friedman and the co-defendants on December 16, 2024. Appellant Friedman was again not served. On December 23, 2024 he filed his appearance and his answer and counterclaims. Appellant Friedman timely filed his special motion to dismiss under G. L. c. 231, § 59H on January 24, 2025 which was denied on February 3, 2025. He refiled his special

motion to dismiss on February 18, 2025. The trial court held a hearing on his special motion to dismiss on April 10, 2025, which was denied on June 18, 2025. He timely filed his notice of appeal on June 23, 2025.

STATEMENT OF FACTS RELEVANT TO APPEAL

A. All of the records sought by Appellant Friedman are public records as defined in Massachusetts G.L. c. 66, §§ 10-10A.
B. None of Appellant Friedman's public records requests were designed to harass or intimidate Malden.
C. Appellant Friedman has published and broadly disseminated all public records he has received, his requests of Malden, his appeals and the determinations of the co-defendant SPR.
D. Appellant Friedman was exercising his rights as protected petitioning activities in seeking public records from Malden.
E. Appellant Friedman was exercising his rights as protected petitioning activities in seeking appeals and determinations from the co-defendant SPR regarding his requests for public records from Malden.
F. Malden has failed to state any claims that fall outside of the Massachusetts public records laws codified as Massachusetts G.L. c. 66, §§ 10-10A.
G. Malden has failed to state any claims that are valid under administrative review pursuant to G.L. c. § 30A.
H. Malden has failed to state any claims that are under certiorari review pursuant to G. L. c. 249, § 4,
I. Every claim Malden has made are protected petitioning activities and rights guaranteed to Appellant Friedman.

STATEMENT OF ISSUES OF LAW RAISED BY APPEAL

This appeal raises the following questions, all of which were raised and properly preserved before the Superior Court.

1. Is making public records requests protected petitioning activity?
2. Is appealing a public records holder to the SPR protected petitioning activity?
3. Does filing a special motion to dismiss under G. L. c. 231, § 59H require conformance to Superior Court Rule 9A?
4. Can an allegation or statement espoused in a pleading or complaint negate the second prong requirement of determining a special motion to dismiss under G. L. c. 231, § 59H even when no claim for relief is made or available for that statement or allegation?
5. Can a records holder sue a records requestor regarding public records requests under G.L. c. § 30A?
6. Can a records holder sue a records requestor regarding public records requests under G. L. c. 249, § 4?
7. Can a records holder sue a records requestor regarding public records requests under G.L. c. 66, §§ 10-10A?
8. Can a records holder sue the SPR regarding public records requests under G.L. c. § 30A?
9. Can a records holder sue the SPR regarding public records requests under G. L. c. 249, § 4?
10. Can a records holder sue the SPR regarding public records requests under G.L. c. 66, §§ 10-10A?

BRIEF STATEMENT OF ARGUMENT

I. Malden failed to follow the law; The Massachusetts public records law. Instead, they decided to unleash a campaign against Appellant Friedman to silence him and his public news articles and critiques of the City of Malden. They have attempted to use alternative theories to advance their cause, including the misapplication of G.L. c. § 30A, and G. L. c. 249, § 4, multiple lawsuits brought in a very short period of time, all of which were able to be plead and prosecuted in a single case. Weaponizing their suits by claiming Appellant Friedman was committing the illegal practice of law by representing himself and that his website is a party and must have separate counsel.

II. The trial courts erred in misapplying Superior Court Rule 9A to a time tolling special motion to dismiss under G. L. c. 231, § 59H, where Malden failed to secure service, and demonstrated with zeal a tactical battle to prevent Appellant Friedman from exercising his rights.

III. The trial courts erred in not dismissing Malden's claims under G. L. c. 231, § 59H, where they did find that seeking public records and appealing to the SPR were in fact protected petitioning activities, however allowed them to proceed because their allegations which were not claims for relief included non-partitioning activities. If this is all it takes to overcome a special motion to dismiss under G. L. c. 231, § 59H, then a perfected recipe for denial has been published and the Anti-SLAPP laws of Massachusetts have been gutted. Any claim for relief (which does not happen in these cases) outside of protected petitioning activities should be allowed to stand, however in this case

the only claims for relief were allowed to stand despite the fact that they are entirely protected petitioning activities.

IV. The United States is in a mode of significant change, democracy is only safe is the citizens and press are able to monitor, explore and manage the acts of its government. Access to records is a key element to democracy, transparency is imperative to the rights of individuals and to the press. Massachusetts is categorically one of but a very few states where transparency is under attack and where the opaqueness of government is at its worst. It is incumbent upon this honorable Court to right the ship and send a strong message that the chilling effects of suing public records requestors is palpable, aside from that the judicial resources employed to forestall and impede rapid and complete disclosure of public records if these rulings and cases are allowed to proceed and stand will open the floodgates of litigation to secrete and withhold records.

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate where an appeal presents (1) questions of first impression or novel questions of law; (2) state or federal constitutional questions; or (3) questions of substantial public interest. See Mass. R. App. P. 11(a).

This case presents all three types of questions;

First, this is a case of several questions of first impression as outlined above.

Second, this case presents a question concerning both the United States Constitution and the Massachusetts Constitution. Specifically, it asks if making public records requests and appealing to the SPR are protected petitioning activities, and covered under the freedom of the press, the first amendment and the right to petition the government.

Third, the public interest in these questions is substantial. The public records law is grounded in the understanding that transparency is fundamental to our democracy. Under the public records laws, "there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies." G.L. c. 66, § 10 (c). The public has a right to know whether in addition to these enumerated exemptions, a large swath of records received by Massachusetts governmental entities could be hidden from the public through litigation.

Respectfully Submitted this 2nd day of July, 2025

/s/ Bruce Friedman, Pro Se

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CERTIFICATE OF COMPLIANCE

I hereby certify, under the penalties of perjury, that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to:

Rule 11(b) (applications for direct appellate review);
Rule 16(a)(13) (addendum);
Rule 16(e) (references to the record);
Rule 18 (appendix to the briefs);
Rule 20 (form and length of briefs, appendices, and other documents);
Rule 21 (redaction).

Specifically, this brief was written in Times New Roman, 14-point font, and created on Microsoft Word. The number of words contained in this application for direct appellate review is 2862.

Dated this 3rd day of July, 2025

/s/ Bruce Friedman, Pro Se
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CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of July 3, 2025 I have made service of a copy of this Motion for Consolidation of Cases and Petition/Application for Direct Appellate Review filed on Behalf of Bruce Friedman, Pro Se, upon the attorney of record for each party via e-File and Serve and via email:

Ms. Alicia McNeil - City of Malden - amcneil@cityofmalden.org

Ms. Felicia Vasudevan – City of Malden - fvasudevan@mhtl.com

Ms. Julie Frohlich - Secretary of Public Records - Julie.Frohlich@mass.gov

Ms. Julie Frohlich - Secretary of Massachusetts - Julie.Frohlich@mass.gov

Dated this 3rd day of July, 2025

/s/ Bruce Friedman, Pro Se

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ADDENDUM

2481CV02456 City of Malden vs. Manza Arthur, in her capacity as Supervisor of Public Records A Division of The Office of Wlliam Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth et al

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 09/13/2024
- DCM Track:
- A - Average
- Initiating Action:
- Certiorari Action, G. L. c. 249 § 4
- Status Date:
- 09/13/2024
- Case Judge:
-
- Next Event:
- 08/13/2025

All Information | Party | Subsequent Action/Subject | Event | Tickler | Docket | Disposition

Party Information

City of Malden
- Plaintiff

Alias

Party Attorney
- Attorney
- McNeil, Esq., Alicia Ann
- Bar Code
- 632134
- Address
- Law Offices of Alicia A. McNeil
  15 Lincoln St
  Suite 190
  Wakefield, MA 01880
- Phone Number
- (617)263-0123

More Party Information

Manza Arthur, in her capacity as Supervisor of Public Records A Division of The Office of Wlliam Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth
- Defendant

Alias

Party Attorney
- Attorney
- Frohlich, Esq., Julie Ann
- Bar Code
- 554707
- Address
- Massachusetts Attorney Generals Office
  One Ashburton Place
  20th Floor
  Boston, MA 02108
- Phone Number

- (617)963-2394

More Party Information

Opencommonwealth (Bruce Friedman d/b/a Opencommonwealth.org)
- Defendant

Alias	Party Attorney

More Party Information

Subsequent Action/Subject

Description	Status	SA/Subject #	Status Date	Responding Party	*Judgments*	Pleading Party
Counterclaim	Open	1	12/10/2024	City of Malden	0	Opencommonwealth (Bruce Friedman d/b/a Opencommonwealth.org)

Events

Date	Session	Location	Type	Event Judge	Result
06/16/2025 02:00 PM	Civil D Rm 620	Courtroom 620	Rule 12 Hearing	Freniere, Hon Diane	Rescheduled
08/13/2025 02:00 PM	Civil D Rm 620	Courtroom 620	Rule 12 Hearing		

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	09/13/2024	12/12/2024	90	
Answer	09/13/2024	01/13/2025	122	
Rule 12/19/20 Served By	09/13/2024	01/11/2025	120	
Rule 12/19/20 Filed By	09/13/2024	02/10/2025	150	
Rule 12/19/20 Heard By	09/13/2024	03/12/2025	180	
Rule 15 Served By	09/13/2024	11/07/2025	420	
Rule 15 Filed By	09/13/2024	12/08/2025	451	
Rule 15 Heard By	09/13/2024	12/08/2025	451	
Discovery	09/13/2024	09/03/2026	720	
Rule 56 Served By	09/13/2024	10/05/2026	752	
Rule 56 Filed By	09/13/2024	11/02/2026	780	
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Judgment	09/13/2024	09/13/2027	1095	
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Docket Date	*Docket Text*	File Ref Nbr.	*Image Avail.*

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09/13/2024	Civil action cover sheet filed.	2	Image
09/13/2024	Case assigned to: DCM Track A - Average was added on 09/13/2024		
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12/09/2024	Endorsement on Request of pro se defendant Bruce Friedman to extend/postpone his required answer date (#3.0): DENIED without prejudice for failure to comply with MRCP Rule 9A		Image
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03/05/2025	Attorney appearance On this date Julie Ann Frohlich, Esq. added as Private Counsel for Defendant Manza Arthur, in her capacity as Supervisor of Public Records A Division of The Office of Wlliam Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth		Image
03/05/2025	Party(s) file Stipulation of the parties to Extend Time To Answer Or Respond To Complaint The Parties to this action hereby stipulate to a fourteen (14) day extension in the time for Defendants Manza Arthur, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of State of the Commonwealth, and William Francis Galvin, Secretary of the Commonwealth, to answer or otherwise respond to the Complaint until March 24, 2025. Applies To: Opencommonwealth (Bruce Friedman d/b/a Opencommonwealth.org) (Defendant); Frohlich, Esq., Julie Ann (Attorney) on behalf of Manza Arthur, in her capacity as Supervisor of Public Records A Division of The Office of Wlliam Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth (Defendant)	15	Image
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Case Disposition

Disposition	Date	Case Judge

Pending

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss **SUPERIOR COURT DEPARTMENT**
CIVIL ACTION NO.

2481CV2456

CITY OF MALDEN,
Plaintiff

v.

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

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, 17th 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, 17th 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 "*10th Business day*" (emphasis added). (**See Exhibit E**).

23. On June 5, 2024, the 10th 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, 4th Floor
Malden, MA 01248
781-397-7106
BBO# 632134
amcneil@cityofmalden.org

Date: 9.13.2024

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.: 2481CV02456

DEFENDANT BRUCE FRIEDMAN'S APPEARANCE AND REQUEST TO EXTEND/POSTPONE HIS REQUIRED ANSWER DATE.

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), and enters his appearance Pro-Se, and hereby 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.

1. On December 6, 2024, Mr. Friedman became aware of the above captioned lawsuit through an online search of the Massachusetts Trial Court Case Access system.
2. Mr. Friedman was taken aback but not surprised to learn that the Plaintiff has now initiated 3 (three) separate lawsuits against him regarding public records, all of which are cases of first impression in Massachusetts.

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3. On December 16, 2024, Mr. Friedman will undergo his second major orthopedic surgery in 2024 and will require 6-12 weeks for recovery.
4. Mr. Friedman will begin to work on his answers and will absolutely be filing counterclaims to this case as soon as he is physically able.
5. Wherefore, Mr. Friedman requests that the court extend his time to respond to, answer and to make his counterclaims in this suit until March 15, 2025.

Respectfully Submitted by Defendant,

Dated: December 6th, 2024

/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 the above document was served upon the counsel for the City of Malden, Ms. Alicia McNeil at amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: December 6th, 2024

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

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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.: 2481CV02456

DEFENDANT BRUCE FRIEDMAN'S APPEARANCE AND REQUEST TO EXTEND/POSTPONE HIS REQUIRED ANSWER DATE.

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), and enters his appearance Pro-Se, and hereby 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.

1. On December 6, 2024, Mr. Friedman became aware of the above captioned lawsuit through an online search of the Massachusetts Trial Court Case Access system.
2. Mr. Friedman was taken aback but not surprised to learn that the Plaintiff has now initiated 3 (three) separate lawsuits against him regarding public records, all of which are cases of first impression in Massachusetts.

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS	)	
v.	)	
SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	)	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV02456

DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), Pro-Se, and files this Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59H. Further, Defendant Friedman asks 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 (this case), November 2024, 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

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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 his 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 SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Pursuant to Massachusetts G.L.c. 231 § 59H, Defendant, Friedman hereby makes a special Motion to Dismiss Plaintiff's Complaint as Strategic Litigation Against Public Participation. As grounds for his Motion, Defendant Friedman asserts that:

(1) Counts I, II, and III are subject to dismissal under G.L.c. 231 § 59H. Defendant Friedman and his website, OpenCommonwealth.org are currently under strategic litigation attacks from Malden. Defendant Friedman through his websites, social media posts, and blogs has made PRR's from hundreds of different municipalities, state agencies, public bodies and other governmental agencies, including but not limited to Malden since 2019. Defendant Friedman has published his requests, any and all responses, his appeals, determinations of the SPR, and all records provided. Hundreds of thousands of people have read, downloaded and made use of the published works of Defendant Friedman and his website, OpenCommonwealth and on his social media posts. Much of Malden's pleadings and exhibits come directly from these publications.

(2) Malden has filed 4 (four) lawsuits against Defendant Friedman and OpenCommonwealth, three of them in the fourth quarter of 2024 alone. In each suit, Malden seeks judicial assistance to silence Defendant Friedman. It asks this Court to enter an Order to presumably permanently deny his ability to request and receive public records from Malden. It asks that this Court make a formal finding

that Defendant Friedman is a harasser, therein barring him from making further public records requests.

(3) Malden has used this and three other lawsuits to silence the SPR and prevent the SPR from enforcing PRL with regard to Defendant Friedman and OpenCommonwealth. The SPR is now withholding opinions related to Defendant Friedman's and Open Commonwealth's requests because there is "pending litigation" even though those requests are not the subject of this or any litigation. (See Exhibit A)

(4) Defendant Friedman's Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*") and in Supreme Judicial Court Rule 1:19. Submitting public records requests is engaging in an activity that is protected under the First Amendment, which includes the right to petition the government for information. Each request at issue in Malden's Complaint were written statements submitted directly to Malden, a Municipality, an incorporated city in Massachusetts, and a governmental entity in the Commonwealth of Massachusetts.

(5) Defendant Friedman's appeals to the SPR for Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*"). Each request at issue in Malden's Complaint were written statements submitted directly to the SPR who is a governmental body under the executive branch of Massachusetts (the SOS) for an issue under consideration, to consider and review, and to enlist public participation.

(6) The entirety of Malden's complaint is based on Defendant Friedman's protected petitioning activities, that of making public records requests, that of appealing Malden's responses to Defendant Friedman's public records requests, that of Malden's exhaustive and fruitless petitioning the SPR to deny Defendant Friedman's protected petitioning activity and that of overruling the SPR's

determinations. All of Malden's allegations, claims and counts are based on this protected petitioning activity alone, with no substantial basis other than or in addition to said protected petitioning.

(7) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity was devoid of any reasonable factual support or any arguable basis in law.

(8) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity caused Malden any actual injury.

(9) Plaintiff Malden ("Malden") filed this case on September 13th, 2024.

(10) Malden's complaint failed to provide verification and a sworn attestation to the truthfulness and accuracy of the complaint as required under law and Massachusetts Court rules.

(11) Malden failed to serve Defendant Friedman. Defendant Friedman first learned of this case on December 6, when he filed his Appearance and Motion to extend time to answer.

(12) Malden failed to timely serve Co-Defendants Secretary of the Commonwealth ("SOS") and the Supervisor of Public Records ("SPR").

(13) As of the time of this Opposition, said Service has not been perfected and filed with the Court.

(14) On December 10, 2024, Defendant Friedman filed, emailed and served Malden with his answers and counterclaims.

(15) This special motion is timely as Defendant Friedman has sixty (60) days to file his Special Motion to Dismiss under G.L.c. 231 § 59H from the date he was served, or in this case, December 6, 2024, when he became aware of this case and filed his Appearance and Motion to extend time to answer.

(16) Defendant Friedman hereby requests that the Court dismiss Malden's complaint in its entirety with prejudice under G.L.c. 231 § 59H.

Defendant Friedman requests a hearing on his Motions pursuant to Superior Court Rules 9A(a)(1) and 9A(c)(2). As grounds for its request, Defendant Friedman states that under Superior Court Rule 9A(c)(3), a motion to dismiss enjoys a presumptive right to a hearing.

Respectfully Submitted by Defendant,

Dated: January 24th, 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 Special Motion to Dismiss under G.L.c. 231 § 59H was served upon the counsel for the City of Malden, Ms. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

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

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS	)	
v.	)	
SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	)	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV02456

AFFIDAVIT OF DEFENDANT BRUCE FRIEDMAN IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

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

1. I, Bruce Friedman A./K./A. OpenCommonwealth.org am a citizen journalist as defined under Supreme Judicial Court Rule 1:19, who is regularly engaged in the reporting and publishing of news or information about matters of public interest, specifically matters of government transparency and public records. I am a blogger, and poster of information regarding public records, open government and transparency.
2. I regularly report and publish news and information about matters of public interest on OpenCommonwealth.org, @OpenMass, @OpenCommonwealth and have collaborated with other news organizations such as the Boston Globe and Malden News Network.
3. I publish all of the requests, appeals, determinations and records and they are all free and available to anyone anytime.
4. I am personally and exclusively responsible for the website OpenCommonwealth.org.

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5. OpenCommonwealth.org is not incorporated, registered or servicemark or trademarked with any state or federal agency.
6. OpenCommonwealth has no state or federal tax or other ID number of any kind.
7. OpenCommonwealth.org is not a business, it is a website and publication.
8. OpenCommonwealth.org does not generate income or make expenditures.
9. OpenCommonwealth.org is not an employer, nor does it have any employees.
10. Bruce Friedman has and does personally fully fund any monies expended regarding OpenCommonwealth.org.
11. Any public records request, appeal, complaint, filed with the email address info@opencommonwealth.org or under the name opencommonwealth.org were written by Defendant Friedman.
12. All records received by OpenCommonwealth.org, OpenMalden.org, and Bruce Friedman are published and available without constraint to the public.
13. No public records request filed by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate Plaintiff Malden or any other records holder in any way.
14. No appeal, request for review, complaint, pleading or any other inquiry regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
15. No article, posting, editorial, publication or story regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
16. I have reviewed Malden's Complaint and all attachments thereto and can identify that Malden has used my website, public document repository and social media posts as content in their complaint and exhibits.
17. Attached to the Motion to Dismiss is Exhibit A. This Exhibit is a determination of the SPR in RE: SPR 24/3465. This determination regards a public records request dated and served on December 4, 2024, which seeks public records never before sought by me from the City of Malden. The above captioned lawsuit commenced on November 21, 2024. This determination specifically lists this lawsuit as "pending

litigation" preventing the SPR from opining on the appeal brought by me. This is prima facie evidence that Malden is using strategic litigation against me to silence and prevent me from engaging in constitutionally protected petitioning activities.

Signed under the pains and penalties of perjury this 24th, day of January 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. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

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

EXHIBIT A

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

January 15, 2025
SPR24/3465

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

Dear Ms. Desiderio:

I have received the petition of Commonwealth Transparency ("requestor") appealing the response of the City of Malden (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On December 5, 2024, the requestor sought the following records from the period of "November 1, 2024 through the date that [the City] receive[s] this request":

> [A]ll public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets. . . .
>
> This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

The City responded on December 19, 2024, providing a fee estimate. Unsatisfied with the City's response, the requestor petitioned this office and this appeal, SPR24/3465, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

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

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

Fee estimate – municipalities

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

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

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

The City's December 19th Response

In its December 19, 2024 response, the City provided a fee estimate of $1,825.00 and stated the following:

> The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of

> obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.
> …
> In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the Requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.
> …
> After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

Current Appeal

In the appeal petition, the requestor states, "Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records."

Active Litigation

> 950 C.M.R. 32.08(2)(b) provides in pertinent part:
>
> the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:
>
> 1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

In light of the ongoing litigation, City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of William Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org), Docket No. 2481CV03069, I decline to opine on this matter at this time. See 950 C.M.R. 32.08(2)(b). It should be noted that a change in the status of this action could impact the applicability of 950 C.M.R. 32.08(2)(b).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency
James Donnelly, Esq.
Felicia Vasudevan, Esq.

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

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

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

Dear Supervisor of Public Records:

This office is counsel to the City of Malden in connection with a public records request by OpenCommonwealth, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden replied to the request in a timely fashion on December 19, 2024.

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

Harassment

This public records request is duplicative of prior public records requests submitted by OpenCommonwealth seeking public records of City business on the personal devices of the Mayor and other Malden officials and employees. For every prior request, Malden sought approval of its fee estimate from the Supervisor of Records and received approval of its fee

petition, yet OpenCommonwealth did not pay Malden's fee estimate. This continues OpenCommonwealth's pattern of harassment of Malden – Open Commonwealth often requests the same information despite the presence of an approved fee petition for those same records or similar records. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

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

Moreover, the continuing harassment of Malden is already the subject of current and active litigation. See City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of Wiliam Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org, Docket No. 2481CV03069. Mr. Friedman's and Open Commonwealth's requests continue the pattern of harassment that is the precise subject of the pending litigation. Accordingly, during the pendency of Malden's lawsuit and in accordance with 950 CMR 32.08(2)(b)(1), Malden should be relieved of its obligation to respond to Mr. Friedman and OpenCommonwealth's requests, as the Supervisor has consistently held. See, e.g., SPR21/1540; SPR21/1524; SPR21/1739; SPR21/1748; SPR21/1799.

For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide with copies of the records sought, then Malden alternatively petitions to charge a fee to produce the records.

Fee Petition

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00.

Please be advised that the fee estimate may be reduced if the requester narrows the scope of the request.

Time Petition

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

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden

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

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

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

Sincerely,

/s/ James Donnelly
James Donnelly

cc: Open Commonwealth
Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

December 31, 2024
SPR24/3465

Commonwealth Transparency
OpenCommonwealth.org
VIA EMAIL
MA

Dear Commonwealth Transparency:

I have received your letter appealing the response of the City of Malden to your request for records.

I have directed a member of my staff, Alexander Papadopoulos, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Manza Arthur
Supervisor of Records

cc: Mrs. Carol A. Desiderio

Pierce, Patrick (SEC)

From: Commonwealth Transparency <info@opencommonwealth.org>
Sent: Tuesday, December 31, 2024 11:38 AM
To: SEC-DL-PREWEB
Cc: publicrecords@cityofmalden.org
Subject: Petition for Appeal - Malden, MA. - Improper Response and Fee Request
Attachments: Public Records Response (OpenCommonwealth, 12.19.24).PDF; spr242322[90].pdf

Importance: High

Greetings:

On December 5, 2024, the following verbatim PRR was submitted to Malden, MA:

> **From:** Commonwealth Transparency info@opencommonwealth.org
> **Date:** Wednesday, December 4, 2024 at 5:17 PM
> **To:** Public Records publicrecords@cityofmalden.org
> **Cc:** cdesiderio@cityofmalden.org cdesiderio@cityofmalden.org
> **Subject:** Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
>
> Greetings:
>
> This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:
>
> ***- This is a new request and does not replace or modify any prior requests.***
>
> - For the Time Period of November 1, 2024 through the date that you receive this request:
> - Please ***extract*** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.
> - This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.
>
> OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic

database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

On December 19, 2024, the following email and attached document were received:

From: James Donnelly <jdonnelly@mhtl.com>
Date: Thursday, December 19, 2024 at 12:33 PM
To: Commonwealth Transparency <info@opencommonwealth.org>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Joanne Perperian <jperperian@CITYOFMALDEN.ORG>
Subject: Public Records Response

Good afternoon,

Please find attached Malden's response to your public records request.

Sincerely,

James Donnelly, Esq.
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Braintree Hill Office Park | 50 Braintree Hill Office Park, Suite 410 | Braintree, MA 02184
Tel: (617) 479-5000 | Fax: (617) 479-6469
E-mail: jdonnelly@mhtl.com | www.mhtl.com

OpenCommonwealth hereby petitions the SPR to find and Order that Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records.

In support of this petition, OpenCommonwealth provides the following:

1. Malden's response was untimely.
2. The responsive record set at issue here is for ***only*** 34 calendar days or 21 business days (November 1, 2024 through December 5, 2024).
3. The response ***admits*** that here records are not in the possession, custody, or custody of the City, but remain in the custody and control of the Mayor on his personal device(s).
4. Malden's response requests fees for ***records organization*** disguised as fees for search, for which they are precluded from charging. They sate as follows:

   "The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified."

   Malden is claiming that the act and effort involved in separating the Mayor of Malden's personal business from official City Business is a burden and cost to be borne by the requestor, this claim is wholly without merit. The Mayor is required by law to provide a copy of any public record created or received on his personal devices to the City for safeguarding, retention and management. He admits in the rte4sponse that he has failed to do this and that the requestor is responsible for the cost and burden of identifying public records that have been created and/or received on the Mayor's personal device(s). All of the records are required by to be provided to the City by the Mayor.
5. Malden's response failed to provide the legally required specificity for the responsive record set including but not limited to:
   - The ***specific*** number of responsive records.
   - The cost for segregation estimated accurately in good-faith per record with specificity.
   - The cost for redactions estimated accurately in good-faith per record with specificity to the specific exemption(s) claimed.
   - The cost for search, if any such cost is legally available to them in good-faith per record with specificity.
6. Malden failed to provide any responsive records at all.
7. SPR 24/2322 (attached hereto) details the exact same issues at the heart of this request and in Malden's response regarding public records regarding city business on the Mayor's private device(s) which the City does not maintain custody or control.
   - Citing G. L. c. 66, § 13 & 17 – Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county or municipality to which the records originally belonged; provided, however, that the custodian of public records may enter into a contract for the storage of records containing public record information, but no contract for the storage of public records shall be entered into if the contract prevents or unduly restricts a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records not directly in the custodian's possession shall be considered in the custody of the custodian if subject to a contract for the storage of public records that is permitted by this section. If the custodian does not have custody of public records, the custodian shall demand delivery from any person unlawfully having possession of the records, and the records shall immediately be delivered by such person to the

custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of not more than $20.

- Citing G. L. c. 66, § 13 - Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Wherefore OpenCommonwealth requests that the SPR find and Order Malden to provide all responsive records without delay, and without charge.

Kindest Regards,

OpenCommonwealth.org
OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published. This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: Response to Public Records Requests Received December 5, 2024

Dear Open Commonwealth:

This office represents the City of Malden in connection with your public records request received December 5, 2024 (the "Request"). Malden hereby responds within ten business days of the Request, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Response

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), you will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

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

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

Right of Appeal

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

Respectfully,

/s/ James Donnelly
James Donnelly

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

Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

6.1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS	)	
v.	)	
SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	)	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV02456

AFFIDAVIT OF DEFENDANT BRUCE FRIEDMAN IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

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

1. I, Bruce Friedman A./K./A. OpenCommonwealth.org am a citizen journalist as defined under Supreme Judicial Court Rule 1:19, who is regularly engaged in the reporting and publishing of news or information about matters of public interest, specifically matters of government transparency and public records. I am a blogger, and poster of information regarding public records, open government and transparency.
2. I regularly report and publish news and information about matters of public interest on OpenCommonwealth.org, @OpenMass, @OpenCommonwealth and have collaborated with other news organizations such as the Boston Globe and Malden News Network.
3. I publish all of the requests, appeals, determinations and records and they are all free and available to anyone anytime.
4. I am personally and exclusively responsible for the website OpenCommonwealth.org.

NS

5. OpenCommonwealth.org is not incorporated, registered or servicemark or trademarked with any state or federal agency.
6. OpenCommonwealth has no state or federal tax or other ID number of any kind.
7. OpenCommonwealth.org is not a business, it is a website and publication.
8. OpenCommonwealth.org does not generate income or make expenditures.
9. OpenCommonwealth.org is not an employer, nor does it have any employees.
10. Bruce Friedman has and does personally fully fund any monies expended regarding OpenCommonwealth.org.
11. Any public records request, appeal, complaint, filed with the email address info@opencommonwealth.org or under the name opencommonwealth.org were written by Defendant Friedman.
12. All records received by OpenCommonwealth.org, OpenMalden.org, and Bruce Friedman are published and available without constraint to the public.
13. No public records request filed by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate Plaintiff Malden or any other records holder in any way.
14. No appeal, request for review, complaint, pleading or any other inquiry regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
15. No article, posting, editorial, publication or story regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
16. I have reviewed Malden's Complaint and all attachments thereto and can identify that Malden has used my website, public document repository and social media posts as content in their complaint and exhibits.
17. Attached to the Motion to Dismiss is Exhibit A. This Exhibit is a determination of the SPR in RE: SPR 24/3465. This determination regards a public records request dated and served on December 4, 2024, which seeks public records never before sought by me from the City of Malden. The above captioned lawsuit commenced on November 21, 2024. This determination specifically lists this lawsuit as "pending

litigation" preventing the SPR from opining on the appeal brought by me. This is prima facie evidence that Malden is using strategic litigation against me to silence and prevent me from engaging in constitutionally protected petitioning activities.

Signed under the pains and penalties of perjury this 24th, day of January 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. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

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

EXHIBIT A

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

January 15, 2025
SPR24/3465

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

Dear Ms. Desiderio:

I have received the petition of Commonwealth Transparency ("requestor") appealing the response of the City of Malden (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On December 5, 2024, the requestor sought the following records from the period of "November 1, 2024 through the date that [the City] receive[s] this request":

> [A]ll public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets. . . .
>
> This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

The City responded on December 19, 2024, providing a fee estimate. Unsatisfied with the City's response, the requestor petitioned this office and this appeal, SPR24/3465, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

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

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

Fee estimate – municipalities

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

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

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

The City's December 19th Response

In its December 19, 2024 response, the City provided a fee estimate of $1,825.00 and stated the following:

> The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of

> obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.
> ...
> In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the Requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.
> ...
> After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

Current Appeal

In the appeal petition, the requestor states, "Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records."

Active Litigation

> 950 C.M.R. 32.08(2)(b) provides in pertinent part:
>
> the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:
>
> 1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

In light of the ongoing litigation, City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of William Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org), Docket No. 2481CV03069, I decline to opine on this matter at this time. See 950 C.M.R. 32.08(2)(b). It should be noted that a change in the status of this action could impact the applicability of 950 C.M.R. 32.08(2)(b).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency
James Donnelly, Esq.
Felicia Vasudevan, Esq.

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

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

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

Dear Supervisor of Public Records:

This office is counsel to the City of Malden in connection with a public records request by OpenCommonwealth, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden replied to the request in a timely fashion on December 19, 2024.

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

Harassment

This public records request is duplicative of prior public records requests submitted by OpenCommonwealth seeking public records of City business on the personal devices of the Mayor and other Malden officials and employees. For every prior request, Malden sought approval of its fee estimate from the Supervisor of Records and received approval of its fee

petition, yet OpenCommonwealth did not pay Malden's fee estimate. This continues OpenCommonwealth's pattern of harassment of Malden – Open Commonwealth often requests the same information despite the presence of an approved fee petition for those same records or similar records. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

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

Moreover, the continuing harassment of Malden is already the subject of current and active litigation. See City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of Wiliam Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org, Docket No. 2481CV03069. Mr. Friedman's and Open Commonwealth's requests continue the pattern of harassment that is the precise subject of the pending litigation. Accordingly, during the pendency of Malden's lawsuit and in accordance with 950 CMR 32.08(2)(b)(1), Malden should be relieved of its obligation to respond to Mr. Friedman and OpenCommonwealth's requests, as the Supervisor has consistently held. See, e.g., SPR21/1540; SPR21/1524; SPR21/1739; SPR21/1748; SPR21/1799.

For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide with copies of the records sought, then Malden alternatively petitions to charge a fee to produce the records.

Fee Petition

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00.

Please be advised that the fee estimate may be reduced if the requester narrows the scope of the request.

Time Petition

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

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden

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

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

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

Sincerely,

/s/ James Donnelly
James Donnelly

cc: Open Commonwealth
Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

December 31, 2024
SPR24/3465

Commonwealth Transparency
OpenCommonwealth.org
VIA EMAIL
MA

Dear Commonwealth Transparency:

I have received your letter appealing the response of the City of Malden to your request for records.

I have directed a member of my staff, Alexander Papadopoulos, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Manza Arthur
Supervisor of Records

cc: Mrs. Carol A. Desiderio

Pierce, Patrick (SEC)

From:	Commonwealth Transparency <info@opencommonwealth.org>
Sent:	Tuesday, December 31, 2024 11:38 AM
To:	SEC-DL-PREWEB
Cc:	publicrecords@cityofmalden.org
Subject:	Petition for Appeal - Malden, MA. - Improper Response and Fee Request
Attachments:	Public Records Response (OpenCommonwealth, 12.19.24).PDF; spr242322[90].pdf
Importance:	High

Greetings:

On December 5, 2024, the following verbatim PRR was submitted to Malden, MA:

> **From:** Commonwealth Transparency info@opencommonwealth.org
> **Date:** Wednesday, December 4, 2024 at 5:17 PM
> **To:** Public Records publicrecords@cityofmalden.org
> **Cc:** cdesiderio@cityofmalden.org cdesiderio@cityofmalden.org
> **Subject:** Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
>
> Greetings:
>
> This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:
>
> ***- This is a new request and does not replace or modify any prior requests.***
>
> - For the Time Period of November 1, 2024 through the date that you receive this request:
> - Please ***extract*** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.
> - This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.
>
> OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic

database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

On December 19, 2024, the following email and attached document were received:

From: James Donnelly <jdonnelly@mhtl.com>
Date: Thursday, December 19, 2024 at 12:33 PM
To: Commonwealth Transparency <info@opencommonwealth.org>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Joanne Perperian <jperperian@CITYOFMALDEN.ORG>
Subject: Public Records Response
Good afternoon,

Please find attached Malden's response to your public records request.

Sincerely,

James Donnelly, Esq.
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Braintree Hill Office Park | 50 Braintree Hill Office Park, Suite 410 | Braintree, MA 02184
Tel: (617) 479-5000 | Fax: (617) 479-6469
E-mail: jdonnelly@mhtl.com | www.mhtl.com

OpenCommonwealth hereby petitions the SPR to find and Order that Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records.

In support of this petition, OpenCommonwealth provides the following:

1. Malden's response was untimely.
2. The responsive record set at issue here is for ***only*** 34 calendar days or 21 business days (November 1, 2024 through December 5, 2024).
3. The response ***admits*** that here records are not in the possession, custody, or custody of the City, but remain in the custody and control of the Mayor on his personal device(s).
4. Malden's response requests fees for ***records organization*** disguised as fees for search, for which they are precluded from charging. They sate as follows:

   "The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified."

   Malden is claiming that the act and effort involved in separating the Mayor of Malden's personal business from official City Business is a burden and cost to be borne by the requestor, this claim is wholly without merit. The Mayor is required by law to provide a copy of any public record created or received on his personal devices to the City for safeguarding, retention and management. He admits in the rte4sponse that he has failed to do this and that the requestor is responsible for the cost and burden of identifying public records that have been created and/or received on the Mayor's personal device(s). All of the records are required by to be provided to the City by the Mayor.
5. Malden's response failed to provide the legally required specificity for the responsive record set including but not limited to:
   - The ***specific*** number of responsive records.
   - The cost for segregation estimated accurately in good-faith per record with specificity.
   - The cost for redactions estimated accurately in good-faith per record with specificity to the specific exemption(s) claimed.
   - The cost for search, if any such cost is legally available to them in good-faith per record with specificity.
6. Malden failed to provide any responsive records at all.
7. SPR 24/2322 (attached hereto) details the exact same issues at the heart of this request and in Malden's response regarding public records regarding city business on the Mayor's private device(s) which the City does not maintain custody or control.
   - Citing G. L. c. 66, § 13 & 17 – Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county or municipality to which the records originally belonged; provided, however, that the custodian of public records may enter into a contract for the storage of records containing public record information, but no contract for the storage of public records shall be entered into if the contract prevents or unduly restricts a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records not directly in the custodian's possession shall be considered in the custody of the custodian if subject to a contract for the storage of public records that is permitted by this section. If the custodian does not have custody of public records, the custodian shall demand delivery from any person unlawfully having possession of the records, and the records shall immediately be delivered by such person to the

custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of not more than $20.

- Citing G. L. c. 66, § 13 - Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Wherefore OpenCommonwealth requests that the SPR find and Order Malden to provide all responsive records without delay, and without charge.

Kindest Regards,

OpenCommonwealth.org
OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published. This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you. Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: Response to Public Records Requests Received December 5, 2024

Dear Open Commonwealth:

This office represents the City of Malden in connection with your public records request received December 5, 2024 (the "Request"). Malden hereby responds within ten business days of the Request, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Response

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), you will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

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

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

Right of Appeal

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

Respectfully,

/s/ James Donnelly
James Donnelly

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

Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

6

D

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS v. SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV02456

DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), Pro-Se, and files this Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59H. Further, Defendant Friedman asks 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 (this case), November 2024, 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

NS

2481CV03069 City of Malden vs. William Francis Galvin, Secretary of the Commonwealth et al

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 11/21/2024
- DCM Track:
- X - Accelerated
- Initiating Action:
- Certiorari Action, G. L. c. 249 § 4
- Status Date:
- 11/21/2024
- Case Judge:
-
- Next Event:
- 01/05/2026

All Information | Party | Subsequent Action/Subject | Event | Tickler | Docket | Disposition

Party Information

City of Malden
- Plaintiff

Alias	Party Attorney
	Attorney Donnelly, Esq., James R Bar Code 713025 Address Murphy Hesse Toomey and Lehane LLP 50 Braintree Hill Off Park Suite 410 Braintree, MA 02184 Phone Number (617)479-5000 Attorney Vasudevan, Esq., Felicia Simone Bar Code 687463 Address Murphy, Hesse, Toomey and Lehane 50 Braintree Hill Off Pk Suite 410 Braintree, MA 02184 Phone Number (617)479-5000

More Party Information

William Francis Galvin, Secretary of the Commonwealth
- Defendant

Alias	Party Attorney
	Attorney Frohlich, Esq., Julie Ann Bar Code 554707 Address

- Massachusetts Attorney Generals Office
  One Ashburton Place
  20th Floor
  Boston, MA 02108
- Phone Number
- (617)963-2394

More Party Information

Manza Arthur, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin Secretary of the Commonwealth
- Defendant

Alias	Party Attorney

- Attorney
- Frohlich, Esq., Julie Ann
- Bar Code
- 554707
- Address
- Massachusetts Attorney Generals Office
  One Ashburton Place
  20th Floor
  Boston, MA 02108
- Phone Number
- (617)963-2394

More Party Information

OpenCommonwealth (Bruce Friedman d/b/a Open Commonwealth.org)
- Defendant

Alias	Party Attorney

More Party Information

Subsequent Action/Subject

Description	Status	SA/Subject #	Status Date	Responding Party	*Judgments*	Pleading Party
Counterclaim	Open	1	02/17/2025	City of Malden	0	OpenCommonwealth (Bruce Friedman d/b/a Open Commonwealth.org)

Events

Date	Session	Location	Type	Event Judge	Result
03/12/2025 03:00 PM	Civil H Rm 710	Courtroom 710	Motion Hearing	Barry-Smith, Hon. Christopher K	Decision rendered
01/05/2026 02:00 PM	Civil H Rm 710		Final Pre-Trial Conference		

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	11/21/2024	02/19/2025	90	03/05/2025
Judgment	11/21/2024	11/21/2025	365	
Under Advisement	03/12/2025	04/11/2025	30	03/31/2025
Status Review	05/14/2025	05/30/2025	16	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/21/2024	Complaint electronically filed. Exhibits scanned in with the Complaint	1	Image
11/21/2024	Civil action cover sheet filed.	2	Image
11/21/2024	Plaintiff City of Malden's Motion for Appointment of a Special Process Server Constable Thomas Cabral 11/22/24. ALLOWED (Fraser, J.)	3	Image
11/22/2024	Case assigned to: DCM Track X - Accelerated was added on 11/22/2024		
12/05/2024	Defendant OpenCommonwealth (Bruce Friedman d/b/a Open Commonwealth.org)'s Request to Extend/Postpone his Required Answer Date	4	Image
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Case Disposition

Disposition	Date	Case Judge
Pending		

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 24CV3069

City of Malden,

Plaintiff,

v.

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

Defendants.

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

INTRODUCTION

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

JURISDICTION AND VENUE

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

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

PARTIES

4. Plaintiff Malden is a municipality organized and operating under the laws of the Commonwealth of Massachusetts with a principal place of business located at 215 Pleasant Street, Malden, MA 02148.

5. Defendant William Francis Galvin is the Secretary of the Commonwealth of Massachusetts (the "Secretary"). The Secretary is sued in his official capacity as Secretary of the Commonwealth. His usual place of employment is One Ashburton Place, 17th Floor, Boston, Massachusetts 02108.

6. Defendant Manza Arthur is the Supervisor of Records of the Public Records Division (the "Supervisor"). The Public Records Division is a division of the Office of the Secretary that is legislatively assigned the duty to adjudicate administrative appeals under the Massachusetts Public Records Law, G.L. c. 66 § 10A. The Supervisor is sued in his official capacity as Supervisor of Records. His usual place of employment is One Ashburton Place, 17th Floor, Boston, Massachusetts 02108.

7. Upon information and belief, Defendant OpenCommonwealth is a purported organization operated by Bruce Friedman doing business in the Commonwealth of Massachusetts, in Middlesex County, Malden, Massachusetts. Bruce Friedman is an individual with a residential address of 8 Marvin Street, Malden, Massachusetts 02148.

FACTS

Public Records Law

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

> If the supervisor of records determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass,

> and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the supervisor of records may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought.
>
> G.L. c. 66, § 10(c).

9. The Massachusetts Public Records Law Regulations provide:

> [I]f, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought.
>
> 950 C.M.R 32.06(4)(f).

Background of Harassment

10. Mr. Friedman initiated litigation at the Bureau of Special Education Appeals ("BSEA") against Malden Public Schools in October 2019.

11. Since then, Mr. Friedman, using his personal email address or the email address of several purported organizations created by him, including OpenCommonwealth, OpenMalden, and, upon information and belief, Public Schools Data Exchanger, among others, has submitted over three hundred public records requests to Malden.

12. Mr. Friedman and OpenCommonwealth's harassment of Malden is already the subject of current and active litigation in Malden Public Schools v. Rebecca S. Murray, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin, Secretary of the Commonwealth and Bruce Friedman, Docket No. 2181CV01458 and City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth and William Francis Galvin,

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

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

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

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

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

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

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

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

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

25. Out of Malden's 123 responses, OpenCommonwealth appealed Malden's response on 52 separate occasions. A copy of the Supervisor's tracking information for appeals of Malden's responses in 2024 is attached as Exhibit G.

26. When the Supervisor approved one of Malden's 35 fee petitions, OpenCommonwealth requested reconsideration of the Supervisor's determination on 9 separate occasions. A copy of the Supervisor's tracking information for requests for reconsideration of Malden's approved fee petitions in 2024 is attached as Exhibit H.

27. When the Supervisor denied one of OpenCommonwealth's appeals to Malden's responses, OpenCommonwealth requested reconsideration of the denial on another 9 separate occasions. A copy of the Supervisor's tracking information for requests for reconsideration of denied appeals of Malden's responses in 2024 is attached as Exhibit I.

Malden's First Harassment Petition

28. Between September 4, 2024 and September 15, 2024, OpenCommonwealth submitted 26 new public records requests to Malden (the "First Harassment Petition Requests").

29. Malden responded to the First Harassment Petition Requests within ten business days with a response dated September 18, 2024 ("September 18 Response"). A copy of the response is attached as Exhibit J.[2]

30. Malden also submitted a Harassment, Fee, and Time Petition to the Supervisor on September 18, 2024 regarding the First Harassment Petition Requests (the "First Harassment Petition"). A copy of the First Harassment Petition is attached as Exhibit K.

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

31. In a determination dated September 25, 2024, the Supervisor granted Malden's fee petition and time petition, but arbitrarily denied Malden's harassment petition. A copy of the determination in SPR24/2625 is attached as Exhibit L.

32. OpenCommonwealth submitted 10 separate appeals of the determination in SPR24/2625 regarding 10 of the 26 total First Harassment Petition Requests. A copy of the Supervisor's email acknowledging the appeals is attached as Exhibit M.

33. The Supervisor sought and received an extension of time of an extra 10 business days to issue a determination with respect to OpenCommonwealth's appeals "due to the large number of requests involved." A copy of the Supervisor's email request and acknowledgment of agreement is attached as Exhibit N.

34. Malden is not afforded the same opportunity for an extension to respond to the requests, even though it was required to respond to the same number of requests.

35. In SPR24/2781, the Supervisor instructed OpenCommonwealth that it could not appeal the determination in SPR24/2625 until it communicated with Malden about the First Harassment Petition Requests. A copy of the determination in SPR24/2781 is attached as Exhibit O.

Malden's Second Harassment Petition

36. Between September 23, 2024 and October 7, 2024 at 8:14 AM, Open Commonwealth submitted 14 public records requests to Malden (the "Second Harassment Petition Requests").

37. Malden responded to the Second Harassment Petition Requests within ten business days with a response dated October 7, 2024 ("October 7 Response"). A copy of the response is attached as Exhibit P.

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

Malden's Third Harassment Petition

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

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

The Harassing Nature of OpenCommonwealth's Requests

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

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

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

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

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

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

52. For example, OpenCommonwealth repeatedly requests the same information for different Malden employees or officials, including in the First, Second, and Third Harassment Petition Requests, despite the issuance of an approved fee petition from the Supervisor which authorizes a fee for the same type of information regarding a different employee or official.

53. Likewise, OpenCommonwealth often requests the same information but changes the number of records requested, alternating between the latest 50, 75, or 100 responsive records, including in the First, Second, and Third Harassment Petition Requests, despite the presence of an approved fee petition or a pending fee petition before the Supervisor for those same records.

54. Open Commonwealth repeatedly informs the Supervisor of modified requests knowing that the Supervisor will close out a pending fee petition, even though the so-called 'modified' request requests the same information and necessitates a new response and fee petition from Malden.

55. OpenCommonwealth has paid a fee estimate from Malden on exactly three occasions this year, despite all of these requests.

56. Malden has expended countless hours, resources, and energy on responding to OpenCommonwealth and Mr. Friedman's public records requests at tremendous financial and opportunity cost.

57. OpenCommonwealth's requests subvert the Public Records Law, which imposes a standard of reasonableness on the conduct of records requesters.

58. The only purpose behind OpenCommonwealth's requests is to harass Malden, its officials, and its employees.

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

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

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

    a. In violation of constitutional provisions;

    b. In excess of the statutory authority or jurisdiction of the Supervisor;

    c. Based upon an error of law;

    d. Made upon unlawful procedure;

    e. Unsupported by substantial evidence; and

    f. Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

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

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

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

a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and

b. Malden is relieved of its obligation to provide copies of the records sought; and

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

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

64. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 54 of this Complaint as if each were set forth here and in their entirety.

65. The Public Records Appeal process before the Supervisor regarding the Original Response constitute a judicial or quasi-judicial proceeding.

66. If judicial review under G. L. c. 30A is not available to Malden, then Malden lacks reasonably adequate remedies to address the manifest injustice it is experiencing.

67. Malden has suffered a substantial injury or injustice arising from the proceedings before the Supervisor because it is being forced to respond to public records requests designed to harass Malden.

68. Certiorari review is appropriate to correct errors in the proceeding before the Supervisor which were not conducted in accordance with the course of common law.

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

a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and

b. Malden is relieved of its obligation to provide copies of the records sought; and

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

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

70. Malden repeats, realleges and incorporates herein the allegations contained in Paragraphs 1 through 60 of this Complaint as if each were set forth here and in its entirety.

71. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden.

72. The Supervisor's Determinations reflects a continuing dispute and actual controversy between the parties within the meaning of M.G.L. c.231A.

73. Malden seeks and is entitled to a binding declaration of right, duty, status and other legal relations within the meaning of M.G.L. c. 231A, § 1 in the manner herein described.

74. Malden respectfully requests that this Honorable Court declare that

a. Public records requests made by OpenCommonwealth, Mr. Friedman, and any other organization operated by Mr. Friedman, including the First, Second, and Third Harassment Petition Requests, are intended to harass Malden; and

b. Malden is relieved of its obligation to provide copies of the records sought; and

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

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

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

Respectfully submitted by

Plaintiff City of Malden,
By its Attorneys,

/s/ Felicia Vasudevan
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jdonnelly@mhtl.com

Dated: November 21, 2024

VERIFICATION

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

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

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

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Commonwealth of Massachusetts

MIDDLESEX,SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2481CV03069

City of Malden, PLAINTIFF(S),

V.

William Francis Galvin, Secretary of the Commonwealth et al, DEFENDANT(S)

SUMMONS

THIS SUMMONS IS DIRECTED TO OpenCommonwealth (Bruce Friedman, dba Open Commonwealth.org) . (Defendant's name)

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Middlesex Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court **and** mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
   a. Filing your **signed original** response with the Clerk's Office for Civil Business, Middlesex Superior Court, 200 Trade Center Woburn, MA 01801 (address), by mail or in person, **AND**
   b. Delivering or mailing a **copy** of your response to the Plaintiff's Attorney/Plaintiff at the following address: Felicia S. Vasudevan, c/o Murphy, Hesse, Toomey & Lehane, LLP 50 Braintree Hill Office Park, Suite 410, Braintree, MA 02184
3. **What to include in your response.** An **"Answer"** is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a **"Motion to Dismiss,"** if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under **Mass. R. Civ. P. 12.** If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov.courts/case-legal-res/rules of court.

4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
5. **Required information on all filings:** The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Heidi Brieger, Chief Justice on December 4, , 2024.

Michael A. Sullivan
Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify that on December 5, 2024, I served a copy of this summons, together with a copy of the complaint in this action, on the defendant named in this summons, in the following manner (See Mass. R. Civ. P. 4(d)(1-5)):

TN Hand Service to Bruce Friedman @ 11:35 Am

Dated: 12.5, 2024 Signature:

N.B. TO PROCESS SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX - BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.

December 5, 2024

RETURN OF SERVICE

State of Massachusetts **County of Middlesex** **Superior Court**

Case Number: CIVIL ACTION NO. 2481CV03069

Plaintiff
City of Malden

vs.

Defendant:
William Francis Galvin, Secretary of the Commonwealth, et al

For:
MURPHY HESSE TOOMEY & LEHANE, LLP
50 Braintree Hill Office Park
Suite 410
Braintree, MA 02184

Received by SubpoenaServer.Com on the 4th day of December, 2024 at 6:00 pm to be served on **Bruce Friedman, 8 Marvin Street, Malden, MA 02148**.

I, Thomas Cabral, do hereby affirm that on the **5th day of December, 2024 at 11:30 am, I:**

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **Original Summons directed toward Defendant Bruce Friedman 8 Marvin Street Malden, Ma 02184; Civil Action Cover Sheet, 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 with Exhibits A through V, attached thereto; Plaintiffs Motion for the Appointment of a Special Process Server; Plaintiffs Motion for the Appointment of a Special Process Server (allowed); and Civil Tracking Order** with the date and hour of service endorsed thereon by me, to: **Bruce Friedman** at the address of: **8 Marvin Street, Malden, MA 02148**, and informed said person of the contents therein, in compliance with state statutes.

Signed under the penalties of perjury. I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Thomas Cabral
Process Server

SubpoenaServer.Com
407 Bark Street
Swansea, MA 02777
(617) 669-6660

Our Job Serial Number: SBC-2024000293

CERTIFICATE OF SERVICE

I, Felicia S. Vasudevan, hereby certify on this 11th day of December, 2024, that a true copy of the foregoing document was filed electronically and will be via First Class Mail to the following recipients:

William Francis Galvin,
Secretary of the Commonwealth
One Ashburton Place, 17th Floor
Boston, MA 02108

Manza Arthur,
Supervisor of Records
Public Records Division of the
Office of the Secretary of the Commonwealth
One Ashburton Place, 17th Floor
Boston, MA 02108

OpenCommonweath
Bruce Friedman, d/b/a
OpenCommonweath
8 Marvin Street
Malden, MA 02148

/s/ Felicia S. Vasudevan
Felicia S. Vasudevan

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS	)	
v.	)	
SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	)	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV03069

DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), Pro-Se, and files his Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59H. Further, Defendant Friedman asks 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

ML

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 his 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 SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Pursuant to Massachusetts G.L.c. 231 § 59H, Defendant, Friedman hereby makes a special Motion to Dismiss Plaintiff's Complaint as Strategic Litigation Against Public Participation. As grounds for his Motion, Defendant Friedman asserts that:

(1) Counts I, II, and III are subject to dismissal under G.L.c. 231 § 59H. Defendant Friedman and his website, OpenCommonwealth.org are currently under strategic litigation attacks from Malden. Defendant Friedman through his websites, social media posts, and blogs has made PRR's from hundreds of different municipalities, state agencies, public bodies and other governmental agencies, including but not limited to Malden since 2019. Defendant Friedman has published his requests, any and all responses, his appeals, determinations of the SPR, and all records provided. Hundreds of thousands of people have read, downloaded and made use of the published works of Defendant Friedman and his website, OpenCommonwealth and on his social media posts. Much of Malden's pleadings and exhibits come directly from these publications.

(2) Malden has filed 4 (four) lawsuits against Defendant Friedman and OpenCommonwealth, three of them in the fourth quarter of 2024 alone. In each suit, Malden seeks judicial assistance to silence Defendant Friedman. It asks this Court to enter an Order to presumably permanently deny his ability to request and

receive public records from Malden. It asks that this Court make a formal finding that Defendant Friedman is a harasser, therein barring him from making further public records requests.

(3) Malden has used this and three other lawsuits to silence the SPR and prevent the SPR from enforcing PRL with regard to Defendant Friedman and OpenCommonwealth. The SPR is now withholding opinions related to Defendant Friedman's and Open Commonwealth's requests because there is "pending litigation" even though those requests are not the subject of this or any litigation. (See Exhibit A)

(4) Defendant Friedman's Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*") and in Supreme Judicial Court Rule 1:19. Submitting public records requests is engaging in an activity that is protected under the First Amendment, which includes the right to petition the government for information. Each request at issue in Malden's Complaint were written statements submitted directly to Malden, a Municipality, an incorporated city in Massachusetts, and a governmental entity in the Commonwealth of Massachusetts.

(5) Defendant Friedman's appeals to the SPR for Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*"). Each request at issue in Malden's Complaint were written statements submitted directly to the SPR who is a governmental body under the executive branch of Massachusetts (the SOS) for an issue under consideration, to consider and review, and to enlist public participation.

(6) The entirety of Malden's complaint is based on Defendant Friedman's protected petitioning activities, that of making public records requests, that of appealing Malden's responses to Defendant Friedman's public records requests, that of Malden's exhaustive and fruitless petitioning the SPR to deny Defendant

Friedman's protected petitioning activity and that of overruling the SPR's determinations. All of Malden's allegations, claims and counts are based on this protected petitioning activity alone, with no substantial basis other than or in addition to said protected petitioning.

(7) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity was devoid of any reasonable factual support or any arguable basis in law.

(8) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity caused Malden any actual injury.

(9) The above captioned case was filed on November 21, 2024.

(10) Malden perfected service on Defendant Friedman on December 5, 2024.

(11) Defendant Friedman filing of his Special Motion to Dismiss Plaintiff's Claims Under G.L.c. 231 § 59H is timely and within 60 (sixty) days of being served.

(12) Defendant Friedman hereby requests that the Court dismiss Malden's complaint in its entirety with prejudice.

Defendant Friedman requests a hearing on his Motions pursuant to Superior Court Rules 9A(a)(1) and 9A(c)(2). As grounds for its request, Defendant Friedman states that under Superior Court Rule 9A(c)(3), a motion to dismiss enjoys a presumptive right to a hearing.

Respectfully Submitted by Defendant,

Dated: January 24th, 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 the above document was served upon the counsel for Plaintiff Malden at fvasudevan@mhtl.com and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS	)	
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 IN SUPPORT OF AND DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

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

1. I, Bruce Friedman A./K./A. OpenCommonwealth.org am a citizen journalist as defined under Supreme Judicial Court Rule 1:19, who is regularly engaged in the reporting and publishing of news or information about matters of public interest, specifically matters of government transparency and public records. I am a blogger, and poster of information regarding public records, open government and transparency.
2. I regularly report and publish news and information about matters of public interest on OpenCommonwealth.org, @OpenMass, @OpenCommonwealth and have collaborated with other news organizations such as the Boston Globe and Malden News Network.
3. I publish all of the requests, appeals, determinations and records and they are all free and available to anyone anytime.

4. I am personally and exclusively responsible for the website OpenCommonwealth.org.
5. OpenCommonwealth.org is not incorporated, registered, service marked or trademarked with any state or federal agency.
6. OpenCommonwealth has no state or federal tax or other ID number of any kind.
7. OpenCommonwealth.org is not a business, it is a website and publication.
8. OpenCommonwealth.org does not generate income or make expenditures.
9. OpenCommonwealth.org is not an employer, nor does it have any employees.
10. Bruce Friedman has and does personally fully fund any monies expended regarding OpenCommonwealth.org.
11. Any public records request, appeal, complaint, filed with the email address info@opencommonwealth.org or under the name opencommonwealth.org were written by Defendant Friedman.
12. All records received by OpenCommonwealth.org, OpenMalden.org, and Bruce Friedman are published and available without constraint to the public.
13. No public records request filed by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate Plaintiff Malden or any other records holder in any way.
14. No appeal, request for review, complaint, pleading or any other inquiry regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
15. No article, posting, editorial, publication or story regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
16. I have reviewed Malden's Complaint and all attachments thereto and can identify that Malden has used my website, public document repository and social media posts as content in their complaint and exhibits.
17. Attached to the Motion to Dismiss is Exhibit A. This Exhibit is a determination of the SPR in RE: SPR 24/3465. This determination regards a public records request dated and served on December 4, 2024, which seeks public records never before sought by me from the City of Malden. This determination references the attached

letter from Malden's counsel, James Donnelly, who specifically requests that the SPR consider the above captioned case as reason to relieve Malden from having to respond. The above captioned lawsuit commenced on November 21, 2024. This determination specifically lists this lawsuit as "pending litigation" preventing the SPR from opining on the appeal brought by me. This is prima facie evidence that Malden is using strategic litigation against me to silence and prevent me from engaging in constitutionally protected petitioning activities.

Signed under the pains and penalties of perjury this 24th, day of January 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 the above document was served upon the counsel for the Malden Public Schools, at fvasudevan@mhtl.com and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

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

EXHIBIT A

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

January 15, 2025
SPR24/3465

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

Dear Ms. Desiderio:

I have received the petition of Commonwealth Transparency ("requestor") appealing the response of the City of Malden (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On December 5, 2024, the requestor sought the following records from the period of "November 1, 2024 through the date that [the City] receive[s] this request":

> [A]ll public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets. . . .
>
> This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

The City responded on December 19, 2024, providing a fee estimate. Unsatisfied with the City's response, the requestor petitioned this office and this appeal, SPR24/3465, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

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

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

Fee estimate – municipalities

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

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

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

The City's December 19th Response

In its December 19, 2024 response, the City provided a fee estimate of $1,825.00 and stated the following:

> The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of

> obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.
> …
> In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the Requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.
> …
> After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

Current Appeal

In the appeal petition, the requestor states, "Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records."

Active Litigation

> 950 C.M.R. 32.08(2)(b) provides in pertinent part:
>
> the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:
>
> 1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

In light of the ongoing litigation, City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of William Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org), Docket No. 2481CV03069, I decline to opine on this matter at this time. See 950 C.M.R. 32.08(2)(b). It should be noted that a change in the status of this action could impact the applicability of 950 C.M.R. 32.08(2)(b).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency
James Donnelly, Esq.
Felicia Vasudevan, Esq.

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

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

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

Dear Supervisor of Public Records:

This office is counsel to the City of Malden in connection with a public records request by OpenCommonwealth, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden replied to the request in a timely fashion on December 19, 2024.

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

Harassment

This public records request is duplicative of prior public records requests submitted by OpenCommonwealth seeking public records of City business on the personal devices of the Mayor and other Malden officials and employees. For every prior request, Malden sought approval of its fee estimate from the Supervisor of Records and received approval of its fee

petition, yet OpenCommonwealth did not pay Malden's fee estimate. This continues OpenCommonwealth's pattern of harassment of Malden – Open Commonwealth often requests the same information despite the presence of an approved fee petition for those same records or similar records. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

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

Moreover, the continuing harassment of Malden is already the subject of current and active litigation. See City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of Wiliam Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org, Docket No. 2481CV03069. Mr. Friedman's and Open Commonwealth's requests continue the pattern of harassment that is the precise subject of the pending litigation. Accordingly, during the pendency of Malden's lawsuit and in accordance with 950 CMR 32.08(2)(b)(1), Malden should be relieved of its obligation to respond to Mr. Friedman and OpenCommonwealth's requests, as the Supervisor has consistently held. See, e.g., SPR21/1540; SPR21/1524; SPR21/1739; SPR21/1748; SPR21/1799.

For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide with copies of the records sought, then Malden alternatively petitions to charge a fee to produce the records.

Fee Petition

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00.

Please be advised that the fee estimate may be reduced if the requester narrows the scope of the request.

Time Petition

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

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden

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

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

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

Sincerely,

/s/ James Donnelly
James Donnelly

cc: Open Commonwealth
Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

December 31, 2024
SPR24/3465

Commonwealth Transparency
OpenCommonwealth.org
VIA EMAIL
MA

Dear Commonwealth Transparency:

I have received your letter appealing the response of the City of Malden to your request for records.

I have directed a member of my staff, Alexander Papadopoulos, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Manza Arthur
Supervisor of Records

cc: Mrs. Carol A. Desiderio

Pierce, Patrick (SEC)

From:	Commonwealth Transparency <info@opencommonwealth.org>
Sent:	Tuesday, December 31, 2024 11:38 AM
To:	SEC-DL-PREWEB
Cc:	publicrecords@cityofmalden.org
Subject:	Petition for Appeal - Malden, MA. - Improper Response and Fee Request
Attachments:	Public Records Response (OpenCommonwealth, 12.19.24).PDF; spr242322[90].pdf
Importance:	High

Greetings:

On December 5, 2024, the following verbatim PRR was submitted to Malden, MA:

> **From:** Commonwealth Transparency info@opencommonwealth.org
> **Date:** Wednesday, December 4, 2024 at 5:17 PM
> **To:** Public Records publicrecords@cityofmalden.org
> **Cc:** cdesiderio@cityofmalden.org cdesiderio@cityofmalden.org
> **Subject:** Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A
>
> Greetings:
>
> This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:
>
> ***- This is a new request and does not replace or modify any prior requests.***
>
> - For the Time Period of November 1, 2024 through the date that you receive this request:
> - Please ***extract*** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.
> - This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.
>
> OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic

database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

On December 19, 2024, the following email and attached document were received:

From: James Donnelly <jdonnelly@mhtl.com>
Date: Thursday, December 19, 2024 at 12:33 PM
To: Commonwealth Transparency <info@opencommonwealth.org>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Joanne Perperian <jperperian@CITYOFMALDEN.ORG>
Subject: Public Records Response

Good afternoon,

Please find attached Malden's response to your public records request.

Sincerely,

James Donnelly, Esq.
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Braintree Hill Office Park | 50 Braintree Hill Office Park, Suite 410 | Braintree, MA 02184
Tel: (617) 479-5000 | Fax: (617) 479-6469
E-mail: jdonnelly@mhtl.com | www.mhtl.com

OpenCommonwealth hereby petitions the SPR to find and Order that Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records.

In support of this petition, OpenCommonwealth provides the following:

1. Malden's response was untimely.
2. The responsive record set at issue here is for ***only*** 34 calendar days or 21 business days (November 1, 2024 through December 5, 2024).
3. The response ***admits*** that here records are not in the possession, custody, or custody of the City, but remain in the custody and control of the Mayor on his personal device(s).
4. Malden's response requests fees for ***records organization*** disguised as fees for search, for which they are precluded from charging. They sate as follows:

   "The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified."

   Malden is claiming that the act and effort involved in separating the Mayor of Malden's personal business from official City Business is a burden and cost to be borne by the requestor, this claim is wholly without merit. The Mayor is required by law to provide a copy of any public record created or received on his personal devices to the City for safeguarding, retention and management. He admits in the rte4sponse that he has failed to do this and that the requestor is responsible for the cost and burden of identifying public records that have been created and/or received on the Mayor's personal device(s). All of the records are required by to be provided to the City by the Mayor.
5. Malden's response failed to provide the legally required specificity for the responsive record set including but not limited to:
   - The ***specific*** number of responsive records.
   - The cost for segregation estimated accurately in good-faith per record with specificity.
   - The cost for redactions estimated accurately in good-faith per record with specificity to the specific exemption(s) claimed.
   - The cost for search, if any such cost is legally available to them in good-faith per record with specificity.
6. Malden failed to provide any responsive records at all.
7. SPR 24/2322 (attached hereto) details the exact same issues at the heart of this request and in Malden's response regarding public records regarding city business on the Mayor's private device(s) which the City does not maintain custody or control.
   - Citing G. L. c. 66, § 13 & 17 – Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county or municipality to which the records originally belonged; provided, however, that the custodian of public records may enter into a contract for the storage of records containing public record information, but no contract for the storage of public records shall be entered into if the contract prevents or unduly restricts a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records not directly in the custodian's possession shall be considered in the custody of the custodian if subject to a contract for the storage of public records that is permitted by this section. If the custodian does not have custody of public records, the custodian shall demand delivery from any person unlawfully having possession of the records, and the records shall immediately be delivered by such person to the

custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of not more than $20.

- Citing G. L. c. 66, § 13 - Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Wherefore OpenCommonwealth requests that the SPR find and Order Malden to provide all responsive records without delay, and without charge.

Kindest Regards,

OpenCommonwealth.org
OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published.

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: Response to Public Records Requests Received December 5, 2024

Dear Open Commonwealth:

This office represents the City of Malden in connection with your public records request received December 5, 2024 (the "Request"). Malden hereby responds within ten business days of the Request, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Response

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), you will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

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

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

Right of Appeal

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

Respectfully,

/s/ James Donnelly
James Donnelly

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

Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

29

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. **SUPERIOR COURT**
CIVIL ACTION
No. 2481cv3069

CITY OF MALDEN

vs.

SUPERVISOR OF PUBLIC RECORDS at the SECRETARY OF THE COMMONWEALTH and BRUCE FRIEDMAN, d/b/a OPENCOMMONWEALTH.ORG

DECISION AND ORDER ON DEFENDANT'S SPECIAL MOTION TO DISMISS

Bruce Friedman, who runs a website at opencommonwealth.org,[1] and the City of Malden have a long history concerning requests for information made by Friedman to Malden under the Public Records Law, G.L. c. 66, § 10. On many occasions, after Malden responds to Friedman's requests, Friedman has appealed Malden's response to the Supervisor of Public Records at the Secretary of the Commonwealth (the "Supervisor"). The Supervisor has issued several administrative decisions concerning Friedman's requests to Malden. Malden has filed administrative appeals in Superior Court challenging some of the Supervisor's decisions, often concerning Malden's efforts to charge Friedman money for producing public records, given the breadth and number of Friedman's requests and the city resources necessary to respond. Several of those appeals are pending in this court, involving specific public record requests by Friedman.

This administrative appeal is distinct. In three recent interactions with the Supervisor concerning three different expansive requests for public records by Friedman, Malden sought relief from the Supervisor under Section 10(c) of the Public Records Law. That section provides:

[1] For simplicity, I refer to OpenCommonwealth.org and Friedman together as "Friedman."

> If the supervisor of public 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 public records may** grant a longer extension or **relieve the agency or municipality of its obligation to provide copies of the records sought**.

G.L. c. 66, § 10(c)(emphasis supplied)(hereafter, the "anti-harassment provision"); see also 950 C.M.R. 32.06(4)(f) (Secretary's regulation providing same authority). With respect to three requests by Friedman to Malden in September and October 2024, Malden sought the Supervisor's approval of Malden's fee and time petition with respect to Friedman's request, and also sought relief under the anti-harassment provision of Section 10(c), emphasized above. On each occasion, the Supervisor *approved* Malden's fee and time petitions but *denied* Malden additional relief under the anti-harassment provision—that is, the Supervisor did not relieve Malden of its statutory obligation to respond to Friedman's public records requests. In this administrative appeal, Malden argues that the Supervisor has given scant attention to Malden's statutory request for relief from harassment, and that the Supervisor's denials of relief were arbitrary and capricious.

Presently before the court is Friedman's special motion to dismiss under G.L. c. 231, § 59H, the Anti-SLAPP statute, designed to prohibit strategic lawsuits against public participation. Malden is entitled to bring an administrative appeal of the Supervisor's decision declining relief to Malden under the anti-harassment provision of Section 10(c). The question raised by Friedman's motion is whether Malden was permitted to name Friedman as a defendant, or whether the Anti-SLAPP law prohibits the claims against Friedman.

ANALYSIS

On February 29, 2024, the Supreme Judicial Court issued its decision in *Bristol Asphalt Co., Inc. v. Rochester Bituminous Products, Inc.*, No. SJC-13460. In *Bristol Asphalt*, the SJC

renounced the often-complicated multistep Anti-SLAPP analysis employed since *Blanchard v. Steward Carney Hosp., Inc.*, 477 Mass. 141 (2017) and, generally speaking, returned to its prior two-step analytical approach established in *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass. 156 (1998).

For the first step of my analysis of the Anti-SLAPP motion to dismiss, the moving party (Friedman) must show that the claims against him are based *solely* on protected petitioning activities. The Court explained:

> [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*." [Duracraft, 427 Mass.] 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.

Slip op. at 29 (emphasis supplied).

The SJC also clarified that this first step turns principally on the pleadings, that is, the allegations in the non-moving party's complaint or counterclaim:

> At the first stage, a court need only conduct a facial review of a special motion opponent's pleading to identify which factual allegations serve as the basis for a particular claim. Slip op. at 38. [A] motion judge may need to look to other documents in the anti-SLAPP record to determine whether these factual allegations fall within the statutory definition of petitioning activity. This is an objective assessment to be made based upon the documents before the motion judge, without resort to judicial fact finding.

Slip op. at 38, n.21 (citations omitted).

If the moving party satisfies the first step, the second step asks whether the opposing party has shown that the moving party's exercise of its right of petition lacked

any factual support or basis in law and has caused the opposing party injury. The opponent must show by a preponderance of the evidence that:

> the special motion proponent's exercise of its right of petition (1) "was devoid of any reasonable factual support or any arguable basis in law" and (2) "caused actual injury to the [special motion opponent]." G. L. c. 231, § 59H. [P]roving petitioning is "devoid" of any reasonable factual support or any arguable basis in law is a difficult task and one that the statute imposes on the special motion opponent. Slip op. at 32. [W]hen the special motion opponent has submitted evidence and argument challenging the reasonableness of the factual and legal basis of the petitioning, a special motion proponent cannot merely rely on speculation, conclusory assertions, or averments outside of its personal knowledge for the court to identify reasonable support.

Slip op. at 34.

At the second stage, a motion judge "relies on a documentary record, without resolving credibility disputes." Slip op. at 39. If the opposing party has met its burden, at Step 2, on both lack of factual or legal support and injury, the special motion to dismiss should be denied.

Petitioning Activity

The parties disagree on the threshold question whether Malden's claims are based on Friedman's "petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities." *Bristol Asphalt*, Slip Op. at 29. Friedman argues that Malden's lawsuit concerns almost entirely his requests to Malden to produce public records to him, and his appeals to the Supervisor of Malden's responses to his requests. In response, Malden strains to contend that Friedman's requests and his appeals, though in exercise of his statutory rights under the Public Records Law, do not qualify as petitioning because they are not "statements," or fall short of constitutionally-protected statements. Malden is incorrect. Friedman's exercise of his statutory right to request public records from a municipality, and to appeal to the Supervisor when he contends Malden's response does not conform to the Public Records law, fall squarely within petitioning protected by the Anti-SLAPP statute. The first clause of the statutory

definition protects as petitioning, "any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding," as well as "any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other government proceeding." G.L. c. 231, § 59H (sixth para.). Friedman's public records requests to Malden, a legislative and executive body, qualify as petitioning, as do his appeals to the Supervisor, part of an executive body. Further, the requests and appeals and advocacy all are submitted to a government proceeding—namely, the statutory process established by the Public Records Law.

It is true that the main thrust of Malden's claims—its c. 30A appeal, certiorari petition, and declaratory judgment—is to obtain an anti-harassment order against Friedman consistent with Malden's view of the protections provided by Section 10(c) of the Public Records Law. This result, were it achieved, plainly would inhibit Friedman's exercise of his statutory petitioning activity, on a prospective basis. However, it does not automatically follow from that objective of the lawsuit that Malden's claims are based solely on Friedman's petitioning activity. Here, a close examination of Malden's Verified Complaint shows that Malden's allegations extend beyond Friedman's petitioning activity (his public records requests and appeals). Namely, Malden alleges that:

- Friedman harassed a former Malden employee by sending a personal investigator he had hired to the home of the former Malden employee. Verified Complaint, ¶ 13.
- In 2022, Friedman publicly posted records containing the home address and social security number of former Malden School Superintendent Ligia Noriega-Murphy. *Id.* ¶ 18.

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

This alleged conduct does not qualify as petitioning. Beyond Freidman's petitioning, Malden alleges that Friedman misused, in an actionable way, certain public records he obtained.[2] These allegations by themselves provide a substantial basis for Malden's claims, that extends beyond the mere filing of requests and appeals.

In addition, certain allegations support the inference that, even though the alleged conduct occurred within the statutory process established by the Public Records Law, the alleged conduct on its face extends beyond bona fide petitioning. Namely, Malden alleges that:

- When the Supervisor approved one of Malden's 35 fee petitions, Friedman requested reconsideration of that decision on nine separate occasions. *Id.* ¶ 26.
- When the Supervisor denied one of Friedman's appeals of Malden's responses, Friedman requested reconsideration of the denial on nine separate occasions. *Id.* ¶ 27.
- Friedman repeatedly and frivolously submitted nearly identical requests for public records, despite knowing that Malden had obtained approval for a fee petition for the same type of information, with the sole purpose of forcing Malden to issue a new response and fee petition which Friedman had no intention of paying. The only purpose is to harass Malden and its officials. *Id.* ¶¶ 51, 53, 54, 58.

[2] Friedman presumably disagrees with this allegation and the characterization of "misuse," however, at this stage my analysis tuns on Malden's allegations in the Verified Complaint. *Bristol Asphalt*, Slip Op. at p. 38.

These allegations too, are a meaningful part of Malden's claims, seeking to establish the type of harassment that warrants an anti-harassment order under Section 10(c). They provide an additional basis beyond the first three allegations highlighted above.

Had Malden's claims rested *solely* on Friedman's exercise of his statutory rights to make public records requests to Malden and file appeals with the Supervisor, such a complaint may well have led to dismissal on Anti-SLAPP grounds. That would not mean Malden could not pursue its administrative appeal or its other remedies; it would mean only that Friedman should not be named as a defendant. However, because the allegations of Malden's complaint go beyond Friedman's petitioning activity, Friedman's Anti-SLAPP motion to dismiss fails at the first step of the *Bristol Asphalt* analysis. This conclusion applies to each of Malden's three claims, as all of the beyond-petitioning allegations support each of Malden's claims—whether the administrative appeal, the certiorari action, or declaratory judgment.

CONCLUSION AND ORDER

For these reasons, Friedman's special motion to dismiss (Paper No. 10) is **denied**.

So ordered.

Christopher K. Barry-Smith
Justice of the Superior Court

DATE: May 14, 2025

2481CV03277 City of Malden vs. Manza Arthur, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth et al

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 12/16/2024
- DCM Track:
- X - Accelerated
- Initiating Action:
- Certiorari Action, G. L. c. 249 § 4
- Status Date:
- 12/16/2024
- Case Judge:
-
- Next Event:
-

All Information | Party | Subsequent Action/Subject | Event | Tickler | Docket | Disposition

Party Information

City of Malden
- Plaintiff

Alias

Party Attorney
- Attorney
- McNeil, Esq., Alicia Ann
- Bar Code
- 632134
- Address
- Law Offices of Alicia A. McNeil
  15 Lincoln St
  Suite 190
  Wakefield, MA 01880
- Phone Number
- (617)263-0123

More Party Information

Manza Arthur, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth
- Defendant

Alias

Party Attorney
- Attorney
- Frohlich, Esq., Julie Ann
- Bar Code
- 554707
- Address
- Massachusetts Attorney Generals Office
  One Ashburton Place
  20th Floor
  Boston, MA 02108
- Phone Number
- (617)963-2394

More Party Information

William Francis Galvin, Secretary of the Commonwealth
- Defendant

Alias	Party Attorney
	• Attorney • Frohlich, Esq., Julie Ann • Bar Code • 554707 • Address • Massachusetts Attorney Generals Office One Ashburton Place 20th Floor Boston, MA 02108 • Phone Number • (617)963-2394

More Party Information

OpenCommonwealth (Bruce Friedman a/k/a OpenComoonwealth.org)
- Defendant

Alias	Party Attorney

More Party Information

Subsequent Action/Subject

Description	Status	SA/Subject #	Status Date	Responding Party	*Judgments*	Pleading Party
Counterclaim	Open	1	12/24/2024	City of Malden	0	OpenCommonwealth (Bruce Friedman a/k/a OpenComoonwealth.org)

Events

Date	Session	Location	Type	Event Judge	Result
04/10/2025 03:00 PM	Civil C Rm 740	Courtroom 740	Rule 12 Hearing	Sisitsky, Hon. Adam	Held - Under advisement
07/21/2025 03:00 PM	Civil C Rm 740	Courtroom 740	Rule 12 Hearing		Canceled

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	12/16/2024	03/17/2025	91	
Judgment	12/16/2024	12/16/2025	365	
Under Advisement	04/10/2025	05/10/2025	30	

Docket Information

Docket Date	*Docket Text*	File Ref Nbr.	*Image Avail.*
12/16/2024	Complaint electronically filed.	1	
12/16/2024	Civil action cover sheet filed.	2	Image

12/17/2024	Case assigned to: DCM Track X - Accelerated was added on 12/17/2024		Image
12/23/2024	Received from Defendant OpenCommonwealth (Bruce Friedman a/k/a OpenComoonwealth.org): Answer with a counterclaim;	3	Image
12/23/2024	Counterclaim filed.		
12/30/2024	Plaintiff City of Malden's EX PARTE Motion for Appointment of Special Process Server, Greg DiGiorgio of DiGiorgio & Associates Constable Service LLC	4	Image
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06/18/2025	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S SPECIAL MOTION TO DISMISS [Dkt. No. 9] CONCLUSION AND ORDER For these reasons, Defendant's Special Motion to Dismiss (Dkt. No. 9) is DENIED. SO ORDERED. Adam L. Sisitsky Associate Justice of the Superior Court June 18, 2025 (See scanned image, 6 pages) Judge: Sisitsky, Hon. Adam	23	Image
06/18/2025	Endorsement on Submission of Renewed Special Motion to Dismiss Plaintiff's Claims Under G.L.c. 231 § 59H (#9.0): Other action taken Following a hearing and consideration of the parties' submissions and as more fully set forth in the Court's Memorandum of Decision and Order of this date, the motion is DENIED. Judge: Sisitsky, Hon. Adam		Image
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Case Disposition

Disposition	Date	Case Judge
Pending		

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss **SUPERIOR COURT DEPARTMENT**
CIVIL ACTION NO. 24CV3277

CITY OF MALDEN,
Plaintiff

v.

MANZA ARTHUR, Supervisor of Records of the Public Records Division of the Office of William Francis Galvin, Secretary of the Commonwealth 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.

INTRODUCTION

1. City of 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.

JURISDICITION 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, 17th 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, 17th 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*

Alicia A. McNeil, Esq.
City Solicitor
City of Malden
Legal Department
215 Pleasant Street, 4th Floor
Malden, MA 01248
781-397-7106
BBO# 632134
amcneil@cityofmalden.org

Date: 12.16.2024

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS v. SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV03277

DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), Pro-Se, and files this Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59H. Further, Defendant Friedman asks 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, and in December 2024 (this case). 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

ML

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 his 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 SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Pursuant to Massachusetts G.L.c. 231 § 59H, Defendant, Friedman hereby makes a special Motion to Dismiss Plaintiff's Complaint as Strategic Litigation Against Public Participation. As grounds for his Motion, Defendant Friedman asserts that:

(1) Counts I, II, and III are subject to dismissal under G.L.c. 231 § 59H. Defendant Friedman and his website, OpenCommonwealth.org are currently under strategic litigation attacks from Malden. Defendant Friedman through his websites, social media posts, and blogs has made PRR's from hundreds of different municipalities, state agencies, public bodies and other governmental agencies, including but not limited to Malden since 2019. Defendant Friedman has published his requests, any and all responses, his appeals, determinations of the SPR, and all records provided. Hundreds of thousands of people have read, downloaded and made use of the published works of Defendant Friedman and his website, OpenCommonwealth and on his social media posts. Much of Malden's pleadings and exhibits come directly from these publications.

(2) Malden has filed 4 (four) lawsuits against Defendant Friedman and OpenCommonwealth, three of them in the fourth quarter of 2024 alone. In each suit, Malden seeks judicial assistance to silence Defendant Friedman. It asks this Court to enter an Order to presumably permanently deny his ability to request and receive public records from Malden. It asks that this Court make a formal finding

that Defendant Friedman is a harasser, therein barring him from making further public records requests.

(3) Malden has used this and three other lawsuits to silence the SPR and prevent the SPR from enforcing PRL with regard to Defendant Friedman and OpenCommonwealth. The SPR is now withholding opinions related to Defendant Friedman's and Open Commonwealth's requests because there is "pending litigation" even though those requests are not the subject of this or any litigation. (See Exhibit A)

(4) Defendant Friedman's Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*") and in Supreme Judicial Court Rule 1:19. Submitting public records requests is engaging in an activity that is protected under the First Amendment, which includes the right to petition the government for information. Each request at issue in Malden's Complaint were written statements submitted directly to Malden, a Municipality, an incorporated city in Massachusetts, and a governmental entity in the Commonwealth of Massachusetts.

(5) Defendant Friedman's appeals to the SPR for Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*"). Each request at issue in Malden's Complaint were written statements submitted directly to the SPR who is a governmental body under the executive branch of Massachusetts (the SOS) for an issue under consideration, to consider and review, and to enlist public participation.

(6) The entirety of Malden's complaint is based on Defendant Friedman's protected petitioning activities, that of making public records requests, that of appealing Malden's responses to Defendant Friedman's public records requests, that of Malden's exhaustive and fruitless petitioning the SPR to deny Defendant Friedman's protected petitioning activity and that of overruling the SPR's

determinations. All of Malden's allegations, claims and counts are based on this protected petitioning activity alone, with no substantial basis other than or in addition to said protected petitioning.

(7) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity was devoid of any reasonable factual support or any arguable basis in law.

(8) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity caused Malden any actual injury.

(9) Plaintiff Malden ("Malden") filed this case on December 16th, 2024.

(10) Malden's complaint failed to provide verification and a sworn attestation to the truthfulness and accuracy of the complaint as required under law and Massachusetts Court rules.

(11) Malden failed to serve Defendant Friedman. Defendant Friedman first learned of this case on December 23, 2024, when he filed his Answer and Counterclaims.

(12) Malden failed to timely serve Co-Defendants Secretary of the Commonwealth ("SOS") and the Supervisor of Public Records ("SPR").

(13) As of the time of this Opposition, said Service has not been perfected and filed with the Court.

(14) This special motion is timely as Defendant Friedman has sixty (60) days to file his Special Motion to Dismiss under G.L.c. 231 § 59H from the date he was served, or in this case, December 23, 2024, when he became aware of this case and filed his Answer and Counterclaims.

(15) Defendant Friedman hereby requests that the Court dismiss Malden's complaint in its entirety with prejudice under G.L.c. 231 § 59H.

Defendant Friedman requests a hearing on his Motions pursuant to Superior Court Rules 9A(a)(1) and 9A(c)(2). As grounds for its request, Defendant Friedman states that under Superior Court Rule 9A(c)(3), a motion to dismiss enjoys a presumptive right to a hearing.

Respectfully Submitted by Defendant,

Dated: January 24th, 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 Special Motion to Dismiss under G.L.c. 231 § 59H was served upon the counsel for the City of Malden, Ms. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

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

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS	)	
v.	)	
SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	)	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV03277

AFFIDAVIT OF DEFENDANT BRUCE FRIEDMAN IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

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

1. I, Bruce Friedman A./K./A. OpenCommonwealth.org am a citizen journalist as defined under Supreme Judicial Court Rule 1:19, who is regularly engaged in the reporting and publishing of news or information about matters of public interest, specifically matters of government transparency and public records. I am a blogger, and poster of information regarding public records, open government and transparency.
2. I regularly report and publish news and information about matters of public interest on OpenCommonwealth.org, @OpenMass, @OpenCommonwealth and have collaborated with other news organizations such as the Boston Globe and Malden News Network.
3. I publish all of the requests, appeals, determinations and records and they are all free and available to anyone anytime.
4. I am personally and exclusively responsible for the website OpenCommonwealth.org.

5. OpenCommonwealth.org is not incorporated, registered or servicemarked or trademarked with any state or federal agency.
6. OpenCommonwealth has no state or federal tax or other ID number of any kind.
7. OpenCommonwealth.org is not a business, it is a website and publication.
8. OpenCommonwealth.org does not generate income or make expenditures.
9. OpenCommonwealth.org is not an employer, nor does it have any employees.
10. Bruce Friedman has and does personally fully fund any monies expended regarding OpenCommonwealth.org.
11. Any public records request, appeal, complaint, filed with the email address info@opencommonwealth.org or under the name opencommonwealth.org were written by Defendant Friedman.
12. All records received by OpenCommonwealth.org, OpenMalden.org, and Bruce Friedman are published and available without constraint to the public.
13. No public records request filed by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate Plaintiff Malden or any other records holder in any way.
14. No appeal, request for review, complaint, pleading or any other inquiry regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
15. No article, posting, editorial, publication or story regarding Plaintiff Malden or any other records holder made by OpenCommonwealth.org, OpenMalden.org, or Bruce Friedman were intended to harass or intimidate in any way.
16. Attached to the Motion to Dismiss is Exhibit A. This Exhibit is a determination of the SPR in RE: SPR 24/3465. This determination regards a public records request dated and served on December 4, 2024, which seeks public records never before sought by me from the City of Malden. The above captioned lawsuit commenced on November 21, 2024. This determination specifically lists this lawsuit as "pending litigation" preventing the SPR from opining on the appeal brought by me. This is prima facie evidence that Malden is using strategic litigation against me to silence and prevent me from engaging in constitutionally protected petitioning activities.

Signed under the pains and penalties of perjury this 24th, day of January 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. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Rebecca.Krumholz@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: January 24th, 2025

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

EXHIBIT A

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

January 15, 2025
SPR24/3465

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

Dear Ms. Desiderio:

I have received the petition of Commonwealth Transparency ("requestor") appealing the response of the City of Malden (City) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On December 5, 2024, the requestor sought the following records from the period of "November 1, 2024 through the date that [the City] receive[s] this request":

> [A]ll public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets. . . .
>
> This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

The City responded on December 19, 2024, providing a fee estimate. Unsatisfied with the City's response, the requestor petitioned this office and this appeal, SPR24/3465, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

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

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

Fee estimate – municipalities

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

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

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

The City's December 19th Response

In its December 19, 2024 response, the City provided a fee estimate of $1,825.00 and stated the following:

> The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of

> obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.
> ...
> In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the Requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.
> ...
> After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

Current Appeal

In the appeal petition, the requestor states, "Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records."

Active Litigation

> 950 C.M.R. 32.08(2)(b) provides in pertinent part:
>
> the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:
>
> 1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

In light of the ongoing litigation, City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of William Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org), Docket No. 2481CV03069, I decline to opine on this matter at this time. See 950 C.M.R. 32.08(2)(b). It should be noted that a change in the status of this action could impact the applicability of 950 C.M.R. 32.08(2)(b).

SPR24/3465

Sincerely,

Manza Arthur
Supervisor of Records

cc: Commonwealth Transparency
James Donnelly, Esq.
Felicia Vasudevan, Esq.

MURPHY HESSE TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

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

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

Dear Supervisor of Public Records:

This office is counsel to the City of Malden in connection with a public records request by OpenCommonwealth, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Malden replied to the request in a timely fashion on December 19, 2024.

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

Harassment

This public records request is duplicative of prior public records requests submitted by OpenCommonwealth seeking public records of City business on the personal devices of the Mayor and other Malden officials and employees. For every prior request, Malden sought approval of its fee estimate from the Supervisor of Records and received approval of its fee

petition, yet OpenCommonwealth did not pay Malden's fee estimate. This continues OpenCommonwealth's pattern of harassment of Malden – Open Commonwealth often requests the same information despite the presence of an approved fee petition for those same records or similar records. The only purpose behind Open Commonwealth's requests is to harass Malden, its officials, and its employees.

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

Moreover, the continuing harassment of Malden is already the subject of current and active litigation. See City of Malden v. Manza Arthur, Supervisor of Records of the Public Records Divisions of the Office of Wiliam Francis Galvin, Secretary of the Commonwealth, William Francis Galvin, Secretary of the Commonwealth and OpenCommonwealth (Bruce Friedman D/B/A OpenCommonwealth.org, Docket No. 2481CV03069. Mr. Friedman's and Open Commonwealth's requests continue the pattern of harassment that is the precise subject of the pending litigation. Accordingly, during the pendency of Malden's lawsuit and in accordance with 950 CMR 32.08(2)(b)(1), Malden should be relieved of its obligation to respond to Mr. Friedman and OpenCommonwealth's requests, as the Supervisor has consistently held. See, e.g., SPR21/1540; SPR21/1524; SPR21/1739; SPR21/1748; SPR21/1799.

For these reasons, the District asks that the Supervisor relieve Malden of its obligations to respond to this request.

If Malden is not relieved of its obligation to provide with copies of the records sought, then Malden alternatively petitions to charge a fee to produce the records.

Fee Petition

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), the requester will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00.

Please be advised that the fee estimate may be reduced if the requester narrows the scope of the request.

Time Petition

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

To the extent the Supervisor denies that request, given the broad scope of the requests and the volume of potentially responsive records which require detailed review and redaction, Malden

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

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

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

Sincerely,

/s/ James Donnelly
James Donnelly

cc: Open Commonwealth
Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

December 31, 2024
SPR24/3465

Commonwealth Transparency
OpenCommonwealth.org
VIA EMAIL
MA

Dear Commonwealth Transparency:

I have received your letter appealing the response of the City of Malden to your request for records.

I have directed a member of my staff, Alexander Papadopoulos, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Manza Arthur
Supervisor of Records

cc: Mrs. Carol A. Desiderio

Pierce, Patrick (SEC)

From: Commonwealth Transparency <info@opencommonwealth.org>
Sent: Tuesday, December 31, 2024 11:38 AM
To: SEC-DL-PREWEB
Cc: publicrecords@cityofmalden.org
Subject: Petition for Appeal - Malden, MA. - Improper Response and Fee Request
Attachments: Public Records Response (OpenCommonwealth, 12.19.24).PDF; spr242322[90].pdf

Importance: High

Greetings:

On December 5, 2024, the following verbatim PRR was submitted to Malden, MA:

From: Commonwealth Transparency info@opencommonwealth.org
Date: Wednesday, December 4, 2024 at 5:17 PM
To: Public Records publicrecords@cityofmalden.org
Cc: cdesiderio@cityofmalden.org cdesiderio@cityofmalden.org
Subject: Public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A

Greetings:

This is a formal public records request under the Massachusetts Public Records Law M.G.L. c66, §§ 10-10A:

- This is a new request and does not replace or modify any prior requests.

- For the Time Period of November 1, 2024 through the date that you receive this request:
- Please ***extract*** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.
- This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.

OpenCommonwealth reminds the City that the extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f).

This request seeks responsive documents be delivered in electronic format and in the format in which they are regularly maintained, and specifically includes all electronic mail attachments and metadata.

Where no such records in the above categories exist, please provide a written statement to that effect.

With respect to the form of production, we note that relevant regulations require the production of records in an accessible, commonly used electronic form, to the extent feasible. See 950 CMR 32.04(5)(d).

The records custodian who receives this request is required to use his or her "superior knowledge" to determine the exact records that are responsive to this request.

Your government entity may have multiple RAOs that are assigned to a specific division or department within that entity. A request to one RAO may include records of another division or department within the RAOs' agency or municipality. RAOs must use their superior knowledge of the records to ensure that a request for records is delivered to the appropriate party. Therefore, an RAO is expected to forward such requests to the appropriate parties within its municipality or agency.

Record custodians are also required to implement new record keeping systems and databases in such a way as to allow for "retrieval of public portions of records to provide maximum public access." See 950 CMR 32.07(1)(e).

Extraction of such data from a database or electronic record system does not constitute creating a new record. See 950 CMR 32.07(1)(f). Printing these records from a database or electronic system, redacting them with a marker, and then re-scanning them, is generally not consistent with these regulations; this process provides the digital records neither in the preferred form nor in a "searchable machine-readable form." 950 CMR 32.04(5)(d).

If necessary, we welcome reasonable suggested modifications pursuant to 950 CMR 32.06(2)(g). Per Attorney Gen. v. Dist. Attorney for Plymouth Dist., 484 Mass. 260, 141 N.E.3d 429 (2020), compiling information from a database is not tantamount to creating a new record that would otherwise be precluded under public records law. Specifically: "Where public records are in electronic form, a public records request that requires a government entity to search its electronic

database to extract requested data does not mean that the extracted data constitute the creation of a new record, which would not be required, under the public records law. " Id. at 442 to 443.

Thus, we request that your department query its database and provide a response to the records request. Should you determine that some portions of the documents are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note for any such redactions the applicable statutory exemption and explain why it applies to the redacted or withheld information.

This request and all responsive documents are for express purposes of gathering information to promote citizen oversight and further the public understanding of the operation and activities of our government.

Kindest Regards,

OpenCommonwealth.org

On December 19, 2024, the following email and attached document were received:

From: James Donnelly <jdonnelly@mhtl.com>
Date: Thursday, December 19, 2024 at 12:33 PM
To: Commonwealth Transparency <info@opencommonwealth.org>
Cc: pre@sec.state.ma.us <pre@sec.state.ma.us>, Felicia S. Vasudevan <fvasudevan@mhtl.com>, Joanne Perperian <jperperian@CITYOFMALDEN.ORG>
Subject: Public Records Response
Good afternoon,

Please find attached Malden's response to your public records request.

Sincerely,

James Donnelly, Esq.
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Braintree Hill Office Park | 50 Braintree Hill Office Park, Suite 410 | Braintree, MA 02184
Tel: (617) 479-5000 | Fax: (617) 479-6469
E-mail: jdonnelly@mhtl.com | www.mhtl.com

OpenCommonwealth hereby petitions the SPR to find and Order that Malden's response was untimely, insufficient and improper and as a result they are barred from charging for the responsive records.

In support of this petition, OpenCommonwealth provides the following:

1. Malden's response was untimely.
2. The responsive record set at issue here is for ***only*** 34 calendar days or 21 business days (November 1, 2024 through December 5, 2024).
3. The response ***admits*** that here records are not in the possession, custody, or custody of the City, but remain in the custody and control of the Mayor on his personal device(s).
4. Malden's response requests fees for ***records organization*** disguised as fees for search, for which they are precluded from charging. They sate as follows:

   "The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified."

   Malden is claiming that the act and effort involved in separating the Mayor of Malden's personal business from official City Business is a burden and cost to be borne by the requestor, this claim is wholly without merit. The Mayor is required by law to provide a copy of any public record created or received on his personal devices to the City for safeguarding, retention and management. He admits in the rte4sponse that he has failed to do this and that the requestor is responsible for the cost and burden of identifying public records that have been created and/or received on the Mayor's personal device(s). All of the records are required by to be provided to the City by the Mayor.
5. Malden's response failed to provide the legally required specificity for the responsive record set including but not limited to:
   - The ***specific*** number of responsive records.
   - The cost for segregation estimated accurately in good-faith per record with specificity.
   - The cost for redactions estimated accurately in good-faith per record with specificity to the specific exemption(s) claimed.
   - The cost for search, if any such cost is legally available to them in good-faith per record with specificity.
6. Malden failed to provide any responsive records at all.
7. SPR 24/2322 (attached hereto) details the exact same issues at the heart of this request and in Malden's response regarding public records regarding city business on the Mayor's private device(s) which the City does not maintain custody or control.
   - Citing G. L. c. 66, § 13 & 17 – Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county or municipality to which the records originally belonged; provided, however, that the custodian of public records may enter into a contract for the storage of records containing public record information, but no contract for the storage of public records shall be entered into if the contract prevents or unduly restricts a records access officer or custodian of records from providing or storing the records in accordance with this chapter. Records not directly in the custodian's possession shall be considered in the custody of the custodian if subject to a contract for the storage of public records that is permitted by this section. If the custodian does not have custody of public records, the custodian shall demand delivery from any person unlawfully having possession of the records, and the records shall immediately be delivered by such person to the

custodian. A person who refuses or neglects to perform any duty required by this section shall be punished by fine of not more than $20.

- Citing G. L. c. 66, § 13 - Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Wherefore OpenCommonwealth requests that the SPR find and Order Malden to provide all responsive records without delay, and without charge.

Kindest Regards,

OpenCommonwealth.org
OpenCommonwealth.org is a free and open public media organization. We serve the greater Massachusetts community with the goal to provide and empower citizen oversight of governmental operations and activities, help citizens understand how, why and where taxpayer dollars are expended, and to investigate, gather and report the facts in the online publications found on the webpages and social media accounts of OpenCommonwealth.org. OpenCommonwealth.org is a free service, is staffed only by volunteers, and all costs and expenses are borne by its creators. No person has ever paid OpenCommonwealth.org any monies, or any in-kind contributions for its reporting, or access to any of its files. It is the structural intent of OpenCommonwealth.org to maintain and persist as an absolutely free service to the entire public. Since its inception, OpenCommonwealth.org has been viewed by over 130,000 visitors between the website and social media, and has had over 20,000 external visitors view and/or download records from our free and publicly available records repository. Currently OpenCommonwealth.org has over a 1.5 Terabytes of publicly available content published.

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

James Donnelly
jdonnelly@mhtl.com

December 19, 2024

VIA ELECTRONIC MAIL
Open Commonwealth
info@opencommonwealth.org

Re: Response to Public Records Requests Received December 5, 2024

Dear Open Commonwealth:

This office represents the City of Malden in connection with your public records request received December 5, 2024 (the "Request"). Malden hereby responds within ten business days of the Request, which sought the following:

- *For the Time Period of November 1, 2024 through the date that you receive this request:*
- *Please **extract** all public records of any City business on any personal device of Gary Christenson, this request specifically seeks text messages both sent and received, email messages, photographs, voicemail recordings and or transcripts, messages from any messaging service including but not limited to WhatsApp, and/or Signal, and/or Telegram, calendar entries, documents, spreadsheets.*
- *This requests specifically requests that the extract be provided in the original format, machine readable, and not screenshots or .pdf format.*

Response

The search process here involves going one-by-one through each text, email, photograph, and voicemail on any of the Mayor's personal devices – amounting to thousands of records – until any record regarding City business dating back to November 1, 2024 has been identified. These records may contain student record information protected by FERPA and Exemption (a) of the Public Records Law, as the Mayor is also the Chair of the School Committee. The records may also contain attorney-client privileged information, as the Mayor often communicates with attorneys for both the City and the School Committee for the purpose of obtaining legal advice, which has not been shared with the public. The texts may also contain information protected from disclosure by Exemption (c), including personnel file information or other information the disclosure of which would constitute an unwarranted invasion of personal privacy, as the Mayor oversees many employees and often communicates with them. The records may also contain the personal email address, personal phone number, or home addresses of City employees, information protected by Exemption (o). If any redactions are required, Malden will have to convert the record to a pdf, and redact the pdf before production. Accordingly, Malden estimates that it will take 75 hours to search for, review, and redact any responsive records.

Calculation of Fee Estimate

To produce these records, Malden provides the following fee estimate. Pursuant to G. L. c. 66, § 10(d)(iii) *et seq.*, "if a municipality is required to devote more than 2 hours of employee time to search for, compile, segregate, redact or reproduce a record requested, the records access officer may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the record requested." In this case, the lowest paid employee who has the necessary skill required to segregate and redact the records requested is a salaried employee whose effective hourly rate exceeds $25 per hour. In accordance with 950 CMR 37.02(2)(m)(1), you will not be charged for the first two (2) hours of those services and will only be charged at a rate of $25 per hour.

After subtracting the first two (2) hours, 73 hours for search, segregation and redaction at the rate of $25 per hour, yields a fee estimate of $1,825.00. Malden is seeking approval of its estimate in a harassment, fee, and time petition to the Supervisor of Records.

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

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

Right of Appeal

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

Respectfully,

/s/ James Donnelly
James Donnelly

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

Joanne Perperian, Records Access Administrator, City of Malden
Carol Ann Desiderio, City Clerk

C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN PUBLIC SCHOOLS v. SUPERVISOR OF RECORDS, SECRETARY OF THE COMMONWEALTH, and OPEN COMMONWEALTH AND BRUCE FRIEDMAN	MIDDLESEX SUPERIOR COURT DOCKET NO.: 2481CV03277

DEFENDANT'S SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), Pro-Se, and files this Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59H. Further, Defendant Friedman asks 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, and in December 2024 (this case). 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

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1/31/2025 Denied without prejudice for failure to comply with Superior Court Rule 9A.

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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.: 2481CV03277

RECEIVED
2/18/2025

DEFENDANT'S RENEWED SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Comes now, Defendant Bruce Friedman of Malden, MA ("Defendant Friedman"), Pro-Se, and files this Special Motion to Dismiss the Plaintiff's Complaint in its entirety under Massachusetts G.L.c. 231 § 59H. Further, Defendant Friedman asks 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, and in December 2024 (this case). 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

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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 his 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 SPECIAL MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER G.L.c. 231 § 59H

Pursuant to Massachusetts G.L.c. 231 § 59H, Defendant, Friedman hereby makes a special Motion to Dismiss Plaintiff's Complaint as Strategic Litigation Against Public Participation. As grounds for his Motion, Defendant Friedman asserts that:

(1) Counts I, II, and III are subject to dismissal under G.L.c. 231 § 59H. Defendant Friedman and his website, OpenCommonwealth.org are currently under strategic litigation attacks from Malden. Defendant Friedman through his websites, social media posts, and blogs has made PRR's from hundreds of different municipalities, state agencies, public bodies and other governmental agencies, including but not limited to Malden since 2019. Defendant Friedman has published his requests, any and all responses, his appeals, determinations of the SPR, and all records provided. Hundreds of thousands of people have read, downloaded and made use of the published works of Defendant Friedman and his website, OpenCommonwealth and on his social media posts. Much of Malden's pleadings and exhibits come directly from these publications.

(2) Malden has filed 4 (four) lawsuits against Defendant Friedman and OpenCommonwealth, three of them in the fourth quarter of 2024 alone. In each suit, Malden seeks judicial assistance to silence Defendant Friedman. It asks this Court to enter an Order to presumably permanently deny his ability to request and receive public records from Malden. It asks that this Court make a formal finding

that Defendant Friedman is a harasser, therein barring him from making further public records requests.

(3) Malden has used this and three other lawsuits to silence the SPR and prevent the SPR from enforcing PRL with regard to Defendant Friedman and OpenCommonwealth. The SPR is now withholding opinions related to Defendant Friedman's and Open Commonwealth's requests because there is "pending litigation" even though those requests are not the subject of this or any litigation. (See Exhibit A)

(4) Defendant Friedman's Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*") and in Supreme Judicial Court Rule 1:19. Submitting public records requests is engaging in an activity that is protected under the First Amendment, which includes the right to petition the government for information. Each request at issue in Malden's Complaint were written statements submitted directly to Malden, a Municipality, an incorporated city in Massachusetts, and a governmental entity in the Commonwealth of Massachusetts.

(5) Defendant Friedman's appeals to the SPR for Public Records Requests were and are definitive protected petitioning activity as defined by the Legislature and the Massachusetts Supreme Judicial Court in ***Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 542 (2024)*** ("*Bristol*"). Each request at issue in Malden's Complaint were written statements submitted directly to the SPR who is a governmental body under the executive branch of Massachusetts (the SOS) for an issue under consideration, to consider and review, and to enlist public participation.

(6) The entirety of Malden's complaint is based on Defendant Friedman's protected petitioning activities, that of making public records requests, that of appealing Malden's responses to Defendant Friedman's public records requests, that of Malden's exhaustive and fruitless petitioning the SPR to deny Defendant Friedman's protected petitioning activity and that of overruling the SPR's

determinations. All of Malden's allegations, claims and counts are based on this protected petitioning activity alone, with no substantial basis other than or in addition to said protected petitioning.

(7) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity was devoid of any reasonable factual support or any arguable basis in law.

(8) Malden has failed to claim or demonstrate that Defendant Friedman's protected petitioning activity caused Malden any actual injury.

(9) Plaintiff Malden ("Malden") filed this case on December 16th, 2024.

(10) Malden's complaint failed to provide verification and a sworn attestation to the truthfulness and accuracy of the complaint as required under law and Massachusetts Court rules.

(11) Malden failed to serve Defendant Friedman. Defendant Friedman first learned of this case on December 23, 2024, when he filed his Answer and Counterclaims.

(12) Malden failed to timely serve Co-Defendants Secretary of the Commonwealth ("SOS") and the Supervisor of Public Records ("SPR").

(13) As of the time of this Opposition, said Service has not been perfected and filed with the Court.

(14) This special motion is timely as Defendant Friedman has sixty (60) days to file his Special Motion to Dismiss under G.L.c. 231 § 59H from the date he was served, or in this case, December 23, 2024, when he became aware of this case and filed his Answer and Counterclaims.

(15) Defendant Friedman hereby requests that the Court dismiss Malden's complaint in its entirety with prejudice under G.L.c. 231 § 59H.

Plaintiff has stated that this Court should somehow Order Defendant to obtain counsel and that not doing so would be permitting the unlawful practice of law. This position seems to be based on the incorrect premise that OpenCommonwealth is an entity capable of being sued. OpenCommonwealth is a web page. It has no status as any legal entity. It is not incorporated and has no tax ID number. It has no bank account. It does no business. It earns no income.

OpenCommonwealth is simply a moniker I used for a website and social media publication of news and public records data and where I make the results of public records I gather available to the public. Plaintiff relies on Wilbur v. Tunnell, 98 Mass. App. Ct. 19, 23 (2020) in support of its position that Defendant Friedman should be required to retain counsel. The *Wilbur* case does not support Plaintiff's position. "The ability to represent oneself in the courts of the Commonwealth is protected by statute. See G. L. c. 221, § 48 ("Parties may manage, prosecute or defend their own suits personally, or by such attorneys as they may engage")" *Id.* The *Wilbur* decision states that pro-se representation is appropriate where the pro-se litigant is only representing their own interests and not those of others. "In the narrow circumstances presented, where no third-party interests other than those of the litigants are at stake, we agree with the weight of Federal and State authority that the personal representative ought to be able to exercise the statutory right of self-representation." *Id.* Defendant Friedman's affidavit filed on January 24, 2025, details the facts surrounding his use of the OpenCommonwealth moniker. Those facts are uncontested by the Plaintiff. Defendant Friedman ***is*** OpenCommonwealth, there is no other party, no other interest—only that of Defendant Friedman. Plaintiff does not and cannot contest these facts. Plaintiff requested service on Bruce Friedman d/b/a OpenCommonwealth however; as indicated in the aforementioned affidavit OpenCommonwealth is not a business entity.

Plaintiff's attempt to have this Court Order Plaintiff Friedman to obtain counsel under the threat of the illegal practice of law further demonstrates the case Defendant Friedman makes in his claims under G.L.c. 231 § 59H. Plaintiff uses any means available to apply pressure to Defendant Friedman including an attempt to force him to expend thousands of dollars to defend four civil suits brought by Malden, three alone in the last three months of 2024. This tactic illustrates that Malden's case is Strategic Litigation Against Public Participation.

To properly frame the questions that this Court must answer;

- Is the act of requesting public records from a government entity in Massachusetts an act of public participation?
- Is the act of appealing to the Supervisor of Public Records an act of public participation?
- Is making a public records request protected petitioning activity under G.L.c. 231 § 59H?

- Is appealing to the co-defendant Supervisor of Records for relief under Massachusetts public records law protected petitioning activity under G.L.c. 231 § 59H?

Unfortunately, these questions are questions of first impression in Massachusetts and no binding case law has made findings regarding these fundamental issues. (In fact, all cases filed by Malden against Mr. Friedman are also matters of first impression as it relates to whether a public records holder can sue a records requestor. Thus, of course, whether such a case can survive a SLAPP motion is also one of first impression.)

Massachusetts is one of 13 states with laws containing a broad definition of public participation including Arkansas, California, Connecticut, Florida, Guam, Louisiana, Maryland, Nevada, Oklahoma, Oregon, Rhode Island, and Texas. All of these states' laws are either facially broad or include provisions that could logically extend to public records requests because they protect speech aimed at prompting government action on issues of public interest or concern.

The U.S. District Court of Massachusetts in December of 2024 made the following determination and Order in *Ascend Learning, LLC and Assessment Technologies Institute, L.L.C. v. Bridgette Bryan and SPIN-Learning, LLC, No. 22-cv-11978*:

> "The Massachusetts Supreme Judicial Court has laid out a two-stage burden-shifting procedure for such special motions to dismiss. Under "[s]tage one," the proponent of the special motion to dismiss "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." Bristol, 227 N.E.3d at 1036-37 (cleaned up). "In order to determine if statements are petitioning, [courts] consider them in the over-all context in which they were made." N. Am. Expositions Co. Ltd. P'ship v. Corcoran, 898 N.E.2d 831, 841 (Mass. 2009). While "[t]he typical mischief that the legislation intended to remedy was lawsuits directed at individual citizens of modest means for speaking publicly against development projects," Duracraft Corp. v. Holmes Prods. Corp., 691 N.E.2d 935, 940 (Mass. 1998), the statute provides for broader protection in certain situations. Some

> "[t]ypical categories of petitioning activities include `reporting violations of law, writing to government officials, attending public hearings, testifying before government bodies, circulating petitions for signature, lobbying for legislation, campaigning in initiative or referendum elections, filing agency protests or appeals, being parties in law-reform lawsuits, and engaging in peaceful boycotts and demonstrations.'" Riverdale Mills Corp. v. Cavatorta N. Am., Inc., 189 F. Supp. 3d 317, 324 (D. Mass. 2016) (quoting Cadle Co. v. Schlichtmann, 859 N.E.2d 858, 864 (Mass. 2007))."

This opinion and determination strictly construed answers in the affirms that Defendant Friedman's appeal to the Supervisor of Records is a "typical category of petitioning activity". *Id.* Thus, Defendant Friedman's request that this court dismiss Plaintiff's Complaint pursuant to G.L.c. 231 § 59H should be granted. All three Counts of the Plaintiff's case seek relief from the Determinations made by the Co-Defendant Supervisor of Public Records. Those Determinations were the result of Defendant Friedman's protected petitioning activity when he appealed Plaintiff's responses or non-responses. In those appeals Defendant Friedman stated that Plaintiff violated the law related to his public records requests.

Additionally, and perhaps more broadly, *writing to government officials* is the foundation of a public records request. In the instant case, each of the three Counts of the Plaintiff's case starts with Defendant Friedman writing to the City of Malden's records access officers. This activity is protected activity under the U.S. and Massachusetts Constitutions under freedom of speech and freedom of the press. Public records requests are clear and succinct examples of seeking information. Submitting a public records request is engaging in an activity that is protected under the First Amendment, which includes the right to petition the government, including for information.

Plaintiff repeatedly requests relief from the Co-Defendant and the Courts in the form of labeling Defendant Friedman's public records requests as harassing and request that he be deemed a harasser under Massachusetts G.L.c. 66 § 10(c)(vi) and under 950 CMR 32.06(f):

> *"if, when reviewing a petition for extension of time described in 950 CMR 32.06(4)(d), the Supervisor determines that the request is part of a series of contemporaneous*

requests that are frivolous or designed to intimidate or harass, ***and*** *the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the custodian of its obligation to provide copies of the records sought."*

(Emphasis added.) The facts before this Court (and in all four cases currently before the Middlesex Superior Court) do not support a favorable finding for Plaintiff, who has to prove BOTH elements: 1. A series of contemporaneous requests that are frivolous or designed to intimidate or harass; AND 2. That the requests are not intended for broad dissemination of information to the public about actual or alleged government activity. Plaintiff consistently wants to ignore that Defendant Friedman has proven beyond the any reasonable doubt that all of his requests, all of the responses, appeals and public records provided to him by the Plaintiff and all other government agencies are broadly and publicly disseminated and regularly read, downloaded and used by the public.

In *Bristol Asphalt, Co. v. Rochester Bituminous Prod., Inc., 227 N.E.3d 1019, 1032 (Mass. 2024)* The Massachusetts Supreme Judicial Court opined:

"This court simplified the existing framework for assessing special motions to dismiss brought pursuant to G. L. c. 231, § 59H, the "anti-SLAPP" statute, to ensure that the legislative intent behind the statute was not undermined by its misapplication, and thus a proponent of a special motion to dismiss must make a threshold showing through the pleadings and affidavits that the claims against it are based on its petitioning activities alone and have no substantial basis other than or in addition to those activities [547-557]; and once a special motion proponent has met this threshold burden, allowance of the special motion to dismiss is required, unless the special motion opponent shows that the special motion proponent's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and caused actual injury to the special motion opponent [557-560]."

Here, Plaintiff's own Claims are completely and exclusively based on Defendant Friedman's public records requests and the determinations made by the Co-Defendant Supervisor of Public Records. There are no activities alleged by Plaintiff Malden outside of these two activities for which Plaintiff Malden seeks relief and the only relief they specifically seek is to be relieved of

the duty to provide the public records requested by Defendant Friedman, and the Orders and Determinations issued by Co-Defendant Supervisor of Public Records.

If this Court finds that Defendant Friedman or the acts of the Co-Defendant Supervisor of Public Records are public participation and/or protected petitioning activities of Defendant Friedman, then under *Bristol*, a threshold showing has been made.

If this Court finds that Plaintiff Malden's claims in its complaint are void of any activities outside of Defendant's activities requesting public records and appealing public records responses, or lack thereof, to the Co-Defendant Supervisor of Public Records, then under *Bristol* the burden shifts to Plaintiff Malden to show that Defendant Friedman's exercise of his rights of petition was devoid of any reasonable factual support or any arguable basis in law ***and*** caused actual injury to Plaintiff Malden.

Plaintiff Malden has neither plead nor affirmed that Defendant Friedman's public records requests and his appeals to co-defendant Supervisor of Records were or are devoid of any reasonable factual support or any arguable basis in law. One could certainly argue that the fact that the Supervisor has granted Mr. Friedman's appeals and ruled in his favor the majority of the time would certainly indicate that there was reasonable factual support and an arguable basis in the law for positions he took in those appeals.

Plaintiff Malden claims with no support that *"Defendant Friedman's alleged petitioning activity is a complete sham which has caused and continues to cause Malden actual injury."* Friedman has no idea what basis Plaintiff has for claiming his public records requests are a "complete sham". He can point to numerous instances where his petitioning activity has revealed issues causing citizen concern over the governance of the Plaintiff City, including but not limited to: missing and/or misappropriated funds, nepotism, improper handling of public records; and numerous findings by the attorney general of Open Meeting Law violations and public records violations. No actual injuries have been pled or sworn to, ever. Malden has failed to establish any basis for this Court to believe or find that Malden has suffered any injuries. What is important to note is that Malden has only expended time RESISTING Mr. Friedman's requests

for records. Further, assuming that Malden did nothing - refused to provide records and ignored any orders issued by the Supervisor—what would happen to Malden? NOTHING, unless and until either Mr. Friedman decided to initiate a suit to obtain the records or the Attorney General's office filed suit to force Malden's compliance with a Co-Defendant Supervisor of Records decision, in which case Malden would enjoy a much better standard of review under the public records law. Even in that case the law does not provide for a monetary penalty of any kind. Malden has chosen to expend time and money resisting public records requests and suing a citizen that makes those requests. No one forced Plaintiff to do this.

Under Section 59H, this court shall advance any such special motion so that it may be heard and determined as expeditiously as possible. The court shall grant such special motion, unless the party against whom such special motion is made shows that: (1) the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

Defendant Friedman requests an expedited hearing on his Motion pursuant to G.L.c. 231 § 59H.

Respectfully Submitted by Defendant,

Dated: February 18th, 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. Alicia McNeil; amcneil@cityofmalden.org and to counsel for Defendants Supervisor of Records and Secretary of the Commonwealth at Julie.Frohlich@mass.gov electronically via email and by email sent by the undersigned and through efile and serve.

Dated: February 18th, 2025

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

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2481CV03277

CITY OF MALDEN

vs.

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

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S SPECIAL MOTION TO DISMISS [Dkt. No. 9]

This case arises out of a dispute between plaintiff, City of Malden ("Malden" or "the City"), and defendant Bruce Friedman ("Friedman") (who runs the website www.opencommonwealth.org, ("OC")), specifically concerning multiple public records requests made to Malden by Friedman via OC[1]. Per the allegations of Plaintiff's Complaint, on August 30, 2024, Defendant OC submitted four public records requests to Malden within the span of eight minutes. The first three public records requests sought information from three different individuals between the dates of July 18, 2024 and August 30, 2024. The fourth public records request sought information from three different email accounts between the dates of January 1, 2024 and August 30, 2024.

Malden responded on September 17, 2024, with a fee estimate, pursuant to G.L. 66, et seq. and informed OC that it would file a fee petition with Defendant Supervisor of Records of

[1] Malden seems to suggest that OC is a legal entity (arguing that Friedman, as he is not an attorney, may not file a motion on behalf of OC or otherwise appear on OC's behalf). Friedman argues that he "**is** OpenCommonwealth" and "OpenCommonwealth is simply a moniker" he utilizes to post public records, news, etc. For the purposes of the Court's consideration of the instant motion, the Court declines to address this topic.

the Secretary of the Commonwealth ("Supervisor") as well as a time extension request. The Supervisor allowed Malden's request for an extension of time; however, denied Malden's fee petition. Malden sent a letter requesting the Supervisor reconsider its decision since Malden had timely requested the fee within the 10-day period, excluding the Labor Day holiday. The Supervisor refused to reconsider its denial of the requested fee petition.

Malden filed the instant case seeking: (Count 1) Judicial Review, pursuant to M.G.L. c. 30A, §14 of the Supervisor's Determination; (Count II) Certiorari Review pursuant to MGL c. 249, §4 (in the event judicial review under 30A is not available to it); and, (Count III) Declaratory Judgment pursuant to MGL c. 231A that Malden responded to the request within ten days, and was entitled to its fees, and that the request by OC was intended to harass Malden.

Presently before the court is Friedman's special motion to dismiss under G.L. c. 231, 59H, the Anti-SLAPP statute, designed to prohibit strategic lawsuits against public participation. The question raised by Friedman's motion is whether the Anti-SLAPP law prohibits the claims against him.

ANALYSIS

In *Bristol Asphalt Co., Inc. v. Rochester Bituminous Products, Inc.* 493 Mass. 529 (2024) ("*Bristol Asphalt*") the SJC abandoned the complicated multistep Anti-SLAPP analysis employed since *Blanchard v. Steward Carney Hosp., Inc.*, 477 Mass. 141 (2017) in favor of a two-step approach comparable to that previously established in *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass.156 (1998).

The first step of the Anti-SLAPP motion to dismiss, requires that the moving party (Friedman) must show that the claims against him are based solely on protected petitioning activities, such that:

> [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.*" [*Duracraft*, 427 Mass.] 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.

Slip op. at 29 (emphasis supplied).

The SJC also clarified that this first step turns principally on the pleadings, (i.e., the allegations in the non-moving party's complaint or counterclaim), noting that: "[a]t the first stage, a court need only conduct a facial review of a special motion opponent's pleading to identify which factual allegations serve as the basis for a particular claim." *Id.* at 38. However, "a motion judge may need to look to other documents in the anti-SLAPP record to determine whether these factual allegations fall within the statutory definition of petitioning activity. *Id.* This is an objective assessment to be made based upon the documents before the motion judge, without resort to judicial fact finding. *Id.* at 38, n.21 (citations omitted).

If the moving party satisfies the first step, the second step is to determine whether the opposing party has shown that the moving party's exercise of its right of petition lacked any factual support or basis in the law and has caused the opposing party injury. The opponent must show by a preponderance of the evidence that:

> the special motion proponent's exercise of its right of petition (l) "was devoid of any reasonable. factual support or any arguable basis in law" and (2) "caused actual injury to the [special motion opponent]." G. L. c. 231, 59H.

> [P]roving petitioning is "devoid" of any reasonable factual support or any arguable basis in law is a difficult task and one that the statute imposes on the special motion opponent. Slip op. at 32. [W]hen the special motion opponent has submitted evidence and argument challenging the reasonableness of the factual and legal basis of the petitioning, a special motion proponent cannot merely rely on speculation, conclusory assertions, or averments outside of its personal knowledge for the court to identify reasonable support.
>
> Slip op. at 34.

The Court "relies on a documentary record, without resolving credibility disputes" for the second step. *Id.* at 39. If the opposing party has met its burden, at Step two on both lack of factual or legal support and injury, the special motion to dismiss should be denied.

Here, the parties disagree on the threshold question of whether Malden's claims are based on Friedman's "petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities." *Bristol Asphalt*, Slip Op. at 29. Friedman argues that Malden's claims are "completely and exclusively" based on his requests to Malden to produce public records to him, "*and the determinations made by* [the Supervisor]." In response, Malden suggests that Friedman's requests, though in exercise of his statutory rights under the Public Records Law, are not constitutionally-protected petitioning activity. The Court disagrees with Malden on this point. Friedman's exercise of the right to request public records from a municipality, fall squarely within petitioning protected by the Anti-SLAPP statute.

Malden's claims—its c. 30A appeal, certiorari petition, and declaratory judgment—are ostensibly geared to obtain the protections provided by: Section 10(c) of the Public Records Law., which if successful in securing the Court's determination that Friedman intended to harass Malden, would in turn inhibit Friedman's exercise of his statutory petitioning activity, on a prospective basis. However, in significant respect, Malden's Complaint does not involve Friedman at all – but for the fact that he made the requests at issue: in substantial part, Malden

seeks relief from the actions of another - what it deems an erroneous decision by the Supervisor concerning the timing (counting of days) of Malden's response. Malden seeks redress for the Supervisor's denial of Malden's request to charge a fee. The Supervisor based its decision on it's determination that Malden's request was not timely. Malden argues that the Supervisor improperly counted Monday September 2, 2024, as a business day in calculating the timeframe within which Malden was permitted to file its request. Malden argues that because that day was Labor Day, a holiday, and not a "business day," under the public records law regulations, the Supervisor should not have included it in its calculation of the ten business days within which Malden was allowed to file its request.

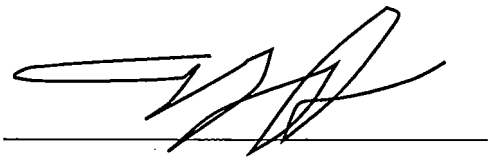
A fair reading of Malden's complaint on this point suggests that the objective of the lawsuit is not based solely on Friedman's petitioning activity, but rather, substantially based on something else. Malden's allegations extend well beyond Friedman's petitioning activity and indeed focus more on the actions of the Supervisor and how that office calculates time restrictions under the law.

Had Malden's claims rested solely on Friedman's exercise of his statutory rights to make public records requests to Malden, such a complaint may well have led to dismissal on Anti-SLAPP grounds. However, because the allegations of Malden's complaint go well beyond just Friedman's petitioning activity, Friedman's Anti-SLAPP motion to dismiss fails under the first stage of the *Bristol Asphalt* analysis. This conclusion applies to each of Malden's three claims, as all of the beyond-petitioning allegations support each of Malden's claims—whether the administrative appeal, the certiorari action, or declaratory judgment.

CONCLUSION AND ORDER

For these reasons, Defendant's Special Motion to Dismiss (Dkt. No. 9) is DENIED.

SO ORDERED.



Adam L. Sisitsky
Associate Justice of the Superior Court

June 18, 2025