

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF CAMBRIDGE

and

CAMBRIDGE POLICE SUPERIOR  
OFFICERS ASSOCIATION

Case No.: MUP-22-9551

Date issued: May 20, 2025

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Kate M. Kleimola, Esq.

Representing the City of Cambridge

Alan J. McDonald, Esq.

Representing the Cambridge Police  
Superior Officers Association

HEARING OFFICER'S DECISION

SUMMARY

1       The issue in this case is whether the City of Cambridge (City) violated Section  
2   10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter  
3   150E (the Law) by: a) failing to provide the Cambridge Police Superior Officers  
4   Association (Union) with all relevant and reasonably necessary information that the Union  
5   had requested; and b) failing to timely provide the Union with requested information. For  
6   the reasons described below, I find that the City has violated the Law.

Statement of the Case

8       On September 8, 2022, the Union filed a charge with the Department of Labor  
9   Relations (DLR) alleging that the City had engaged in prohibited practices within the

1 meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. A DLR  
2 investigator investigated the charge on November 29, 2022. On January 11, 2023, the  
3 investigator issued a complaint alleging that the City violated Sections 10(a)(5) and (1) of  
4 the Law by: a) not providing the Union with an unredacted report that the Union had  
5 requested, which was relevant and reasonably necessary for the Union to perform its  
6 duties as the exclusive bargaining representative, and b) not timely providing the Union  
7 with relevant and reasonably necessary requested information. The City filed its answer  
8 on June 13, 2023.

9 I conducted a hearing on January 10, 2024. Both parties had an opportunity to be  
10 heard, to call witnesses, and to introduce evidence. The parties subsequently filed their  
11 post-hearing briefs on March 25, 2024. Upon review of the entire record, including my  
12 observation of the demeanor of the witnesses, I make the following findings of fact and  
13 render the following opinion.

14 Stipulated Facts

- 15 1. The Employer is a public employer within the meaning of Section 1 of the Law.
- 16 2. The Union is an employee organization within the meaning of Section 1 of the Law.
- 17 3. The Union is the exclusive bargaining representative for a bargaining unit that
- 18 includes superior officers employed by the Employer's Police Department.
- 19 4. At all relevant times, James Crowley (Crowley) was a unit member employed by
- 20 the Employer.
- 21 5. On or about July 2, 2019, the Employer completed its investigation into Crowley
- 22 and generated a Report of Investigation and its Findings (Report).
- 23 6. On or about September 30, 2019, Police Commissioner Branville Bard (Bard)
- 24 issued Crowley's written warning. Bard issued the warning after Bard had
- 25 reviewed and considered the Report.
- 26
- 27
- 28
- 29
- 30

1 7. On or about April 1, 2022, the Union notified the Employer that it learned the  
2 Employer had provided the findings in the Report and disposition of discipline  
3 against Crowley to the POST Commission. The Union requested the Employer  
4 provide it with a copy of the Report.

5  
6 8. At all times material Alan McDonald was an authorized agent of the Cambridge  
7 Police Superior Officers Association for dealing with labor relations matters with  
8 the City of Cambridge.

9  
10 9. At all times material Jamie Matthews was an authorized agent of the City of  
11 Cambridge for dealing with labor relations matters with the Cambridge Police  
12 Superior Officers Association.

13 Findings of Fact<sup>1</sup>

14 The City employs approximately 250 sworn officers in its Police Department,  
15 including about fifty lieutenants and sergeants who are members of the Union's  
16 bargaining unit. The City and the Union were parties to a collective bargaining agreement  
17 that, by its terms, was in effect from July 1, 2021 through June 30, 2024 (2021-2024 CBA).

18 The 2021-2024 CBA contained, in part, the following relevant contractual provisions:

19 Article 7 FAIR PRACTICES

20  
21 Section 2. Non-Discrimination/Consistent Policy

22  
23 The City and the Association agree to continue the policy of not discriminating against  
24 any covered employee on the basis of race, color, creed, national origin, sex, sexual  
25 orientation, marital status or participation in or association with the activities of the  
26 Association. The parties further agree that this Agreement should not be enforced in a  
27 manner inconsistent with or in violation of the non-discrimination laws covered by this  
28 Article.

29  
30 Section 3. Sexual Harassment

31  
32 The parties acknowledge that sexual harassment is a form of unlawful sex discrimination  
33 and that no employee shall engage in such conduct.

34  
35 Article 19 GRIEVANCE/ARBITRATION

36  

---

<sup>1</sup> The DLR's jurisdiction in this matter is uncontested.

1 Section 1. Definition/Scope The term “grievance” shall include any dispute concerning  
2 any provision of this Agreement, or any law, ordinance, rule, regulation, policy or practice  
3 relating to the Police Department and its operation as any of such may touch upon  
4 personnel relations, or any decision or order of either the City Manager or the Police  
5 Commissioner as any such may affect personnel or conditions of work and employment.  
6 Except as provided in Section 6 of this Article, no grievance, which is the subject of  
7 M.G.L., c.31, may be submitted as a grievance.  
8

9 Section 2. Grievance Procedure All grievances shall be processed in the following  
10 manner:  
11

12 (a) Step One – Commanding Officer Grievances must first be presented by the  
13 employee and/or the Association to the Commanding Officer designated by the  
14 Police Commissioner as in charge of the employee’s shift or such other  
15 supervisors so designated within thirty (30) calendar days of the act or omission  
16 complained of when the employee knew or reasonably should have known of  
17 said act or omission. ...  
18

19 Section 6. Just Cause  
20

21 No employee shall be disciplined, suspended, discharged, removed or terminated except  
22 for just cause. ...

## 23 Background 24

25 The City has employed Crowley in its Police Department since 1998. Crowley  
26 served as a patrol officer from 1998 through 2003, became a detective<sup>2</sup> in 2003, was  
27 promoted to sergeant in 2004, served as a detective sergeant in the detective unit<sup>3</sup> from  
28 2004 to 2006, then transferred to the Police Department’s administration section from  
29 2006 to 2013, and returned to the detective unit as a detective sergeant in 2013. As a  
30 detective sergeant, Crowley regularly oversaw between six and fifteen detectives,

---

<sup>2</sup> In the City’s Police Department, the position of detective is an assignment rather than a rank.

<sup>3</sup> The City’s Police Department has used the terms the Bureau of Criminal Investigation, the Major Crime Unit, the Criminal Investigation Division, and the Criminal Investigation Section when referring to the detectives unit. For the purposes of this decision, I will use the term detectives unit.

1 including so-called general detectives, as well as detectives dealing with specialized  
2 areas, including domestic violence and sexual assault. In March 2018, Superintendent  
3 of Support Services Stephen DeMarco (DeMarco)<sup>4</sup> asked to see Crowley in DeMarco's  
4 office. Deputy Superintendent Leonard DiPietro (DiPietro) was also present. DeMarco  
5 informed Crowley that he had heard disturbing allegations about Crowley and wanted  
6 Crowley to submit a request for a transfer or Crowley would be involuntarily transferred.  
7 When Crowley asked what the nature of the allegations were, DeMarco replied that he  
8 knew little about them, but that DeMarco wanted Crowley to leave the detectives unit.  
9 DeMarco informed Crowley that there also would be an investigation into the allegations.<sup>5</sup>  
10 Crowley then returned to his office and wrote up a transfer request addressed to DeMarco  
11 with copies to DiPietro and Crowley's immediate superior officer Lieutenant Stephen  
12 Donahue (Donahue). When Crowley gave Donahue a copy of the transfer request,  
13 Donahue responded by asking if Crowley was joking. When Crowley told Donahue about  
14 Crowley's conversation with DeMarco, Donahue indicated that he had no idea that  
15 DeMarco was going to request Crowley's transfer.<sup>6</sup> Crowley took several days off and  
16 then transferred to his new assignment as a sergeant in the patrol unit. A few days later,  
17 Crowley went out on personal leave until July 2018 when he returned to the patrol unit.<sup>7</sup>

---

<sup>4</sup> Support Services encompasses the detectives unit.

<sup>5</sup> Crowley also claimed at hearing that he heard from "the Police Department's grapevine" that there was a complaint against him.

<sup>6</sup> Prior to March 2018, the Police Department never had informed Crowley that his work performance in the detectives unit was subpar.

<sup>7</sup> At some point after Crowley's return to work in July 2018, a representative from the Police Department's Professional Standards Unit informed Crowley that Crowley was the subject of an investigation. The Professional Standards Unit investigates internal and

1 In or about the Fall of 2018, Crowley was reviewing the shared drive (S drive)<sup>8</sup> on  
2 the Police Department's computer system when he discovered an unsigned complaint  
3 about him (2018 Complaint).<sup>9</sup> The 2018 Complaint alleged that since 2013, Crowley had  
4 sent demeaning emails to the author (complainant) and that Crowley had showed  
5 favoritism in how he assigned cases to detectives. The complainant named two other  
6 detectives, whom the complainant alleged were also the subject of Crowley's unfair  
7 treatment. The complainant also identified the detective whom Crowley allegedly favored  
8 and described how Crowley frequently allowed that detective to take a department-issued  
9 vehicle home overnight.

10 On November 4, 2018 at 10:00 a.m., Crowley submitted a report known as a P650  
11 (P650 request) to his superior officer Lieutenant John Boyle (Boyle) seeking an immediate  
12 Professional Standards Unit<sup>10</sup> investigation to determine who authored the 2018  
13 Complaint, who saved it to the S Drive, who had knowledge that the document was  
14 present in the S Drive, and who deleted/relocated it from the S-Drive.<sup>11</sup> Approximately,

---

external complaints against police officers, police officer misconduct, and violations of Police Department rules and regulations. The Professional Standards Unit also compiles reports of the investigations for review and action by the Police Commissioner.

<sup>8</sup> The shared drive is accessible to every sworn and non-sworn employee of the Police Department.

<sup>9</sup> Crowley asserted at hearing that a review of the document's history in the computer showed that it was written between late March and early May 2018. He also claimed that the 2018 Complaint was removed from the S Drive on October 30, 2018.

<sup>10</sup> The Professional Standards Unit is also referred to as the Quality Control Unit.

<sup>11</sup> Crowley attached portions of the 2018 Complaint to his P650 report and emailed Boyle a copy of the 2018 Complaint.

1 thirty-six minutes later, Boyle informed Crowley that he would forward Crowley's P650  
2 Request to the Professional Standards Unit.<sup>12</sup>

3 On December 4, 2018, the Professional Standards Unit sent a memo stating that  
4 it was conducting Investigation No. SI-2018-004 in regard to information that it had  
5 received that Crowley had engaged in alleged unfair and preferential treatment towards  
6 several members of the detectives unit, and that it had scheduled an interview with him  
7 for Monday, December 10, 2018.<sup>13</sup> On December 5, 2018, the Professional Standards  
8 Unit sent a memo stating that in addition to the previous interview notification, Crowley  
9 should also be prepared to explain his duties and responsibilities as a Tactical Patrol  
10 Force (TPF) sergeant.<sup>14</sup> The interview was subsequently rescheduled to January 2019.  
11 Union counsel Alan McDonald represented Crowley at the interview, which spanned two  
12 days, and then Union president Lieutenant David Schofield (Schofield) attended on  
13 Crowley's behalf as well.<sup>15</sup> On July 2, 2019, the Professional Standards Unit investigators

---

<sup>12</sup> At hearing, Crowley indicated that he was informed sometime in mid-2019 that the Police Department had closed without a finding the investigation that Crowley had requested.

<sup>13</sup> The December 4, 2018 memo stated, in part, that the interview would focus on the nature of texts and communications between Crowley and detectives under his supervision, including those which had been provided as examples of demeaning and unfair treatment. The memo further noted that the investigation would examine Crowley's discretion in making assignments and reassignments and allegations of favoritism by allowing certain subordinates to take home department vehicles and to conduct personal errands during work hours.

<sup>14</sup> The December 5, 2018 memo also stated that Crowley should provide all documentation and communications relating to subordinates requesting transfers from the detectives unit and resignations by detectives from the Tactical Patrol Force.

<sup>15</sup> Crowley indicated at hearing that he believed the complainants were identified during the interview but provided no details in support of that assertion, although he referenced

1 submitted their final report and findings in SI-2018-004 (the Report) to Andrea Brown, the  
2 Chief of the Professional Standards Unit.

3 On October 3, 2019, Crowley received a written warning dated September 30,  
4 2019 from then Police Commissioner Dr. Branville Bard, Jr. (Bard), which stated:

5 This Written Warning comes as a result of an investigation into your conduct  
6 related to allegations of unfair and preferential treatment towards several  
7 members of the Criminal Investigations Section.

8 This investigation found two violations under CPD Rules and Regulations,  
9 Chapter 2, Section II, Paragraph S;

10  
11 General Duty Requirement.

12 Refrain from insubordination or disrespect toward a superior officer or other  
13 members of the Force.

14  
15 In addition, you were found in violation of the Sexual Harassment Policy No.  
16 210, Chapter V, Paragraph 2D:

17  
18 Hostile Work Environment

19 Making sexually-oriented comments, jokes, innuendoes, and other offensive  
20 statements.

21  
22 As a result of your actions, I am issuing this Written Warning as the  
23 appropriate measure to take for what I view as a direct violation of  
24 department policy, but more importantly, to caution you against similar  
25 conduct.

26  
27 Although this warning notice does not constitute formal disciplinary action, it  
28 is my hope that you view this action as advisement in guiding you should you  
29 ever find yourself in a similar situation, and that you acknowledge the  
30 importance of following departmental policies and setting a positive example  
31 to the officers under your command.<sup>16</sup>

32 Although Crowley disagreed that the stated grounds for the written warning had  
33 been proven, he did not file a grievance. Crowley believed that the written warning was  
34 not grievable under Article 19 of the CBA because Bard had referred to the written

---

specific individuals in other parts of his testimony. The City explicitly declined at hearing to confirm the names of the complainants or any witnesses in SI-2018-004.



1 warning as a non-disciplinary event.<sup>17</sup> Thereafter, Crowley made at least five requests to  
2 the City under the Freedom of Information Act for copies of the Report, which the City  
3 denied.<sup>18</sup>

4 On December 31, 2020, the Legislature passed St. 2020, c.253 “An Act Relative  
5 to Justice, Equity, and Accountability in Law Enforcement.” (Chapter 253). Section 30 of  
6 Chapter 253 added a new law, M.G.L. c.6E, which created the Massachusetts Peace  
7 Officers Standards and Training Commission (POST Commission). The POST  
8 Commission, in part, oversees mandatory certification, recertification and training of law  
9 enforcement officers in the Commonwealth of Massachusetts<sup>19</sup> as well as the  
10 accreditation of law enforcement agencies. The POST Commission is authorized to  
11 certify a police officer, to suspend a police officer’s certification and require the police  
12 officer to undergo further training, or to decertify a police officer.<sup>20</sup> The POST Commission  
13 in its regulations, 555 CMR 8.06, Section (1), provides that its Division of Police

---

<sup>17</sup> At hearing, Manisha Tibrewal (Tribewal), the Police Department’s Director of Planning, Budget and Personnel who oversaw Human Resources functions for the Police Department, and Schofield both agreed that the written warning was not grievable under Article 19.

<sup>18</sup> Crowley indicated at hearing that he made the public records requests to clear his reputation and to see if he could challenge the allegation and outcome in some forum. He also asserted that the allegations against him could compromise his ability to effectively supervise and mentor colleagues.

<sup>19</sup> Law enforcement officers include police officers employed by a Massachusetts city, town or district, the, department of state police, University of Massachusetts, the MBTA, Massport, public or private colleges, educational institutions and hospitals, as well as employees of sheriffs’ departments, who perform police duties and functions.

<sup>20</sup> Section 102(a) of Chapter 253 provided that law enforcement officers who were hired before December 31, 2020 and had undergone training as defined in that section were considered to be certified.

1 Certification shall maintain a database containing records for each certified law  
2 enforcement officer showing, in part, d) the date of any written reprimand and the reason  
3 for said reprimand; g) the date of, and any reason for, any internal affairs complaint; and  
4 h) the outcome of any internal affairs investigation based on an internal affairs complaint.  
5 Section (3)(a)(10) provides that, with certain delineated exceptions, the public database  
6 shall make a summary of the officer's disciplinary record, which may incorporate  
7 information provided by law enforcement agencies that have employed the officer, and  
8 which shall list: a) complaints against the officer; b) the final disposition of each listed  
9 complaint; c) the nature of any discipline imposed as a result of each listed complaint; d)  
10 whether each complaint was submitted anonymously; and e) whether each complaint was  
11 submitted under the pains and penalties of perjury.

12 In 2021, the POST Commission requested that the City submit a spreadsheet  
13 concerning disciplinary records for all active officers whom it employed in its Police  
14 Department, and officers whom the City previously employed in its Police Department,  
15 but who currently were employed in other police departments in the Commonwealth. The  
16 POST Commission sought the records whether the Department had sustained the  
17 discipline against the police officer or not. On December 22, 2021, the City submitted the  
18 completed spreadsheet with the necessary information for all applicable police officers.  
19 The spreadsheet required the following information, with Crowley's data shown below in  
20 parentheses:

21 a) The police officer's first and last name,

22 (James Crowley)  
23

24 b) The date of the complaint,  
25  
26

1 (04/18/2018)

2 c) The internal affairs investigation number,

3  
4 (SI-2018-004)

5  
6 d) Whether the investigation was administrative or criminal,

7  
8 (administrative)

9  
10 e) The charge(s), infractions/violations,

11  
12 ((1) general duty obligation to obey all policies, procedures, rules, and  
13 regulations,

14 (2) disrespecting another officer,

15 (3) disrespecting another officer,<sup>21</sup>

16 (4) hostile work environment/sexual harassment)

17  
18 f) Whether the police officer was placed on administrative leave  
19 yes or no

20  
21 (no)

22  
23 g) The disposition of the charges/infractions/violations with the codes,  
24 S for sustained,  
25 E for exonerated.  
26 NS for Not Sustained, and  
27 U for unfounded

28  
29 (1) E

30 (2) S

31 (3) S

32 (4) S

33  
34 h) The discipline imposed:

35 WR for reprimand,

36 S for suspension,

37 RT for Re-Training,

38 RN for Resignation, and

39 T for Termination

40  

---

<sup>21</sup> The City charged Crowley with two separate infractions of disrespecting an officer.

1 (WR).<sup>22</sup>

2 The POST Commission did not request any supplemental information from the City in  
3 response to the City's submission of the spreadsheet.

4 In 2022, the POST Commission began to re-certify police officers whose surnames  
5 began with the initials A-I (A-I), which included Crowley, as part of a rotating three-year  
6 recertification process of all law enforcement personnel in the Commonwealth. As part  
7 of that process, the POST Commission required the City to submit information about the  
8 A-I officers by June 30, 2022. Thereafter, the POST Commission requested the actual  
9 disciplinary reports and disciplinary letters for seven or eight of the A-I officers, but not  
10 Crowley. The POST Commission subsequently recertified all the A-I officers, including  
11 Crowley, in 2022.<sup>23</sup> The City never submitted the Report about Crowley to the POST  
12 Commission, nor was it requested to do so.

13 On April 1, 2022, McDonald<sup>24</sup> sent an email to Matthews that stated in pertinent  
14 part:

---

<sup>22</sup> James Mulcahy (Mulcahy), the civilian Director of the Police Department's Professional Standards Section, which oversees the Professional Standards Unit and the Training and Certification Unit, completed the spreadsheet. Mulcahy identified Crowley as having received a written reprimand on the spreadsheet as there was no option for written warning.

<sup>23</sup> Mulcahy opined at hearing that the charges for which Crowley received a written warning did not satisfy the requisite statutory grounds for the POST Commission to suspend Crowley's certification or to decertify him. Further, Mulcahy emphasized that the POST Commission already had recertified Crowley in 2022 with the written warning on his work record.

<sup>24</sup> Schofield indicated that the Union had authorized the use of funds to have Union counsel request the Report because of concerns about due process and transparency in investigations in a paramilitary organization like the Police Department where anonymous complaints about a superior officer could negatively impact the superior officer's career.

1 This email constitutes a request for information on behalf of the Cambridge  
2 Police Superior Officers Association pursuant to G.L. Chapter 150E related  
3 to a departmental investigation within the Criminal Investigations Division in  
4 case SI-2018-04. The Association is aware that this investigation is related  
5 to complaints filed against Sergeant James Crowley, and perhaps, or at  
6 least involving, other members of the Association's bargaining unit. Further,  
7 the Association is aware that the Department has reported the adverse  
8 findings from that investigation against Sergeant Crowley, and perhaps  
9 against other members of the bargaining unit, to the POST Commission.<sup>25</sup>  
10 That is so even though Sergeant Crowley, and perhaps other Association  
11 members, had never been notified by the Department of those findings.  
12

13 In view of the foregoing, the Association requests production of the following  
14 information:  
15

16 Copies of any reports, recommendations, summaries, witness statements,  
17 non-witness statements, notes, findings, recommendations,  
18 correspondence (both and electronic), and any and all documents and  
19 materials of any name or nature generated or received by departmental  
20 agents in connection with the investigation,  
21

22 Copies of any and all notices of discipline, or any other disposition reached  
23 regarding any and all Association bargaining unit members as a result of,  
24 or in conjunction with, the investigation,  
25

26 Copies of any and all notices sent by the Department to the POST  
27 Commission related to actions or inactions of any and all members of the  
28 bargaining unit in connection with the investigation or its disposition.

29 Thank you in advance for the prompt production of the requested  
30 information.

31 On April 19, 2022, McDonald sent an email to Matthews stating:

32 Does the City intend to produce the requested information? If so, when  
33 might we expect it?

34 Matthews replied via email on April 22, 2022 by stating in pertinent part:

---

<sup>25</sup> At hearing, Mulcahy described how the POST Commission was having technical problems with its online database showing law enforcement personnel's disciplinary records. He indicated that as of two days before the hearing, neither Crowley's nor any other active City police officers' disciplinary records were available for viewing on the database. It was expected that when the database was fully functional, the public would be able to view Crowley disciplinary records on the database.

1 ... Next week, I will try to send you something on the ... Sgt. Crowley  
2 request[.],  
3

4 Thanks for your patience and have a nice weekend.

5 On May 7, 2022 and May 18, 2022, McDonald again emailed Matthews seeking updates  
6 on when the Union would receive the requested information regarding Crowley. On May  
7 25, 2022, Matthews responded that the City would provide materials shortly. On June  
8 17, 2022, McDonald again emailed Matthews seeking an update on when the City would  
9 provide the requested information regarding Crowley.

10 On June 22, 2022, Matthews responded to McDonald by attaching a redacted copy  
11 of the Report.<sup>26</sup> The redacted Report indicated that it consisted of 127 pages.<sup>27</sup> The  
12 initial 97 pages of the Report were not provided to the Union. The City completely  
13 redacted pages 98 through 102, pages 105 through 118, and on page 127, the entire  
14 page except for the signatories to the Report.

15 City's Stated Concerns about Disclosure of the Full Report

16 Tribewal, who read the unredacted Report in 2019 and again the morning of the  
17 hearing, believed that none of the redacted information pertained to allegations against  
18 Crowley that were substantiated. She also believed that some of the redacted information  
19 was duplicative of information that was present in the unredacted portions of the Report.  
20 Tribewal described how when the Crowley investigation was ongoing, a witness in the

---

<sup>26</sup> Matthews also attached two other documents pertaining to Crowley to his email, but those documents are not the subject of the dispute before me.

<sup>27</sup> Mulcahy indicated at hearing that the City's Law Department, not the Police Department, had custody of the Report for approximately three years prior to the hearing. Mulcahy also indicated that he had last looked at the Report approximately two years before the hearing.

1 investigation expressed concerns about participating in the investigation and the possible  
2 impacts upon the witness' personal and professional life. Tribewal was unaware of any  
3 agreement to keep the witness(es') or complainant(s') identities confidential. She also  
4 was unaware of any retribution taken by Crowley against any complainant because of the  
5 complainant's participation in the investigation.

6 Opinion  
7

8 The issues in this case are whether the City failed to bargain in good faith by: a)  
9 failing to provide the Union with a copy of the full Report rather than a redacted version,  
10 and b) not timely providing the Union with the information that was present in the redacted  
11 Report.

12 Failure to Provide All Requested Information

13 If a public employer possesses information that is relevant and reasonably  
14 necessary to an employee organization in the performance of its duties as the exclusive  
15 collective bargaining representative, the employer is generally obligated to provide the  
16 information upon the employee organization's request. Higher Education Coordinating  
17 Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's right  
18 to receive relevant and reasonably necessary information is derived from the statutory  
19 obligation to engage in good faith collective bargaining, including both grievance  
20 processing and contract administration. Boston School Committee, 10 MLC 1501, 1513,  
21 MUP-4468 (April 17, 1984). The Commonwealth Employment Relations Board's (CERB)  
22 standard in determining whether the information requested by an employee organization  
23 is relevant is a liberal one, similar to the standard for determining relevancy in civil  
24 litigation proceedings. Board of Higher Education, 26 MLC 91, 92, SUP-4509 (January

1 11, 2000); Board of Trustees of University of Massachusetts (Amherst), 8 MLC 1139,  
2 SUP-2306 (June 24, 1981). Information about terms and conditions of employment of  
3 bargaining unit members is presumptively relevant and necessary for an employee  
4 organization to perform its statutory duties. City of Lynn, 27 MLC 60, 61, MUP-2236, 2237  
5 (December 1, 2000). The relevance of the requested information must be determined by  
6 the circumstances that existed at the time when the exclusive bargaining representative  
7 made the request.

8 Relevant and Reasonably Necessary Information

9 The Union contends that it needs the unredacted Report to fulfill its duties as  
10 Crowley's exclusive bargaining representative and that the Report concerns Crowley's  
11 terms and conditions of employment, which includes his receipt of a written warning that  
12 the City ultimately described and classified in its submission to the POST Commission.  
13 Conversely, the City argues that the Report is not relevant and reasonably necessary to  
14 the Union's role as exclusive representative bargaining representative because any  
15 grievance challenging the written warning would be untimely. The City maintains that the  
16 parties' grievance procedure required Crowley or the Union to file a grievance within thirty  
17 days of Crowley's receipt of the written warning as referenced in Section 19, Article 1 of  
18 the 2021-2024 CBA. The City notes that the Union requested the Report on April 1, 2022,  
19 which is approximately two and one-half years after Crowley's receipt of the written  
20 warning. However, the Union contends that it needs the Report to review the bases of  
21 the description and classification of Crowley's written warning that the City submitted to  
22 the POST Commission on the December 21, 2021 spreadsheet and in any other materials



1 to possibly challenge that description and classification. The Union relies on the language  
2 in Article 19, Section 1 describing a grievance as:

3 any dispute concerning any provision of this Agreement, or any law,  
4 ordinance, rule, regulation, policy or practice relating to the Police  
5 Department and its operation as any of such may touch upon personnel;  
6 relations, or any such decision or order of either the City Manager or the  
7 Police Commissioner as any such may affect personnel or conditions of  
8 work and employment.

9 Upon review of the relevant language, I agree the provision's definition of a  
10 grievance is broad and arguably could encompass how the City described and classified  
11 Crowley's written warning to the POST Commission. Although the City asserts that  
12 pursuant to Section 5<sup>28</sup> of the Law, the Union has no duty of fair representation to Crowley  
13 regarding the POST Commission,<sup>29</sup> the POST Commission's conduct is not the basis of  
14 the Union's possible grievance. Rather, the focus of the Union's possible grievance,  
15 which is encompassed with the duty of fair representation that the Union owes Crowley,  
16 is whether the City acted correctly in how it described and classified Crowley's written  
17 warning in the City's submission to the POST Commission. As the Union correctly notes,  
18 the Report is relevant and reasonably necessary for the Union to evaluate the possible

---

<sup>28</sup> Section 5 of the Law states in pertinent part:

An exclusive representative's duty of fair representation to a public employee who is in the bargaining unit shall be limited to the negotiation and enforcement of the terms of agreements with the public employer. The laws of the commonwealth shall not prohibit an employee organization from providing only to its members legal, economic or job-related services or benefits outside of the collective bargaining agreement.

<sup>29</sup> The Union challenges the City's assertion by noting that it could voluntarily take on the obligation of representing Crowley at matters before the POST Commission. However, I need not decide that issue to decide that the Report was relevant and reasonably necessary to the Union in its role as bargaining representative.

1 merits of the grievance and to manage its resources in deciding whether to file the  
2 grievance. See generally Sheriff's Office of Middlesex County, 30 MLC 91, 96, MUP-2754  
3 (December 31, 2003) (describing union's duty to investigate and make reasoned  
4 judgments about the relative merits of unit members' grievances). Also, when assessing  
5 whether the information requested is relevant and reasonably necessary, the standard is  
6 not whether the Union will prevail over a grievance. Rather, an employer has a duty to  
7 furnish relevant and reasonably necessary information to an employee organization for  
8 the processing of a grievance that is not frivolous or improper. Worcester School  
9 Committee, 14 MLC 1682, 1684, MUP-6169 (April 20, 1988).

10 Finally, the City in its post-hearing brief asserts that the Union's stated reasons for  
11 seeking the Report mask the Union's real reasons for wanting the unredacted report,  
12 which is to retaliate against City employees who provided information to the investigators.  
13 The City notes that Crowley described how he wanted the report to clear his reputation,  
14 even though he was unsure how to make that happen. However, the issue before me is  
15 whether the information is relevant and reasonably necessary to the Union as bargaining  
16 representative, not to Crowley as an individual. As an individual, he made at least five  
17 public records requests, which the City denied and over which the DLR has no jurisdiction.  
18 Further, I do not find persuasive the City's argument that the Union's interest in ensuring  
19 transparency and due process in Crowley's investigation is inconsistent with the Union's  
20 stated need for the Report, which was to verify whether the City reported Crowley's written  
21 warning to the POST Commission in an accurate and fair manner. Finally, the Union  
22 need not rely on the City's claim that the redacted information in the Report was  
23 duplicative of other information that the Union already had received in the redacted

1 Report. See Worcester Jail and House of Correction, 28 MLC 189, 190, MUP-1885  
2 (December 28, 2001) (finding that a union need not rely on an employer's assertion that  
3 requested information was redundant).

4 Consequently, I conclude that the requested unredacted Report was relevant and  
5 reasonably necessary to the Union in its role as the exclusive bargaining representative.

6 Legitimate and Substantial Concerns

7 Once a union has established that the requested information is relevant and  
8 reasonably necessary to its duties as the exclusive representative, the burden shifts to  
9 the employer to establish that it has legitimate and substantial concerns about disclosure,  
10 and that it has made reasonable efforts to provide the union with as much of the requested  
11 information consistent with its expressed concerns. Board of Higher Education, 26 MLC  
12 at 93 (citing Boston School Committee, 13 MLC 1290, 1294-1295, MUP-5905 (November  
13 2, 1996); Adrian Advertising a/k/a Advanced Advertising, 13 MLC 1233, 1263, UP-2497  
14 (November 6, 1986), aff'd sub nom., Despres v. Labor Relations Commission, 25 Mass.  
15 App. Ct. 430 (1988)). If an employer advances legitimate and substantial concerns about  
16 the disclosure of information to a union, the CERB will examine the facts contained in the  
17 record. Boston School Committee, 13 MLC at 1295. The employer's concerns are then  
18 balanced against an employee organization's need for the information. Commonwealth  
19 of Massachusetts, Chief Administrative Justice of the Trial Court, 11 MLC 1440, 1443-  
20 1444, SUP-2746 (February 21, 1985) (adopting the balancing test approach used by the  
21 United States Supreme Court in Detroit Edison v. NLRB, 440 U.S. 301, 100 LRRM 2728  
22 (1979)). Absent showing of a great likelihood of harm flowing from disclosure, however,  
23 the requirement to furnish a bargaining representative with relevant information

1 necessary to carry out its duties overcomes any claim of confidentiality. Greater Lawrence  
2 Sanitary District, 28 MLC 317, 318-319, MUP-2581 (April 19, 2002). Here, the City cites  
3 two premises for its argument that it had legitimate and substantial concerns about the  
4 disclosure of the Report to the Union. First, the City contends that the release of the  
5 unredacted report could have a detrimental effect on employees' willingness to come  
6 forward in the future to report a supervisor's inappropriate conduct towards them.  
7 However, the mere possibility of a chilling effect does not override an employee  
8 organization's right to information. See Commonwealth of Massachusetts, 11 MLC 1440,  
9 1443-1444, SUP-2746 (Feb. 21, 1985) (rather than merely articulating concerns about  
10 the disclosure of information, an employer must produce evidence in support of its  
11 contentions); Board of Higher Education, 29 MLC 169, 171, SUP-4612 (March 6, 2003)  
12 (same).

13 Also, the City argues that if the witnesses' identities were revealed, they may be  
14 subject to retaliation for their involvement in the investigation. Tribewal described how a  
15 witness in the investigation expressed concerns to her about participating in the  
16 investigation and the possible impacts upon the witness's personal and professional life.  
17 As a preliminary matter, it must be noted that the record contains no information showing  
18 that the Union's representatives or Crowley have retaliated against any suspected  
19 witness(es) in the investigation. However, the witness's comments to Tribewal reflect  
20 concerns about possible retaliation from individuals *other* than Union representatives or  
21 Crowley. And it is not unreasonable in a paramilitary work environment that a witness,  
22 especially a witness who might be a subordinate or might have been directed to  
23 participate in the investigation, would be concerned that their peers or superior officers

1 might ostracize the witness or view the witness in a negative light because of information  
2 that the witness provided during an investigation into alleged inappropriate conduct by a  
3 longstanding superior officer. Upon review of the specific facts of this case, I conclude  
4 that the City has established legitimate and substantial concerns about the disclosure of  
5 the unredacted Report to the Union if the Union were provided the unredacted Report  
6 without safeguards on dissemination of the Report.

7 Although the City's concerns about the Union's possible unrestricted dissemination  
8 of the Report are legitimate and substantial, the inquiry does not end there. See City of  
9 Boston, 32 MLC 1, 2, MUP-1687 (June 23, 2005). When an employer has concerns about  
10 disclosing what it deems as sensitive information to a union, it has an obligation to initiate  
11 a discussion to explore acceptable alternative ways to permit the union access to the  
12 necessary information. City of Boston, 22 MLC 1698, 1709, MUP-9605 (April 26, 1996).  
13 Here, the City did not initiate such a discussion but independently decided to redact the  
14 Report before the City provided it to the Union. I further determine that if the unredacted  
15 Report is provided to the Union with safeguards on dissemination in a manner consistent  
16 with the judicially approved protections in Boston Police Superior Officers Federation v.  
17 City of Boston, 414 Mass. 458, 461 n.5 (1993), the Union's need for the unredacted  
18 Report outweighs the City's expressed concerns.

19 Accordingly, I conclude that the City violated Section 10(a)(5) and, derivatively  
20 Section 10(a)(1) of the Law by failing to provide the Union with an unredacted version of  
21 the Report.

22 Failure to Timely Provide Information

1           Additionally, I must consider whether the City provided the redacted Report in a  
2   timely manner. The facts before me establish the following timeline. The Union initially  
3   requested the information on April 1, 2022 and requested updates from the City on April  
4   9, April 17, May 7, May 18, and June 17, 2022. The City responded on April 22, 2022  
5   and May 22, 2022 that the Union would receive the information shortly. On June 22, 2022,  
6   the City provided the Union with the redacted Report. The Union filed the charge of  
7   prohibited practice on September 8, 2022.

8           An employer may not unreasonably delay furnishing requested information that is  
9   relevant and reasonably necessary. Boston School Committee, 24 MLC 8, 11, MUP-  
10   1410, 1412 (August 26, 1997). In determining whether a delay in the production of  
11   information is unreasonable, the CERB considers a variety of factors including: 1) whether  
12   the delay in the production of the information diminishes the employee organization's  
13   ability to fulfill its role as the exclusive representative; Id.; 2) the extensive nature of the  
14   request, UMass Medical Center, 26 MLC 149, 158, SUP-4392, 4400 (March 10, 2000);  
15   3) the difficulty of gathering the information, Id.; 4) the period of time between the request  
16   and the receipt of the information, Higher Education Coordinating Council, 23 MLC at  
17   259; and 5) whether the employee organization was forced to file a prohibited practice  
18   charge to retrieve the information. Board of Higher Education, 26 MLC at 93.

19           Here, the City took more than eleven weeks to respond to the Union's request, but  
20   the City provided the redacted Report to the Union before the Union filed the prohibited  
21   practice charge. The City argues that it did not diminish the Union's role as bargaining  
22   representative because when the Union made the request, the Union had no current need  
23   for the Report, as there was no legal action pending that pertained to Crowley. As a

1 preliminary matter, I note that I already found above that the unredacted Report was  
2 relevant and reasonably necessary to the Union as the bargaining representative.  
3 Further, the Union attempted to assist Crowley by exploring whether the City's description  
4 and classification to the POST Commission of Crowley's written warning could be legally  
5 challenged. The City diminished the Union in its role as bargaining representative  
6 because the Union could not provide Crowley with the assistance that he had requested,  
7 and that the Union had agreed to provide until the City provided the unredacted Report  
8 to the Union. The Union needed to review the contents of the report to determine whether  
9 there were any factual bases to mount a legal challenge. The Union had the right to  
10 review the information contained in the redacted Report and make its own assessment of  
11 whether the information would be useful in its role as bargaining representative. See City  
12 of Boston, 35 MLC 95, 102, MUP-04-4050 (December 10, 2008) (raising the possibility  
13 that a union and an employer could review the same information and draw different  
14 conclusions as to the usefulness of the information).

15 Additionally, the hearing record contains no facts that explain the eleven-week  
16 delay. The City did not need to gather or compile any information in response to the  
17 Union's request, as the Report already existed. Although the City contends that it needed  
18 time to redact the report, I have determined above that the City should not have redacted  
19 the Report but instead, should have provided the Union with a full copy.

20 Accordingly, I find that the City violated Section 10(a)(5) and, derivatively, Section  
21 10(a)(1) of the Law by failing to timely provide the requested information contained in the  
22 redacted Report.

### 23 Remedy

Using as models the safeguards set forth in Boston Police Superior Officers Federation, 414 Mass. at 461, n.5, as implemented in Sheriff's Office of Middlesex County, 30 MLC at 100, I order the following safeguards on the release of the Report:

- a) The Employer shall provide an unredacted copy of the Report to the Union's counsel.
- b) The Union's counsel shall:
  - i. Maintain custody of the Report and take all reasonable steps to ensure that the Report is used solely in matters directly related to reviewing and challenging the City's description and classification of Crowley's written warning to the POST Commission. Reasonable measures shall include, but shall not be restricted to:
    - a) Confine access to the Report or disclose its contents only to his/her client except with the consent of the City. Consistent with Boston Police Superior Officers Federation v. City of Boston, the term "client" is defined as 'the few members of the [union] [such as its officers or executive board] who are directly involved
    - b) Obtain certifications from all persons with access to the Report, including Crowley, that they have not and will not discuss or otherwise disclose the contents of the Report to anyone who has not certified that they acknowledge and will adhere to these restrictions.
    - c) Limit reproduction of the report to physical copies which must be numbered, unless an electronic copy of the Report is required for filing a matter directly related to challenging the City's description and classification of Crowley's written warning to the POST Commission, and track access of those numbered copies consistent with the restrictions in paragraphs a and b.
    - d) Ensure that all numbered copies and the original report are returned to the City, when any matter directly related to challenging the City's description and classification of Crowley's written warning to the POST Commission is no longer pending, unless the parties reach a contrary agreement. If the Union does not file any matter challenging the City's description and classification of Crowley's warning to the POST Commission within six months of receipt of the Report from the City, the Union shall return the unredacted Report and all numbered copies to the City at the end of the six-month period.



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

1. Cease and desist from:
  - a) Failing to bargain in good faith with the Union by not providing the unredacted Report to the Union.
  - b) Failing to bargain in good faith with the Union by producing the redacted Report after an unreasonable delay.
  - c) In any like or related manner, interfering with, restraining and coercing its employees in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action that will effectuate the purposes of the Law:
  - a) Provide the unredacted Report to the Union's counsel, who shall take all reasonable measures, as described in the Remedy section of this decision, to ensure that the Report is used solely for the purpose of reviewing and challenging the City's description and classification of Crowley's written warning in its submission(s) to the POST Commission.
  - b) Provide in a timely manner requested information that is relevant and reasonably necessary to the Union in its role as the exclusive bargaining representative.
  - c) Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the City customarily communicates with these bargaining unit members via intranet or email and display for a period of thirty (30) days thereafter signed copies of the attached Notice to Employees.

- 1 d) Notify the DLR in writing of the steps taken to comply with this decision  
2 within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



---

MARGARET M. SULLIVAN  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall be final and binding on the parties.