

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

<hr/>)	
MAURA HEALEY, ATTORNEY GENERAL,)	
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT</u>
)	
BOSTON POLICE DEPARTMENT,)	
)	
Defendant.)	
<hr/>)	

COMPLAINT FOR DECLARATORY JUDGMENT

I. INTRODUCTION

1. This is an action for declaratory judgment brought by the Attorney General, Maura Healey (the “Attorney General”), on behalf of the Commonwealth, pursuant to the Massachusetts Public Records Law, G.L. c. 66, §§ 10, 10A (the “Public Records Law”), and the Declaratory Judgment Act, G.L. c. 231A. The purpose of this declaratory judgment action is to confirm the Boston Police Department’s (the “Police Department”) obligations under the Public Records Law to furnish copies of certain records in its possession in response to requests by *NBC10 Boston* for provision of such records.

2. The Attorney General is expressly vested with the authority to bring suit to enforce compliance with the Public Records Law. G.L. c. 66, § 10A(a), (e).

3. The Public Records Law is intended to ensure that the public has broad access to governmental records. Access to records is essential to promoting transparency and public confidence in government, particularly with respect to matters involving the conduct of law enforcement officers and other public employees. The public disclosure of internal affairs investigation records is necessary to ensure trust between citizens and police, and the protection of constitutional rights.

4. The Police Department, as custodian of records, received a public records request from Investigative Producer Jim Haddadin of *NBC10 Boston* (the “Requester”) for internal affairs investigation records pertaining to Boston Police Department employee Dennis A. White. The Police Department failed to respond to this request, and the Requester appealed to the Supervisor of Records (the “Supervisor”). After the Police Department failed to comply with two orders issued by the Supervisor, the Supervisor referred the matter to the Attorney General.

5. The Police Department has since responded to the request by declining to provide the requested records, relying on the statutory exemption of the Public Records Law, specifically citing to G.L. c. 41, § 97D (which limits the dissemination of reports of rape, sexual assault, and domestic violence) and the Criminal Offender Record Information statute, G.L. c. 6, §§ 167-172 (which limits the dissemination of records and data that concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release) (the “CORI Law”).

6. The Public Records Law requires disclosure of the requested records, notwithstanding either G.L. c. 41, § 97D or the CORI Law. While the privacy concerns of victims of sexual assault and domestic violence are significant, those concerns may be adequately protected through appropriate redaction of the requested records.

7. By bringing this action, the Attorney General seeks a declaration that the requested internal affairs investigation records are public records that the Police Department must provide pursuant to the Public Records Law.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 66, §§ 10A(b), (e).

9. Venue is proper in this Court pursuant to G.L. c. 223, § 5.

III. PARTIES

10. The Attorney General is the chief law enforcement officer of the Commonwealth and brings this action to enforce compliance with the Public Records Law pursuant to G.L. c. 66, § 10A and G.L. c. 12, § 3.

11. The Boston Police Department is a department within the City of Boston with a principal place of business located at One Schroeder Plaza, Boston, Massachusetts 02120.

12. The Police Department is a criminal justice agency as defined in G.L. c. 6, § 167.

13. This action is brought against the Police Department solely in its official capacity as the custodian of records at issue in this action.

IV. STATUTORY FRAMEWORK

THE PUBLIC RECORDS LAW

14. The Public Records Law defines “public records” as “all books, papers . . . or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, [or] department . . . of the commonwealth, or of any political subdivision thereof, . . . unless such materials or data fall within the following exemptions” G.L. c. 4, § 7, cl. 26.

15. The Public Records Law provides that “[e]ach agency and municipality shall designate 1 or more employees as records access officers.” G.L. c. 66, § 6A(a). “A records access officer shall coordinate an agency’s or municipality’s response to requests for access to public records and shall facilitate the resolution of such requests by the timely and thorough production of public records.” *Id.* § 6A(b).

16. The Public Records Law further states that a “records access officer . . . shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth 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.” G.L. c. 66, § 10(a).

17. Under the Public Records Law, “a presumption shall exist that each record sought is public and the burden shall be on the defendant agency or municipality to

prove, by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law.” G. L. c. 66, § 10A(d)(1) (iv).

18. Records that fall within an exemption to the Public Records Law—including G.L. c. 4, § 7, cl. 26(a), which covers materials or data that are “specifically or by necessary implication exempted from disclosure by statute”—are not public records.

19. “The public records law specifically contemplates redaction of material that would be exempt, to enable the release of the remaining portions of a record.” Champa v. Weston Public Schools, 473 Mass. 86, 92 (2015).

G.L. c. 41, § 97D

20. G.L. c. 41, § 97D states that “[a]ll reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members . . . and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality.”

21. However, a statutory requirement that such a “report be confidential does not mean that any disclosure whatsoever is prohibited.” Doe v. Bright Horizons Children’s Centers, Inc., 8 Mass. L. Rep. 616, 1998 WL 408965 *3 (Mass. Super. Ct. July 2, 1998). Reports of rape and sexual assault may be redacted to conceal the identity of the victims. See Roman Catholic Bishop of Springfield v. Travelers

Casualty and Surety Co., 23 Mass. L. Rep. 524, 2008 WL 650409 at *5 (Mass. Super. Ct. Jan. 7, 2008).

CRIMINAL OFFENDER RECORD INFORMATION

22. The CORI Law restricts criminal justice agencies from disseminating to the public “records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, . . . sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment.” G.L. c. 6, § 167. However, the following are public records: “(1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.” G.L. c. 6, § 172(m).

23. The Supreme Judicial Court has interpreted CORI to be restricted to that information that concerns an identifiable individual; relates to the nature or disposition of a criminal charge, an arrest, a sentence, or release; and is recorded “in a criminal proceeding where the defendant was arraigned.” Boston Globe Media Partners, LLC v. Department of Criminal Justice Information Services, 484 Mass. 279, 288 (2020).

INTERNAL AFFAIRS INVESTIGATION FILES

24. Records related to an internal affairs investigation are inherently public because a “citizenry’s full and fair assessment” of the internal investigation of a police officer’s actions “promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights.” Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 7-8 (2003). The “internal affairs procedure fosters the public’s trust and confidence in the integrity of the police department, its employees, and its processes for investigating complaints because the department has the integrity to discipline itself” and exists specifically to address complaints of police corruption, misconduct, and “other criminal acts that would undermine the relationship of trust and confidence between the police and the citizenry that is essential to law enforcement.” Id. at 7. “It would be odd, indeed, to shield from the light of public scrutiny . . . the workings and determinations of a process whose quintessential purpose is to inspire public confidence.” Id. at 8-9.

V. FACTUAL ALLEGATIONS

25. Between January 14 and March 4, 2021, the Requester submitted five separate requests to the Police Department pursuant to the Public Records Law. The only request at issue in this complaint is the request submitted to the Police Department on March 4, 2021, which requested “all records of internal affairs and/or

misconduct investigations into Boston Police Department employee Dennis A. White” (the “March 4 Request”).¹ See Exhibit A, attached hereto.

26. The requested records pertain to internal affairs investigations of a police officer formally employed by the Police Department.

27. On March 19, 2021, having received no response to his March 4 Request, the Requester appealed, via email, to the Supervisor. See Exhibit B, attached hereto. That same day, in response to the Requester’s appeal to the Supervisor, the Police Department indicated that it intended to respond to the March 4 Request. See Exhibit B, attached hereto.

28. On March 30, 2021, understanding that the Police Department had still not responded to the March 4 Request, the Supervisor issued an order to the Police Department requiring the Police Department to provide a response within ten (10) business days. See Exhibit C, attached hereto. The Police Department did not comply with this order.

29. On May 13, 2021, the Supervisor issued another order to the Police Department requiring the Police Department to provide a response to the March 4 Request within five (5) business days. See Exhibit D, attached hereto. The Police Department did not comply with this order.

¹ The Police Department produced records in response to the other four requests.

30. On May 25, 2021, the Supervisor referred the matter to the Attorney General as the Police Department had failed to comply with the Supervisor's orders to provide a response to the March 4 Request. See Exhibit E, attached hereto.

31. By letter dated June 2, 2021, the Attorney General advised the Police Department of the Supervisor's referral and ordered the Police Department to either produce all responsive records pertaining to the March 4 Request, or, if the Police Department would withhold any responsive documents in full or in part, to provide sufficient explanation and support for the applicability of any claimed exemptions by June 4, 2021. See Exhibit F, attached hereto. The June 4 deadline was subsequently extended to June 9, 2021.

32. On June 9, 2021, the Police Department responded to the March 4 Request stating that the Police Department located three internal affairs investigation case files containing responsive records. The Police Department provided one case file, consisting of 140 pages of records, to the Requester in redacted form to exclude CORI. The Police Department advised that the other two case files, one consisting of 56 pages and one consisting of 39 pages, would be withheld in their entirety on the basis that the records pertained to investigations into allegations of sexual assault or domestic violence and were exempt from disclosure pursuant to G.L. c. 41, § 97D and the CORI Law. See Exhibit G, attached hereto.

33. The Police Department has made no showing that the requested records cannot be redacted to conceal the identity of any victims, enabling the release of the remaining portions of the records.

34. Although the requested records here involve a specifically identified individual, the Police Department has made no showing that such records relate to the nature or disposition of a criminal charge, arrest or sentencing, or that the information contained in the records was recorded during the individual's arraignment in a criminal proceeding.

VI. RELATED LAWSUITS

35. On April 30, 2021, the *Boston Globe* filed a lawsuit in Superior Court, No. 2184CV00996, in response to the Police Department's failure to provide the same records at issue here in response to a similar public records request by the *Globe*, seeking a declaratory judgment that G.L. c. 41, § 97D "does not impose a mandatory, permanent, blanket prohibition on the disclosure of any and all portions of records of an internal affairs investigation involving allegations of sexual assault by a police officer and that such records are not exempt from disclosure."

36. On August 9, 2021, the *Boston Globe* filed a lawsuit in Superior Court, No. 2184CV01807, against the City of Boston for the City's failure to provide records in response to numerous public records requests, seeking an order that both the City and the Police Department comply with the Public Records Law. The requests involved 20 categories of records and included requests for internal affairs investigation records pertaining to Police Department employee Dennis A. White, which are the same records at issue here, as well as internal affairs investigation files of numerous other police officers employed by the Police Department and citizen complaint forms filed against Police Department officers.

VII. CAUSES OF ACTION

Count One:

Violation of G.L. c. 66, § 10

(Public Records Law exemption (a) – G.L. c. 41, § 97D and CORI Law)

37. The Commonwealth incorporates by reference the allegations of paragraphs 1 through 36 of the Complaint.

38. The Police Department continues to withhold the entirety of the requested records, asserting that the records are exempt from disclosure under G.L. c. 4, § 7, cl. 26(a), citing to G.L. c. 41 § 97D and the CORI Law.

39. The requested records are public records and are not exempt from disclosure in their entirety under G.L. c. 4, § 7, cl. 26(a).

40. The requested records exist and are in the Police Department's possession.

41. The exemption asserted by the Police Department does not apply to the entire universe of records sought by the Requester. Therefore, they may not be withheld in their entirety.

42. The Police Department must release the records, subject to redaction of certain information that properly falls within one of the narrowly construed exemptions.

VIII. RELIEF REQUESTED

WHEREFORE, the Commonwealth respectfully asks this Court to enter judgment:

- a. In favor of the Commonwealth and against the Police Department;

- b. Declaring that the requested records are public records and are not exempt from disclosure in their entirety under G.L. c. 4, § 7, cl. 26(a), because they are not specifically or by necessary implication exempted from disclosure by statute, including G.L. c. 41, § 97D or the CORI Law; and
- c. Awarding the Commonwealth such other and further relief as the Court deems just and proper.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

Date: August 12, 2021



KerryAnne Kilcoyne, BBO #643309
Elizabeth Carnes Flynn, BBO #687708
Assistant Attorneys General
Government Bureau
One Ashburton Place, 20th Floor
Boston, Massachusetts 02108
(617) 963-2064
kerry.kilcoyne@state.ma.us
elizabeth.carnes-flynn@state.ma.us

EXHIBIT A

From: City of Boston <CityofBoston@govqa.us>
Sent: Thursday, March 4, 2021 5:54 PM
To: Haddadin, Jim (NBCUniversal) <Jim.Haddadin@nbcuni.com>
Subject: [EXTERNAL] Police Records Request :: B000369-030421

Dear Jim Haddadin

Thank you for your interest in public records of Boston Police Department. Your request has been received and is being processed. Your request was received in this office on 3/4/2021 5:53:19 PM and given the reference number B000369-030421 for tracking purposes. If this is a media request, please contact the Office of Media Relations directly at 617.343.4520.

Pursuant to the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10), I write to request access to and copies of all records of internal affairs and/or misconduct investigations into Boston Police Department employee Dennis A. White. For reference, the Appeals Court of Massachusetts has held that "internal affairs" records are distinct from "personnel records" and therefore cannot be withheld under M.G.L. ch. 4, § 7(26)(c) (the "personnel exemption" to the Public Records Law). See the Secretary of the Commonwealth's Guide to the Massachusetts Public Records Law, pg. 12, citing Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 8-9 (2003). I request to receive this information by electronic mail in any common electronic format, such as a PDF file or Word document. If there are any fees associated with searching or copying these records, please notify me in advance and provide an estimate of the charges. I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. Please provide all segregable portions of otherwise exempt material.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Public Records Center.

Director, Public Information
Boston Police Department

Track the issue status and respond at:

https://bostonma.govqa.us/WEBAPP/_rs/RequestEdit.aspx?rid=8141

EXHIBIT B

From: [Shawn Williams](#)
To: [Haddadin, Jim \(NBCUniversal\)](#)
Cc: [SEC-DL-PREWEB](#); [Boyle, John](#); [Jean Shirley](#)
Subject: Re: Appeal of nonresponse from NBC10 Boston (City of Boston)
Date: Friday, March 19, 2021 10:51:19 AM
Attachments: [image001.png](#)

Good Morning:

The BPD will provide a written response to this request.

Yours truly,



Shawn A. Williams, Esq.
[Director of Public Records](#)
Records Access Officer
City of Boston
One City Hall Square
Boston, MA 02201
publicrecords@boston.gov

On Fri, Mar 19, 2021 at 10:44 AM Haddadin, Jim (NBCUniversal)
<Jim.Haddadin@nbcuni.com> wrote:

Good morning: I write to appeal the failure of the City of Boston to respond to a request for records. I submitted the request below on March 4, 2021 on behalf of NBC10 Boston via the city's public records portal. The request sought copies of any Boston Police Department internal affairs files that pertain to a specific individual. It has yet to respond. Please order it to comply with the law.

Best,

Jim Haddadin

Investigative Producer

NBC10 Boston | Telemundo Boston | NECN

189 B Street Needham Heights, MA 02494

C: 339-213-1592

Twitter: [@JimHaddadin](#)



From: City of Boston <CityofBoston@govqa.us>
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To: Haddadin, Jim (NBCUniversal) <Jim.Haddadin@nbcuni.com>
Subject: [EXTERNAL] Police Records Request :: B000369-030421

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Pursuant to the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10), I write to request access to and copies of all records of internal affairs and/or misconduct investigations into Boston Police Department employee Dennis A. White. For reference, the Appeals Court of Massachusetts has held that "internal affairs" records are distinct from "personnel records" and therefore cannot be withheld under M.G.L. ch. 4, § 7(26)(c) (the "personnel exemption" to the Public Records Law). See the Secretary of the Commonwealth's Guide to the Massachusetts Public Records Law, pg. 12, citing Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 8-9 (2003). I request to receive this information by electronic mail in any common electronic format, such as a PDF file or Word document. If there are any fees associated with searching or copying these records, please notify me in advance and provide an estimate of the charges. I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. Please provide all segregable portions of otherwise exempt material.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Public Records Center.

Director, Public Information
Boston Police Department

Track the issue status and respond at:

https://bostonma.govqa.us/WEBAPP/_rs/RequestEdit.aspx?rid=8141

EXHIBIT C



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

Rebecca S. Murray
Supervisor of Records

March 30, 2021
SPR21/0679 & SPR21/0686

Shawn A. Williams, Esq.
Director of Public Records
City of Boston
1 City Hall Plaza, Room 615
Boston, MA 02201

Dear Attorney Williams:

I have received the petitions of Mr. Jim Haddadin of *NBC10 Boston*, appealing the nonresponse of the Boston Police Department (Department) to his requests for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On March 4, 2021, Mr. Haddadin submitted two public records requests seeking “copies of all records of internal affairs and/or misconduct investigations” related to two Department employees.

Claiming to not yet have received a response, Mr. Haddadin petitioned this office and these appeals were opened as a result.

Subsequently, I learned that a representative from the Department intends on providing a written response to Mr. Haddadin.

Conclusion

Accordingly, the Department is ordered to provide Mr. Haddadin with a response to the requests, provided in a manner consistent with this order, the Public Records Law, and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us. Mr. Haddadin may appeal the substantive nature of the Department’s response within ninety (90) days. See 950 C.M.R. 32.08(1).

Shawn A. Williams, Esq.
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March 30, 2021

SPR21/0679 & SPR21/0686

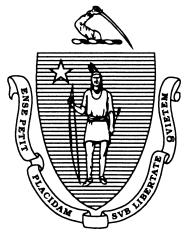
Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looping 'M'.

Rebecca S. Murray
Supervisor of Records

cc: Mr. Jim Haddadin, *NBC10 Boston*

EXHIBIT D



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

Rebecca S. Murray
Supervisor of Records

May 13, 2021
SPR21/0185; SPR21/0234; SPR21/0512
SPR21/0679; SPR21/0684; SPR21/0685
SPR21/0686

Shawn A. Williams, Esq.
Director of Public Records
City of Boston
1 City Hall Plaza, Room 615
Boston, MA 02201

Dear Attorney Williams:

I have received the petitions of Jim Haddadin appealing the responses, or lack thereof, of the City of Boston (City) to seven different requests for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Mr. Haddadin requested various records within the possession of the City. Unsatisfied with the City's response, he petitioned this office and these appeals were opened.

SPR21/0185

On January 4, 2021, Mr. Haddadin requested "a list of City of Boston employees who have been paid on administrative leave from January 1, 2018 thru present, [including] but not be limited to: employee name, title, department, annual salary, leave start date, leave end date, and amount of money earned while on leave." Claiming to not yet have received the responsive records, Mr. Haddadin petitioned this office and this appeal was opened as a result. The City, on January 28, 2021, acknowledged receipt of Mr. Haddadin's January 4th request and indicated it is "working with the appropriate departments to determine whether records exist ... and a written response will be provided at the conclusion of that review." No further response was provided and accordingly, on February 11, 2021 the City was ordered to provide Mr. Haddadin with a response to the request, in a manner consistent with the Public Records Law and its Regulations within 10 business days.

SPR21/0234

On January 14, 2021, Mr. Haddadin requested copies of "any written notices issued to the Boston Police Department employees since Jan. 6, 2021 that pertain to the initiation of internal

affairs proceedings; [and] [a]ll citizen complaints received since Jan. 6, 2021.” On January 29, 2021, the City provided a response denying Mr. Haddadin’s request in its entirety under Exemption (f) of the Public Records Law. G. L. c. 4, § 7(26)(f). As a result, on February 1, 2021, Mr. Haddadin petitioned the Supervisor of Records, and this appeal was opened. The Supervisor of Records found the City denied Mr. Haddadin’s request, in its entirety, under Exemption (f) without sufficiently supporting the exemption to withhold each individual responsive record that pertains to Mr. Haddadin’s request. Accordingly, in the determination dated February 12, 2021, the City was ordered to provide Mr. Haddadin with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations within 10 business days.

SPR21/0512

On February 10, 2021, Mr. Haddadin requested all electronic messages involving a certain individual during a specified time frame. Having received no response, Mr. Haddadin appealed to this office. In the determination dated March 12, 2021, the City was ordered to provide Mr. Haddadin with a response to this request, in a manner consistent with the Public Records Law and its Regulations within 10 business days.

SPR21/0679 & SPR21/0686

On March 4, 2021, Mr. Haddadin submitted two public records requests seeking “copies of all records of internal affairs and/or misconduct investigations” related to two police department employees. Claiming to not yet have received a response, Mr. Haddadin petitioned this office and these appeals were opened as a result. In the determination dated March 30, 2021, the City was ordered to provide Mr. Haddadin with a response to these requests in a manner consistent with the Public Records Law and its Access Regulations within 10 business days.

SPR21/0684

On February 24, 2021, Mr. Haddadin requested “copies of any permits issued to Atlantic Coast Utilities for work in the area of 190 High St.” Having received no response, he petitioned this office and this appeal was opened. In the determination dated March 30, 2021, the City was ordered to provide Mr. Haddadin with a response to the request, provided in a manner consistent with the Public Records Law and its Regulations within 10 business days.

SPR21/0685

On March 4, 2021, Mr. Haddadin requested “copies of all written records created or received by Mayor Martin Walsh during the period from Jan. 11, 2021 through Jan. 28, 2021” related to the selection of the police commissioner. In the determination dated March 30, 2021, the City was ordered to provide Mr. Haddadin with a response to his request in a manner consistent with the Public Records Law and its Access Regulations within 10 business days.

Shawn A. Williams, Esq.
Page 3
May 13, 2021

SPR21/0185; SPR21/0234; SPR21/0512
SPR21/0679; SPR21/0684; SPR21/0685
SPR21/0686

Order

Mr. Haddadin has informed this office that he has yet to receive responses from the City with respect to these determinations. Accordingly, the City is again ordered to provide Mr. Haddadin a response for each of the seven requests described above in a manner consistent with the Public Records Law and its Regulations within 5 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of these responses to this office at pre@sec.state.ma.us. Failure to comply with this order may result in referral of these matters to the Office of the Attorney General. See G. L. c. 66, § 10A (b).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looped "M" and a long, sweeping tail on the "y".

Rebecca S. Murray
Supervisor of Records

cc: Jim Haddadin
John Boyle, Boston Police Department

EXHIBIT E



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

Rebecca S. Murray
Supervisor of Records

May 25, 2021
**SPR21/0234; SPR21/0512; SPR21/0679;
SPR21/0685; SPR21/0686**

The Honorable Maura T. Healey
Attorney General for the Commonwealth of Massachusetts
One Ashburton Place, 20th Floor
Boston, MA 02108

Dear Attorney General Healey:

Pursuant to G. L. c. 66, § 10A(b), I am hereby notifying you of the failure of the City of Boston (City) to comply with five (5) administrative orders. See SPR21/0234 Determination of the Supervisor of Records (February 12, 2021); SPR21/0512 Determination of the Supervisor of Records (March 12, 2021); SPR21/0679, SPR21/0685, SPR21/0686 Determination of the Supervisor of Records (March 30, 2021).

SPR21/0234

On January 14, 2021, Mr. Jim Haddadin of *NBC10 Boston* requested copies of “any written notices issued to the Boston Police Department employees since Jan. 6, 2021 that pertain to the initiation of internal affairs proceedings; [and] [a]ll citizen complaints received since Jan. 6, 2021.” On January 29, 2021, the City provided a response denying Mr. Haddadin’s request in its entirety under Exemption (f) of the Public Records Law. G. L. c. 4, § 7(26)(f). As a result, on February 1, 2021, Mr. Haddadin petitioned the Supervisor of Records, and appeal SPR21/0234 was opened. The Supervisor of Records found the City denied Mr. Haddadin’s request, in its entirety, under Exemption (f) without sufficiently supporting the exemption to withhold each individual responsive record that pertains to Mr. Haddadin’s request. Accordingly, in the determination dated February 12, 2021, the City was ordered to provide Mr. Haddadin with a response to the request, provided in a manner consistent with the order, the Public Records Law and its Regulations within 10 business days.

SPR21/0512

On February 10, 2021, Mr. Haddadin requested all electronic messages involving a certain Boston Police Department employee during a specified time frame. Having received no response, Mr. Haddadin appealed to this office. In the determination dated March 12, 2021, the

The Honorable Maura T. Healey
Page 2
May 25, 2021

SPR21/0234; SPR21/0512; SPR21/0679
SPR21/0685; SPR21/0686

City was ordered to provide Mr. Haddadin with a response to this request, in a manner consistent with the Public Records Law and its Regulations within 10 business days.

SPR21/0679 & SPR21/0686

On March 4, 2021, Mr. Haddadin submitted two public records requests seeking “copies of all records of internal affairs and/or misconduct investigations” related to two Boston Police Department employees. Claiming to not yet have received a response, Mr. Haddadin petitioned this office and these appeals were opened as a result. In the determination dated March 30, 2021, the City was ordered to provide Mr. Haddadin with a response to these requests in a manner consistent with the Public Records Law and its Access Regulations within 10 business days.

SPR21/0685

On March 4, 2021, Mr. Haddadin requested “copies of all written records created or received by Mayor Martin Walsh during the period from Jan. 11, 2021 through Jan. 28, 2021” related to the selection of the Boston Police Department Commissioner. Having received no response, he petitioned this office and this appeal was opened. In the determination dated March 30, 2021, the City was ordered to provide Mr. Haddadin with a response to his request in a manner consistent with the Public Records Law and its Access Regulations within 10 business days.

On May 13, 2021, a second order was sent to the City requiring the City to respond to these determinations within five business days. As of the date of this letter, it is my understanding that the City has not provided a response to the referenced appeals. Accordingly, I refer SPR21/0234, SPR21/0512, SPR21/0679, SPR21/0685 and SPR21/0686 to your office for enforcement.

Enclosed please find my determinations as well as a copy of other records associated with these appeals. I respectfully request that you review these matters and take whatever measures you deem necessary to ensure City complies with the applicable orders.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Jim Haddadin
Ryan Kath
Shawn A. Williams, Esq.

EXHIBIT F



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

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
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June 2, 2021

Shawn Williams, Esq.
Director of Public Records
City of Boston
One City Hall Square
Boston, MA 02201

Via email: shawn.williams@boston.gov

RE: SPR21/0234; SPR21/0512; SPR21/0679; SPR21/0685; SPR21/0686

Dear Attorney Williams:

I am writing in response to a referral from the Supervisor of Records (the “Supervisor”) to the Attorney General to enforce the Supervisor’s orders made pursuant to the Public Records Law, G.L. c. 4, § 7. On May 25, 2021, the Attorney General received a letter from the Supervisor advising that the City of Boston had failed to comply with several administrative orders from the Supervisor pertaining to five separate public records requests made by Jim Haddadin of *NBC10 Boston*. We direct the City to comply with the Public Records Law as set forth below, and we reserve our rights to seek further enforcement by the court.

In particular, the matters that the Supervisor referred to the Attorney General for enforcement are as follows:

1. SPR21/0234: On January 14¹, Mr. Haddadin requested copies of “any written notices issued to the Boston Police Department employees since Jan. 6, 2021 that pertain to the initiation of internal affairs proceedings; [and] [a]ll citizen complaints received since Jan. 6, 2021.” On January 29, the City denied the request in its entirety, citing to Exemption (f) of the Public Records Law. Mr. Haddadin appealed the response, and on February 12 the Supervisor issued an order finding that the City had failed to sufficiently support the applicability of the claimed exemption to withhold each individual responsive record. The City did not subsequently respond, and on May 13, the Supervisor again ordered the

¹ All dates are in 2021, unless indicated.

City to provide a response, consistent with the Public Records Law and its Regulations, no later than May 20. As of the date of the Supervisor's referral, the City had not complied with the Supervisor's prior order.

2. SPR21/0512: On February 10, Mr. Haddadin requested copies of "all electronic mail messages sent by former Commissioner William Gross during the period from Jan. 25, 2021 through Jan. 29, 2021." The City did not respond, and Mr. Haddadin appealed the lack of response to the Supervisor. On March 12, the Supervisor issued an order that the City respond within ten business days. The City did not subsequently respond, and on May 13, the Supervisor again ordered the City to provide a response, consistent with the Public Records Law and its Regulations, no later than May 20. As of the date of the Supervisor's referral, the City had not complied with the Supervisor's prior order.
3. SPR21/0679: On March 4, Mr. Haddadin requested copies of "records of internal affairs and/or misconduct investigations into Boston Police Department employee Sybil F. White." The City did not respond, and Mr. Haddadin appealed the lack of response to the Supervisor. At that time, the City stated that it intended to respond to the request. On March 30, the Supervisor issued an order that the City respond within ten business days. The City did not subsequently respond, and on May 13, the Supervisor again ordered the City to provide a response, consistent with the Public Records Law and its Regulations, no later than May 20. As of the date of the Supervisor's referral, the City had not complied with the Supervisor's prior order.
4. SPR21/0685: On March 4, Mr. Haddadin requested copies of "all written records created or received by Mayor Martin Walsh during the period from Jan. 11, 2021 through Jan. 28, 2021 that pertain to the selection of Dennis White as police commissioner." The City did not respond, and Mr. Haddadin appealed the lack of response to the Supervisor. At that time, the City stated that it intended to respond to the request. On March 30, the Supervisor issued an order that the City respond within ten business days. The City did not subsequently respond, and on May 13, the Supervisor again ordered the City to provide a response, consistent with the Public Records Law and its Regulations, no later than May 20. As of the date of the Supervisor's referral, the City had not complied with the Supervisor's prior order.
5. SPR21/0686: On March 4, Mr. Haddadin requested copies of "records of internal affairs and/or misconduct investigations into Boston Police Department employee Dennis A. White." The City did not respond, and Mr. Haddadin appealed the lack of response to the Supervisor. At that time, the City stated that it intended to respond to the request. On March 30, the Supervisor issued an order that the City respond within ten business days. The City did not subsequently respond, and on May 13, the Supervisor again ordered the City to provide a response, consistent with the Public Records Law and its Regulations, no later than May 20. As of the date of the Supervisor's referral, the City had not complied with the Supervisor's prior order.

On May 25, after the Supervisor referred these matters to the Attorney General for enforcement, you committed to responding to each of the five requests. I asked you to send to

me, by the end of the day on May 27, the City's supplemental responses to each of the five requests. Since these matters were referred to the Attorney General for enforcement, the City has provided supplemental responses to Mr. Haddadin regarding the requests that are the subjects of SPR21/0512, SPR21/0679, and SPR21/0685. We acknowledge the City's prompt but incomplete responses after referral to the Attorney General, and we direct further compliance as outlined below.

First, regarding SPR21/0512, seeking copies of all emails sent by former Commissioner Gross between January 25 and January 29, I understand that the City provided the responsive emails to Mr. Haddadin on May 25, with limited redactions that the City described and explained in its response. We direct the City to send to me, by June 4, copies of the redacted emails that were produced.

Second, regarding SPR21/0679, seeking records of internal affairs and/or misconduct investigations regarding Sybil F. White, I understand that the City provided some records and also claimed exemptions under the Public Records Law. Specifically, in its supplemental response on May 26, the City asserted:

IAD Investigation 103-01, consists of a report concerning an allegation and subsequent investigation into an alleged offense covered by M.G.L c.41 Section 97D. Portions of fourth record 140-96 are properly withheld under the first clause of the privacy exemption to the public records law, G.L. c. 4 §7(26)(c), which applies to *medical files or information, the disclosure of which may constitute an unwarranted invasion of personal privacy*. Disclosure of the portions of the record withheld are diagnostic in nature and would allow for the disclosure of detailed, inmate information about the named officer's medical conditions. Such disclosure would certainly infringe upon the "strong public policy in Massachusetts that favors confidentiality as to medical data about a person's body." Globe Newspaper Company & another v. Chief Medical Examiner, 404 Mass. 132, 135 (1989).

We direct the City to send to me, by June 4, copies of the records as they were produced on May 26, including with any redactions, as well as any supplemental response or explanation, so that we may review whether this response complies with the Supervisor's Order. I note that when claiming an exemption to the Public Records Law, a records custodian is obligated to demonstrate the applicability of the claimed exemption to each individual responsive record that is being withheld or redacted.

Third, regarding SPR21/0685, seeking records created or received by Mayor Walsh between January 11 and January 28 regarding the selection of Dennis White as police commissioner, the City responded on May 28 that there are no records responsive to the request, although the City instead provided a letter dated February 1 from Mayor Walsh to City Clerk Maureen Feeney appointing Dennis White as Police Commissioner of the Boston Police Department. This document was produced without redaction.

Finally as to the two remaining requests, to date the City has failed to provide any substantive response to the request that is the subject of SPR21/0686 and has provided no response since January 29 to the request that is the subject of SPR21/0234, when it denied the request in its entirety and asserted that the records are exempt under Exemption (f).

The Public Records Law provides an exception for certain investigatory records. Exemption (f) allows a custodian of records to withhold:

Investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

G.L. c. 4, § 7 cl. 26(f).

In determining compliance with the law, we look to relevant case law to understand how Exemption (f) applies. Under the Public Records Law, there exists “a presumption that the record sought is public,” G.L. c. 66, § 10(c), and a government agency that refuses to comply with an otherwise proper request for disclosure has the burden of proving with specificity that the information requested is within the statutory exemptions to disclosure. Moreover, the existence of some exempt information in a document will not “justify cloture as to all of it,” Reinstein v. Police Comm’r of Boston, 378 Mass. 281, 290 (1979), because “the right to access extend[s] to any nonexempt ‘segregable portion’ of a public record.” Id. at 287-288.

The inquiry under Exemption (f) is whether the materials requested are “investigatory materials necessarily compiled out of the public view,” and, if so, whether the custodian has demonstrated that their release “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” See Reinstein at 290-291. There exists no blanket exemption for police records or investigation materials. See Reinstein at 289-290. Indeed, the language of Exemption (f) “makes clear that some investigatory materials are public records.” Boston Globe Media Partners, LLC v. Dep’t of Criminal Justice Info. Servs., 484 Mass. 279, 290 (2020) (Emphasis in original). However, courts recognize that in some circumstances, certain categories of records, such as witness statements to be used in a pending criminal proceeding, may be exempt from disclosure without an inquiry into whether disclosure would cause undue prejudice to effective law enforcement in the particular case. Reinstein at 290, n. 18.

To properly claim that Exemption (f) applies, a custodian must demonstrate that the disclosure of the records would have a prejudicial effect on the agency’s investigative efforts. The Public Records Law requires a case-by-case analysis as to the application of the exemption to the specific records requested. See Reinstein at 290; Globe Newspaper Co., 419 Mass. at 859. An assertion that the requested records are “investigatory materials” relating to an ongoing investigation is not enough; the City must also demonstrate that disclosure of the records would likely be so prejudicial to effective law enforcement that disclosure would not be in the public interest.

You informed me by email on May 28 that the City intends to provide responses to these two remaining requests by June 4. We therefore order the City to either produce all responsive records pertaining to the requests that are the subject of SPR21/0234 and SPR21/0686, or, if the City is withholding any responsive documents in full or in part, to provide sufficient explanation and support for the applicability of any claimed exemption(s) as to each responsive document. The City is ordered to provide the responsive documents, and/or adequate explanation for any claimed exemptions, to our office and to Mr. Haddadin by June 4, 2021.

If the City fails to comply in any of the above-listed respects, we intend to seek enforcement of the Supervisor's orders in Superior Court in accordance with our authority under G.L. c. 66, § 10A(b). We anticipate your cooperation.

Sincerely,



Carrie Benedon
Assistant Attorney General
Director, Division of Open Government

cc: Rebecca Murray, Supervisor of Records
Jim Haddadin, NBC10
Henry Luthin, Esq.

EXHIBIT G

From: [City of Boston](#)
To: [Haddadin, Jim \(NBCUniversal\)](#)
Cc: rebecca.murray@sec.state.ma.us; [Benedon, Carrie \(AGO\)](#)
Subject: Police Records Request :: B000369-030421
Date: Wednesday, June 9, 2021 5:49:07 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Attachments:

[White IAD Case 2013-0511 Redacted.pdf](#)

--- Please respond above this line ---



City of Boston
Shawn A. Williams, Esq.
Director of Public Records

06/09/2021

RE: PUBLIC RECORDS REQUEST of March 04, 2021., Reference # B000369-030421; SPR21-0686

Dear Jim:

The Boston Police Department (Department) has received your request for public records. This response applies only to records that exist and are in the custody of the Department. See *A Guide to the Massachusetts Public Records Law*, p. 32, n.115. It is expected that a custodian of records must use her superior knowledge of her records with respect to responses to public records requests. 950 CMR 32.04(5). Specifically, you stated:

Pursuant to the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10), I write to request access to and copies of all records of internal affairs and/or misconduct investigations into Boston Police Department employee Dennis A. White.

For reference, the Appeals Court of Massachusetts has held that "internal affairs" records are distinct from "personnel records" and therefore cannot be withheld under M.G.L. ch. 4, § 7(26)(c) (the "personnel exemption" to the Public Records Law). See the Secretary of the Commonwealth's Guide to the Massachusetts Public Records Law, pg. 12, citing Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 8-9 (2003).

There are three (3) records responsive to your request:

Dennis White IAD Case 2013-0511

The record consists of 140 pages. The record is provided with this letter. The record is redacted to omit a criminal history of a specifically identified person. That specific person is not Dennis White. Such information is exempt by statute as criminal offender record information.

Dennis White IAD Case 129-99

This record consists of 56 pages. This request is denied as the record consists of one (1) investigation into an allegation of sexual assault or domestic violence. There are no other complaints in this file other than those associated with sexual assault or domestic violence. The Department will continue its review and provide any nonexempt records after that review is complete.

Dennis White IAD Case 228-93

This record consists of 39 pages. This request is denied as the record consists of one (1) investigation into an allegation of sexual assault or domestic violence. There are no other complaints in this file other than those associated with sexual assault or domestic violence. The Department will continue its review and provide any nonexempt records after that review is complete.

Applicable Law

Criminal Offender Record Information (CORI)

Criminal offender record information that compiles a criminal history is exempt from disclosure by statute as it operates under exemption (a) of the public records law. G. L. c. 6, §§ 167-178B; G. L. c. 4, § 7 (26) (a). Exemption (a) applies to records that are "specifically or by necessary implication exempted from disclosure by statute."

The Supreme Judicial Court found that a criminal history is the type of record that is exempt from disclosure under the CORI act. Attorney General v. District Attorney for Plymouth District, 484 Mass. 260, 260 (2020).

The Supervisor of Records states:

A government entity may use the statutory exemption as a basis for withholding requested materials where the exempting statute expressly states or necessarily implies that the public's right to inspect records under the Public Records Law is restricted.

A Guide to the Massachusetts Public Records Law, p. 15 Updated March 2020 (accessed June 9, 2021).

Allegations of Sexual Assault or Domestic Violence

The laws of the Commonwealth of Massachusetts associated with allegations of sexual assault or domestic violence are intended to protect not the accused but are intended to protect the identity of an alleged victim as well as the specifics of the report:

All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in section 1 of chapter 209A, and all communications between police officers and victims of such offenses or abuse shall not be public reports and shall be maintained by the police departments in a manner that shall assure their confidentiality; provided, however, that all such reports shall be accessible at all reasonable times, upon written request, to: (i) the victim, the victim's attorney, others specifically authorized by the victim to obtain such information, prosecutors and (ii) victim-witness advocates as defined in section 1 of chapter 258B, domestic violence victims' counselors as defined in section 20K of chapter 233, sexual assault counselors as defined in section 20J of chapter 233, if such access is necessary in the performance of their duties; and provided further, that all such reports shall be accessible at all reasonable times, upon written, telephonic, facsimile or electronic mail request to law enforcement officers, district attorneys or assistant district attorneys and all persons authorized to admit persons to bail pursuant to section 57 of chapter 276. Communications between police officers and victims of said offenses and abuse may also be shared with the forgoing named persons if such access is necessary in the performance of their duties. A violation of this section shall be punished by imprisonment for not more than 1 year or by a fine of not more than \$1,000, or both such fine and imprisonment.

G. L. c. 41, § 97D (emphasis added)

The statute protects Department records relating to allegations of domestic violence or sexual assault in their entirety. All reports of domestic violence or sexual assault are protected by the Department in a manner that assures their confidentiality. These records can only be released with a court order. The statute provides no discretion for the Department to produce the records.

The Requested Records are the Subject of Active Litigation 2184cv00996 Globe Media Partners LLC v. Boston Police Department

The Boston Globe requested copies of the same internal affairs files that are withheld in this request. The Department denied the request filed by the Boston Globe for the same reason it denies the present request. The

responsive records are completely exempt from disclosure under statutes that serve to protect the privacy rights of victims. G. L. c. 41, § 97D.

Subsequent to receiving the denial the Boston Globe filed a complaint in Superior Court. The first paragraph of the complaint states:

This is an action to enforce the Public Records Law, G.L. c. 66 §§ 10 and 10A. The case presents an important question of law: Whether G.L. c. 41 § 97D imposes a permanent, mandatory, blanket prohibition on the disclosure of any and all information contained in records of internal affairs investigations of alleged domestic violence and sexual assault committed by police officers. The statute does no such thing. Section 97D was enacted as part of "An act establishing a method of reporting and prosecuting the crime of rape and counselling of victims of rape." Its confidentiality obligations apply to reports of and communications between police officers and complainants originating sexual assault investigations. The statute does not apply to the entirety of any and all other government records that mention sexual assault allegations, such as press releases, search warrant affidavits, or administrative records such as an internal affairs investigations that are not part of the original reports or communications between a victim and an investigating officer.

Clearly, the records requested, and the response provided by the Department to that request, are the subject of open and ongoing litigation associated with the Department's position that such records are exempt by statute. The records requested by the Boston Globe and the response provided to the Boston Globe is identical to the records requested here.

You may appeal this response to the Supervisor of Records in the Office of the Secretary of the Commonwealth. G. L. c. 66, § 10A (c); G. L. c. 66, § 10(b)(ix); 950 CMR 32.08; 950 CMR 32.08(1)(h) (in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition). You may also appeal to the Superior Court. 950 CMR 32.06(3)(c).

Should the Supervisor of Records be so petitioned the Department requests that no action be taken prior to the issuance of an order from the Superior Court. It is my understanding the Supervisor traditionally will decline to opine upon a matter that is under review by the courts.

Very truly yours,



Shawn A. Williams, Esq.
Director of Public Records
Records Access Officer

To monitor the progress or update this request please log into the [Public Records Center](#).