

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
2184CV \_\_\_\_\_

\_\_\_\_\_  
 )  
 TRUSTEES OF BOSTON UNIVERSITY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOSTON POLICE DEPARTMENT, )  
 )  
 Defendant. )  
 \_\_\_\_\_

**8/27/2021**

**VERIFIED COMPLAINT TO ENFORCE THE PUBLIC RECORDS LAW**

INTRODUCTION

Plaintiff Trustees of Boston University, on behalf of its public radio station, WBUR, (hereinafter, “WBUR”), brings this action to enforce the Public Records Law, G.L. c. 66, §§ 10 and 10A. Defendant Boston Police Department (“BPD”) has violated the Public Records Law by failing to provide WBUR reporter Allison Jarmanning with a copy of a database concerning police misconduct investigations. WBUR seeks an order directing BPD to produce the requested database forthwith, for an award of reasonable attorney's fees and costs, and for an award of punitive damages.

PARTIES

1. Plaintiff Trustees of Boston University is a Massachusetts charitable institution. It owns and operates the public radio station WBUR, which produces, publishes, and broadcasts journalism of interest to residents of the greater Boston area and beyond. WBUR has its principal place of business at 890 Commonwealth Avenue, Boston, Massachusetts.

2. Defendant Boston Police Department (“BPD”) is the law enforcement agency of the City of Boston. It has its principal place of business at 1 Schroeder Plaza, Boston, Massachusetts.

### JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to G.L. c. 66, § 10A(d).

4. Venue is proper pursuant to G.L. c. 66, § 10A(c).

### THE MASSACHUSETTS PUBLIC RECORDS LAW

5. The Public Records Law provides that records custodians, including municipal police departments, “shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record” as defined in G.L. c. 4, § 7, cl. 26, and shall do so “not later than 10 business days following the receipt of the request.” G.L. c. 66, § 10(a).

6. The statutory term “Public records” includes all “documentary materials or data, regardless of physical form or characteristics” either “made or received by” any officer or employee of any agency of the Commonwealth or any municipality. G.L. c. 4, § 7, cl. 26. The term includes certain exemptions, listed in G.L. c. 4, § 7, cl. 26(a)-(v).

7. Documents relating to internal police misconduct investigations, also known as “internal affairs” investigations, are public records. *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 8-9 (2003); *Gatehouse Media, LLC v. City of Worcester*, No. 1885CV1526A, 2021 WL 2328416, at \*18 (Mass. Super. June 2, 2021).

8. Under the Public Records Law, a municipal police department, within 10 business days after a public records request, must either provide a requested public record, or if the department does not intend to provide the requested record, must so inform the requestor. G.L. c. 66, § 10 (a)-(b). If the department does not intend to comply, it must “identify any records,

categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based.” G.L. c. 66, § 10(b)(iv).

#### ENFORCEMENT ACTIONS UNDER THE PUBLIC RECORDS LAW

9. A person who requests public records may initiate a civil action to enforce the Public Records Law. G.L. c. 66, § 10A(c).

10. In any such action, 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).

11. The Superior Court has available all remedies at law or in equity in an enforcement action, including the authority to enter injunctive relief, G.L. c. 66, § 10A(d)(1)(i); to award attorney fees and costs, *id.* § 10A(d)(2); and, in cases where the Court finds the agency did not act in good faith, to award punitive damages, *id.* § 10A(d)(4).

#### WBUR’S PUBLIC RECORDS REQUEST

12. On April 22, 2021, WBUR’s reporter Allison Jarmanning submitted a public records request to the designated Records Access Officer of the Boston Police Department (the “Request”). Jarmanning requested

[a] database or other aggregate information related to internal affairs complaints against Boston police officers. Field names may include, but not be limited to: IA number or case number; incident type; received date; first and last name; title; badge or ID number; allegation; finding; finding date; action taken or outcome; summary or narrative.

I would like this information dating as far back as the Boston police department has it available in an electronic format.

I have received similar records in the past, but without a summary or narrative field. I would like these records with that field.

A copy of the request is attached hereto as Exhibit 1.

13. As Jarmanning stated in her Request, BPD had already produced portions of the requested database to her in response to a previous public records request. Specifically, it did so on or about August 31, 2020, when it provided a version of the database with the following fields: "IA No.," "Incident type," "Received date," "Title/rank," "First Name," "Last Name," "Badge/ID number," "ID Number," "Allegation," "Finding," "Finding date," "Action taken," and "Days or hours suspended."

14. On information and belief, complaints have been made against Boston Police officers since August 31, 2020, and information about those complaints is included in the current database Jarmanning requested.

15. WBUR is aware that BPD has maintained the internal affairs database with a field entitled "Summary" included. The "Summary" field contains descriptions of the incident(s) or interaction(s) that brought about each internal affairs complaint. WBUR is aware that BPD provided a version of the database with the "Summary" field to the *Boston Globe* on or about May 19, 2015. Further, on information and belief, on or about October 7, 2016, BPD provided a version of the database with the "Summary" field to Joseph Palin, a public records requester who is not affiliated with WBUR.

16. BPD sent an email to Jarmanning on April 22, 2021 acknowledging its receipt of her request. (Exhibit 1). However, BPD failed, within 10 business days, either (a) to provide the records she requested or (b) to provide a response explaining its decision to withhold the records and containing the information required by G.L. c. 66, § 10(b).

17. On May 25, 2021, Jarmanning appealed the BPD's non-response to the Supervisor of Records of the Office of the Secretary of the Commonwealth. On June 8, 2021, the Supervisor issued a determination ordering BPD to "provide Ms. Jarmanning with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within 10 business days." A copy of the Supervisor's determination is attached hereto as Exhibit 2.

18. Notwithstanding the expiration of the time to respond set forth in the Public Records Law and the Supervisor's Order, BPD has not provided a response, or the requested records, as of today's date.

19. On June 21, 2021, Jarmanning spoke to Sgt. Det. John Boyle, the Records Access Officer for the Boston Police Department, about the request. Sgt. Boyle told Jarmanning that he was aware of her request but did not intend to produce the records requested because reviewing and redacting the database would take too much time.

#### COUNT I

##### G.L. c. 66, § 10 — VIOLATION OF THE PUBLIC RECORDS LAW

20. WBUR incorporates by reference the allegations set forth above as if fully contained herein.

21. The Department has failed to respond to WBUR's April 22, 2021 public records request, in violation of G.L. c. 66, § 10.

22. The records requested in the April 22, 2021 public records request are public records not subject to any exemption.

23. The Department has failed to produce the records requested in WBUR's April 22, 2021 public records request, in violation of G.L. c. 66, § 10.

24. The Department's failure to comply with the Public Records Law was not in good faith.

25. WBUR is entitled to an order of compliance under G.L. c. 66, § 10A(c) and (d); an award of its reasonable attorneys' fees and costs pursuant to G.L. c. 66, § 10A(d)(2); and to an award of punitive damages pursuant to G.L. c. 66, § 10A(d)(4).

WHEREFORE, Plaintiff Trustees of Boston University respectfully prays that the Court:

1. Order that proceedings in this case be expedited pursuant to G.L. c. 66, § 10A(d)(1)(iii);
2. Grant judgment for the Plaintiff;
3. Order that the Boston Police Department forthwith produce the documents responsive to Plaintiff's request described hereunder;
4. Award the Plaintiff its reasonable attorney fees and costs pursuant to G.L. c. 66, § 10A(d)(2);
5. Issue a permanent injunction requiring the Boston Police Department to respond to future public records requests from the Plaintiff in compliance with the requirements of Massachusetts Public Records Law, G.L. c. 66, §§ 10, 10A; and
6. Enter such other relief as the Court deems just and proper.

TRUSTEES OF BOSTON UNIVERSITY,

By its attorney,

/s/ Jeffrey J. Pyle

Jeffrey J. Pyle (BBO #647438)

jpyle@princelobel.com

PRINCE LOBEL TYE LLP

One International Place, Suite 3700

Boston, MA 02110

(617) 456-8143

(617) 456-8100 (fax)

Date: August 26, 2021

VERIFICATION

I, Allison Jarmanning, state that I have read the foregoing Verified Complaint to Enforce the Public Records Law, that I am authorized to make this Verification on Plaintiff's behalf, and that the factual allegations in paragraphs 1-19 herein are true and based on personal knowledge or information available to me which I believe to be true to the best of my knowledge, information, and belief.

Executed this 26th day of August, 2021,

/s/ Allison Jarmanning

Allison Jarmanning

# EXHIBIT 1





Allison Jarmanning &lt;allyjar@bu.edu&gt;

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**records request -- IA database with summary field**

2 messages

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**Allison Jarmanning** <allyjar@bu.edu>  
To: John Boyle <johnt.boyle@pd.boston.gov>

Thu, Apr 22, 2021 at 2:04 PM

Hello,

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

A database or other aggregate information related to internal affairs complaints against Boston police officers. Field names may include, but not be limited to: IA number or case number; incident type; received date; first and last name; title; badge or ID number; allegation; finding; finding date; action taken or outcome; summary or narrative.

I would like this information dating as far back as the Boston police department has it available in an electronic format.

I have received similar records in the past, but without a summary or narrative field. I would like these records with that field.

If these records are available electronically, in a machine readable format and their native form (an Excel spreadsheet, database, etc.) I would prefer them in that way.

I also request that, if appropriate, fees be waived as this request is made for news gathering purposes and we believe it is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. In the event that fees cannot be waived, please provide a detailed fee estimate.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. That includes citing a specific exemption explaining why any redactions are made.

Sincerely,

Ally

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Ally Jarmanning  
WBUR - Boston's NPR News Station  
wbur.org

--  
617-827-0015  
@allyjarmanning  
she/her

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**John Boyle** <johnt.boyle@pd.boston.gov>  
To: Allison Jarmanning <allyjar@bu.edu>, John Boyle <johnt.boyle@pd.boston.gov>, Maisha Miraj <maisha.miraj@pd.boston.gov>

Thu, Apr 22, 2021 at 6:58 PM

April 22, 2021

Ally Jarmanning  
allyjar@bu.edu

Re: [April 22, 2021 Public Records Request](#)

Dear Ms. Jarmanning:

The Boston Police Department has received your request for public records. A response to a public records request must be provided within ten (10) business days from the business day a written request was received. G. L. c. 66, § 10 (a); 950 CMR 32.06(2)(b). It is possible the City may need additional time to provide any responsive records. The City will provide a "detailed statement" to any requester should additional time be necessary to comply with a request. The public records law permits a response time of up to twenty-five (25) business days from the business day a written request is received, so long as a detailed explanation is provided. G. L. c. 66, § 10(b)(vi); 950 CMR 32.06(2)(i). This response applies only to records that exist and are in the custody of the City. *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:

*This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:*

*A database or other aggregate information related to internal affairs complaints against Boston police officers. Field names may include, but not be limited to: IA number or case number; incident type; received date; first and last name; title; badge or ID number; allegation; finding; finding date; action taken or outcome; summary or narrative.*

*I would like this information dating as far back as the Boston police department has it available in an electronic format.*

*I have received similar records in the past, but without a summary or narrative field. I would like these records with that field.*

*If these records are available electronically, in a machine readable format and their native form (an Excel spreadsheet, database, etc.) I would prefer them in that way.*

*I also request that, if appropriate, fees be waived as this request is made for news gathering purposes and we believe it is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. In the event that fees cannot be waived, please provide a detailed fee estimate.*

*The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing. That includes citing a specific exemption explaining why any redactions are made.*

A municipal records custodian is permitted to assess fees for the provision of public records. G. L. c. 66, § 10 (d); 950 CMR 32.07. A municipality may assess an hourly rate of up to \$25.00 per hour to search for records responsive to public records requests, but may not charge for the first two hours of work. G. L. c. 66, § 10 (d) (iii); 950 CMR 32.07(2)(m). Black and white paper copies of records shall be provided at a cost of \$.05 per page. It is presumed that a requester prefers electronic copies of records when available. There is no per page cost for electronic records. If necessary voluminous electronic records will be made available on a storage device. The cost of the storage device will be no more than the actual cost.

Government records custodians are permitted to redact or withhold portions of public records, so long as a specific exemption to the law is cited. *See* G. L. c. 4, § 7 (26). Portions of records responsive to your request may contain information that is exempt from disclosure.

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).

Thank you,

Sgt. Det. John Boyle

[Quoted text hidden]

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*Sergeant Detective John Boyle*  
*Boston Police Department*  
*Office of Media Relations*  
*1 Schroeder Plaza*  
*Boston, Massachusetts, 02120*  
*617-343-4520*

# EXHIBIT 2



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

Rebecca S. Murray  
*Supervisor of Records*

June 8, 2021  
**SPR21/1296**

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 petition of Allison Jarmanning of *WBUR* appealing the nonresponse of the Boston Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on April 22, 2021, Ms. Jarmanning requested “[a] database or other aggregate information related to internal affairs complaints against Boston police officers. Field names may include, but not be limited to: IA number or case number; incident type; received date; first and last name; title; badge or ID number; allegation; finding; finding date; action taken or outcome; summary or narrative. I would like this information dating as far back as the Boston police department has it available in an electronic format. I have received similar records in the past, but without a summary or narrative field. I would like these records with that field.”

Claiming to not yet have received a response, Ms. Jarmanning petitioned this office and this appeal was opened as a result.

***The Public Records Law***

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

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of

establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

***Order***

Despite being notified of the opening of this appeal, the Department has yet to provide a response with respect to Ms. Jarmanning's request. Accordingly, the Department is ordered to provide Ms. Jarmanning with a response to the request, 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](mailto:pre@sec.state.ma.us). Ms. Jarmanning may appeal the substantive nature of the Department's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray  
Supervisor of Records

cc: Ms. Allison Jarmanning, *WBUR*