

Subject: FW: Request for Appeal - Improper fee requirement, NO records released (Malden 2021-0066)
Date: Tuesday, March 16, 2021 at 5:11:06 PM Central Daylight Time
From: Bruce Friedman
To: pre@sec.state.ma.us, Puccini, Angela M (SEC)
CC: Greg Lucey, Kathryn M. Fallon
Priority: High
Attachments: 2021-0066 Request.pdf, PRR2021-0065&2021-0066_03162021171542.docx

Greetings and Happy Freedom of Information Day!:

The response received this evening in the form of the attached word document and email below is disingenuous and flawed.

I am hereby asking the Secretary to issue an Order charging the City to respond with complete records, without delay and without charge or redaction.

The issue at hand is actually, yet another incredulous examples of the City of Malden's persistent and willful disregard for open government, transparency and the FOIA process in Massachusetts.

The original request was (attached): " Please provide all emails sent to or sent from anyone in the FQDN cityofmalden.org which refer to 89 Summer Street A/K/A Malden District Court. These emails are to be provided in the electronic form which they are regularly maintained and must include all email metadata."

The RAO had until the COB on Wednesday, March 10, 2021 to respond per G. L. c. 66, § 10(b), G. L. c. 66, § 10(e) and/or 950 C.M.R. 32.06(2)(c). The City failed to respond timely, the request was sent on 2/24/2021 after hours received on 2/25/2021 at the start of business. The response was due by the close of business on Wednesday, March 10, 2021. And was sent AFTER close of business (5:27 PM) on 3/16/21 making the response effective on 3/17/21, or the 15th business day; See below:

Date	Day Tolloed
Wednesday, February 24, 2021	
Thursday, February 25, 2021	1
Friday, February 26, 2021	2
Saturday, February 27, 2021	
Sunday, February 28, 2021	
Monday, March 1, 2021	3
Tuesday, March 2, 2021	4

Wednesday, March 3, 2021	5
Thursday, March 4, 2021	6
Friday, March 5, 2021	7
Saturday, March 6, 2021	
Sunday, March 7, 2021	
Monday, March 8, 2021	8
Tuesday, March 9, 2021	9
Wednesday, March 10, 2021	10
Thursday, March 11, 2021	11
Friday, March 12, 2021	12
Saturday, March 13, 2021	
Sunday, March 14, 2021	
Monday, March 15, 2021	13
Tuesday, March 16, 2021	14
Wednesday, March 17, 2021	15

In regards to the response itself, the request was for electronic records, kept in an electronic system. The City must “at reasonable times and without unreasonable delay” permit inspection or furnish a copy of any public record not later than 10 business days following the receipt of the request.

The fees attached are neither legal nor warranted. The City may not be permitted to charge fees associated with the records request if the City did not provide a response to the request within 10 business days, in compliance with the provisions of the Public Records Law. See G. L. c. 66, §10(e); see also 950 C.M.R. 32.06(2) (c).

The fee estimate must provide the hourly rate and the number of hours required for each portion of the task. **An RAO may not recover fees associated with record organization.**

The Public Records Law and its Regulations apply to all Massachusetts government records, regardless of form, and regardless of the location of the records.

Provision of public records in electronic form is preferred, where available. **An RAO is not permitted to assess a copying fee for electronic records.**

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.**

Finally, the City has identified responsive records in what they deem "Sample Sets" and as per their usual business conduct, failed to provide BOTH the responsive records and the privilege logs for the alleged privileged documents.

The City is attempting to find yet another way to block transparency, thwart FOIA requests, and shirk their duties. Allowing them to extend their FOIA response dates is not consistent with the law, it is not consistent with open government and it is not consistent with what the City's position it takes with its citizens.

Regards,

- Bruce Friedman

From: foiairect@townforms.com <foiairect@townforms.com>

Date: Tuesday, March 16, 2021 at 5:27 PM

To: ab <ab@amyandbruce.com>

Cc: glucey@cityofmaiden.org <glucey@cityofmaiden.org>, GChristenson@cityofmaiden.org <GChristenson@cityofmaiden.org>, glucey@cityofmaiden.org <glucey@cityofmaiden.org>

Subject: Request# 2021-0065 : Response to your Request

Please DO NOT reply to this email !! Please use the email address of the sender at bottom of this email, in order to communicate with the request management team.

Malden, MA

Public Record Request Number:2021-0065

Requester: Bruce Friedman

Request Date: Thursday, February 25, 2021 8:30:00 AM

Response Due Date: Tuesday, March 16, 2021

Dear Bruce Friedman:

We have completed the work in reference to your request as referenced above. The response is given below.

Request Response

See attached document responding to your request

Attachments

This response may or may not contain separate Response Documents to include specific response and data. In case such separate response documents exist, they are represented by attachments to this response email. Therefore, please look for any attachments if they exist. Between Request Response and attachments, we believe you are receiving a comprehensive response to your request.

If you have any questions or comments, please do not hesitate to contact us at the following email address.

Thank you.

Anthony Rodrigues, Department Power Reviewer

IT Department Department

Malden

110 Pleasant Street

Malden, MA 02148

Tel: (781)-397-7000

Email: arodrigues@cityofmalden.org

Please [click here](#) to download your response document(s).