

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT

AMERICAN CIVIL LIBERTIES UNION
OF MASSACHUSETTS, INC.,

Plaintiff,

v.

PLYMOUTH COUNTY SHERIFF'S
DEPARTMENT,

Defendant.

C.A. No. 2684CV00477

**PLAINTIFF'S REPLY IN SUPPORT OF
CROSS-MOTION FOR SUMMARY JUDGMENT**

In this public records lawsuit, this Court reviews the actions of the Plymouth County Sheriff's Department ("PCSD") *de novo*, and PCSD bears the burden to justify any withholding of records in its possession. *See* G.L. ch. 66, § 10A(d)(1)(ii), (iv). Through its cross-motion for summary judgment, the American Civil Liberties Union of Massachusetts ("ACLUM") put PCSD to that burden. PCSD has not met its burden to justify withholding the requested records. It submitted no evidence of what documents it is withholding or why. It has not argued for the applicability of any of the exemptions it previously asserted in correspondence with ACLUM. It has not asserted any additional exemptions. It has not disputed any of ACLUM's statements of fact, and those statements are therefore deemed admitted. *See* Mass. Super. Ct. Rule 9A(b)(5)(iii)(A). There are no material facts in dispute, and ACLUM is entitled to judgment as a matter of law.

Although PCSD's opposition does not contest the merits of summary judgment, it raises several procedural objections. These objections are foreclosed by the governing rules of civil

procedure. First, PCSD asserts that ACLUM's cross-motion was filed too early, but Rule 56(a) says the opposite. That rule specifically authorizes plaintiffs (like ACLUM) to file a summary judgment motion "at any time after the expiration of 20 days from the commencement of the action." Mass. R. Civ. P. 56(a). ACLUM's cross-motion is therefore timely.

Second, PCSD appears to request a postponement under Rule 56(f). That request should be denied for multiple reasons. For one thing, PCSD submitted no affidavit and therefore has not complied with the procedural requirements of Rule 56(f). And beyond that, PCSD has not shown that taking discovery from a public records requestor would be in any way useful to deciding this case. PCSD is already in possession of all the records and information at issue and is consequently well positioned to assert and argue whatever exemptions might apply. It simply did not. Instead, PCSD vaguely alludes to a desire to take discovery about certain background information referenced in the introduction to ACLUM's brief. ACLUM did provide some context for why it submitted the request, but ACLUM has not asserted that this contextual information is a material fact for summary judgment purposes. *See* ACLUM SOF. And in all events, ACLUM's brief provided hyperlinks to the cited materials, and so they are equally available to PCSD as they are to ACLUM. *See id.* Delaying this case for discovery would serve no purpose.

PCSD's motion to dismiss should be denied for the reasons previously argued, and ACLUM's cross-motion for summary judgment should be allowed. ACLUM also respectfully requests that its cross-motion be heard at the July 13 hearing, along with the motion to dismiss.

I. ACLUM'S CROSS-MOTION FOR SUMMARY JUDGMENT WAS TIMELY.

PCSD argues that ACLUM's cross-motion for summary judgment is untimely. *See* Opp. at 1–3. But a plaintiff can move for summary judgment "at any time after the expiration of 20 days from the commencement of the action." Mass. R. Civ. P. 56(a). ACLUM filed this action on February 13. *See* Complaint (D.E. 1). ACLUM completed service in March. *See* Return of Serv.

(D.E. 5 & 6). ACLUM served its cross-motion for summary judgment on May 21, well over 20 days later. *See* Opp. & Cross-Mot. (D.E. 12). ACLUM's motion is timely as a matter of law.

PCSD appears to argue that a cross-motion for summary judgment cannot be filed and decided along with a motion to dismiss, *see* Opp. at 3, but that is incorrect. Courts routinely decide cross-motions for summary judgment in tandem with motions to dismiss. *See, e.g., Fifty-One Hispanic Residents of Chelsea v. Sch. Comm. of Chelsea*, 421 Mass. 598, 600 (1996) (motion to dismiss, motion for summary judgment, and cross-motion for summary judgment decided together); *Cooper vs. Callinan*, No. 981183A, 1998 WL 1181681, at *1 (Mass. Super. Ct. Nov. 23, 1998) (denying defendants' motion to dismiss and granting plaintiffs' cross-motion for summary judgment). ACLUM was permitted to file, and PCSD was required to respond to, a motion for summary judgment at this time.¹

II. THERE IS NO DISPUTE OF MATERIAL FACT.

In compliance with Rule 9A(b)(5)(i), ACLUM served with its motion a statement of material facts. PCSD did not serve any response or dispute any of these facts. *See* Rule 9A(b)(5)(iii)(A). Accordingly, ACLUM's asserted facts are all deemed admitted. *See id.*

In its opposition brief, PCSD vaguely references "various factual disputes that Plaintiff raises in their motion for summary judgment," without citing any record evidence or identifying particular statements of material fact it wishes to dispute. Opp. at 3. It is unclear exactly what PCSD is referring to, but in all events, "[b]are assertions made in the nonmoving party's opposition

¹ Notably, PCSD did not file a motion to strike the cross-motion for summary judgment. Instead, PCSD filed the Rule 9A package without including all materials related to the cross-motion (omitting even its own opposition). PCSD's actions appear to be non-compliant with Rule 9A. *See* Rule 9A(b)(4)(ii) & (b)(5)(iv)(C). ACLUM is accordingly filing all materials related to the cross-motion so that the record will be complete.

will not defeat a motion for summary judgment.” *Barron Chiropractic & Rehabilitation, P.C. v. Norfolk & Dedham Group*, 469 Mass. 800, 804 (2014); *see also* Mass. R. Civ. P. 56(e). Accordingly, ACLUM’s statements of fact are deemed admitted, and there is no genuine dispute of material fact for summary judgment purposes.² *See* Mass. R. Civ. P. 56(c).

III. PCSD HAS NOT MET ITS BURDEN TO JUSTIFY WITHHOLDING THE REQUESTED RECORDS.

Under the Public Records Law, the requested records are presumed to be public, and PCSD bears the burden to prove that they are not. *See* G.L. ch. 66, § 10A(d)(1)(iv); *Mack v. District Attorney*, 494 Mass. 1, 10 (2024). PCSD has not presented any evidence to meet this burden. Its summary judgment opposition does not argue that any exemptions under the Public Records Law apply to the requested documents. ACLUM is therefore entitled to judgment as a matter of law. *See, e.g., Boston Globe Media Partners v. DCJIS*, 484 Mass. 279, 294 (2020). Any potential arguments by PCSD to the contrary are waived. *See, e.g., Medmarc Cas. Ins. Co. v. Harvard Bioscience, Inc.*, No. 2184CV02093, 2022 WL 1416489, at *5 n.6 (Mass. Super. Ct. Jan. 24, 2022).

IV. PCSD HAS NOT SHOWN ANY REASON TO POSTPONE SUMMARY JUDGMENT UNDER RULE 56(F).

PCSD requests postponement of summary judgment under Rule 56(f). *See* Opp. at 1, 3–4. Yet, PCSD has not complied with the procedures necessary to invoke the rule. “Rule 56(f) requires [a party opposing summary judgment] to *file an affidavit* explaining the reasons why he or she cannot present facts to justify his or her opposition and requesting a continuance to obtain further discovery.” *Carroll v. Select Bd.*, 493 Mass. 178, 194–195 (2024) (emphasis added). PCSD has

² ACLUM notes that its statements of fact all relate to uncontroversial matters such as the existence of PCSD’s contract with ICE and the written communications between the parties. PCSD does not suggest that it could, or would, attempt to contradict such statements.

not done so, and that alone justifies denial of a continuance under Rule 56(f). *See First Nat'l Bank v. Slade*, 379 Mass. 243, 244–245 (1979).

Moreover, to secure a continuance under Rule 56(f), courts have long required that the party opposing summary judgment “must show to the best of his ability what facts are within the movant’s exclusive knowledge or control; what steps have been taken to obtain the desired information pursuant to the discovery procedures under the Rules; and that he is desirous of taking advantage of these discovery procedures.” *A. John Cohen Ins. Agency v. Middlesex Ins. Agency*, 8 Mass. App. Ct. 178, 183 (1979); *see also Carroll*, 493 Mass. at 195. PCSD clearly has not met and cannot meet that burden. ACLUM is a public records requestor and, outside of whatever may be learned through this litigation, has no access to information about the specific documents PCSD is withholding. There is nothing for PCSD to discover. *See Commonwealth v. Fall River Motor Sales*, 409 Mass. 302, 308 (1991). PCSD vaguely refers to “politicized news stories . . . and hearsay letters from immigration advocates and elected officials,” *Opp.* at 4, which appears to refer to certain background information contained in the introduction section of ACLUM’s memorandum. *See Mem.* at 1–2. Those facts provide some context as to why ACLUM made the request, but ACLUM did not assert that they are material to summary judgment. *See ACLUM SOF.* And, in any event, ACLUM does not have “exclusive knowledge or control” of that information—indeed, ACLUM provided hyperlinks to the referenced documents, and PCSD can review them as easily as ACLUM can. There is no basis for discovery under Rule 56(f). Summary judgment should not be postponed.

CONCLUSION

For the foregoing reasons, ACLUM respectfully asks that the Court grant ACLUM’s cross-motion for summary judgment.

Dated: June 15, 2026

Respectfully submitted,

/s/ Mackenzie R. Saunders

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2026, the foregoing document was filed with the Suffolk Superior Court and served via email on counsel for Defendant at:

Jessica Kenny
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/s/ Mackenzie Saunders
Mackenzie Saunders