

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1984-CV-02998

AMERICAN CIVIL LIBERTIES UNION OF  
MASSACHUSETTS, INC.,  
Plaintiff,

v.

CITY OF BOSTON,  
Defendant.

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF

1. The Defendant, City of Boston, is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph One of the Complaint.
2. The Defendant admits that beginning on August 1, 2019 there was an increased patrol presence in the area of Atkinson Street, Bradston Street, Massachusetts Avenue, Melnea Cass Boulevard, and Southampton Street in Boston. The Defendant further admits there were arrests on outstanding warrants and drug related activities. The Defendant admits that people were asked to move to facilitate cleaning of the streets, and abandoned items were disposed of. The Defendant denies the remainder of Paragraph Two of the Complaint, including Plaintiff's, American Civil Liberties Union of Massachusetts, Inc. ("ACLUM" or "Plaintiff") characterizations of the events.

3. The Defendant admits that it received a public records request from the ACLUM on August 12, 2019 that concerned the events that began on August 1, 2019 in the area of Atkinson Street, as well as documents concerning a U.S. Conference of Mayors. As to the remainder of Paragraph Three of the Complaint, including that the Plaintiff sent its request “to be able to analyze the City’s actions and to evaluate whether civil rights or civil liberties were improperly invaded,” the Defendant is without sufficient knowledge or information to admit or deny the allegations.
4. The Defendant admits that it sent correspondence to the ACLUM on August 26, 2019 indicating it required additional time to respond to the request pursuant to G.L. c. 66, § 10(b)(iv); 950 CMR 32.06(2)(i). The Defendant remained in contact with the ACLUM via email correspondence on September 6, 11, 12, 13, 15, and 16, 2019. The Defendant admits it provided a response and documents on September 17, 2019, which included a spreadsheet list of arrests with redactions. The Defendant admits it supplied email correspondence. The Defendant admits it did not supply preoperative planning documents or orders, communications with other agencies, police reports, or documents explaining the purpose of the increased police presence.
5. The Defendant is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Five of the Complaint.

#### **PARTIES**

6. The Defendant is without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Six of the Complaint.
7. The Defendant admits the allegations set forth in Paragraph Seven of the Complaint.

### JURISDICTION AND VENUE

8. Paragraph Eight of the Complaint is a statement of jurisdiction and venue and therefore a response is not required from Defendant.

### FACTS

9. The Defendant admits that beginning on August 1, 2019 there was an increased patrol presence in the area of Atkinson Street, Bradston Street, Massachusetts Avenue, Melnea Cass Boulevard, and Southampton Street in Boston. As to the remainder of the allegations contained in Paragraph Nine of the Complaint, the Defendant is without sufficient knowledge or information to admit or deny those allegations.
10. The Defendant admits that it received a public record request from the ACLUM on August 12, 2019 regarding the increased patrol presence that began on August 1, 2019 in the area of Atkinson Street. The Defendant admits that the request was included in correspondence the ACLUM sent to the Mayor of the City of Boston. The Defendant admits that the request covered documents from the Boston Police Department and other City departments, as well as documents related to the U.S. Conference of Mayors. As to the remainder of Paragraph Ten of the Complaint, including Plaintiff's "initial concerns," the Defendant is without sufficient knowledge or information to admit or deny those allegations.
11. The Defendant admits that it sent correspondence to the ACLUM on August 26, 2019 indicating it required additional time to respond to the request pursuant to G.L. c. 66, § 10(b)(iv); 950 CMR 32.06(2)(i).

12. The Defendant admits the ACLUM communicated with its Records Access Officer on September 6, 2019. The remainder of Paragraph Ten of the Complaint alleges conclusions of law and therefore no response is required.
13. The Defendant admits that it corresponded with the ACLUM on September 6, 2019, indicating an intention to provide a response on September 9 or 10, 2019.
14. The Defendant admits it received email correspondence from the ACLUM on September 11, 2019, and that it responded indicating an intent to provide a response by September 13, 2019. As to the remainder of Paragraph Fourteen of the Complaint, including Plaintiff's characterizations of the events, the Defendant is without sufficient knowledge or information to admit or deny those allegations.
15. Paragraph 15 is admitted.
16. Paragraph 16 is admitted.
17. The Defendant denies Paragraph 17 of the Complaint insofar as it alleges the Defendant first sent a "substantive response" on September 17, 2019. The Defendant admits that it provided documents for the first time on September 17, 2019.
18. The Defendant admits that its September 17, 2019 response included emails and no preoperative reports or documents, police reports, arrest logs, property seizure logs, communications between BPD and City Hall or other Departments, and no documents from the Public Works Department or other agencies. As to the remainder of Paragraph Eighteen of the Complaint, including Plaintiff's characterizations regarding the emails, the Defendant denies those allegations.



19. The Defendant admits that the emails provided on September 17, 2019 include emails from August 2 but not August 1. The Defendant admits the contents of the email thread dated August 2, 2019. The Defendant admits no records were provided explaining what the emails meant, for what conduct arrests were made, or explaining the purpose of the increased patrol presence. As to the remainder of Paragraph Nineteen of the Complaint, including Plaintiff's characterizations, those allegations are denied.
20. The Defendant admits that that the emails provided on September 17, 2019 include an email thread from August 5 and admits the content of that email thread. The Defendant admits that no records were produced with after-action reports, pre-action communications with the State Police or Sheriff's office, or any documents explaining what actions were taken. As to the remainder of Paragraph Twenty of the Complaint, including Plaintiff's characterizations, those allegations are denied.
21. The Defendant admits that the emails provided on September 17, 2019 include an email thread from August 6, 2019 and admits the content of that email thread. The Defendant admits no records were produced explaining that email correspondence, what items were disposed of, what personnel from other agencies were involved or in what capacity, or regarding coordination between the Boston Police Department and other departments. As to the remainder of Paragraph Twenty-One of the Complaint, including Plaintiff's characterizations, those allegations are denied.
22. The Defendant admits that the documents referenced in sub-paragraphs i through xi of Paragraph Twenty-Two of the Complaint were not produced. The Defendant denies that it failed to produce records responsive to Request number 4. As to the remainder of

Paragraph Twenty-Two, including Plaintiff's assertion that "It is obvious from the review of the few records produced by the City that many responsive records are completely missing" and "Obvious missing records include but are not limited to," those allegations are denied.

23. Paragraph Twenty-Three of the Complaint is admitted.

24. The Defendant admits that the redaction relied upon for Exhibit D attached to the Complaint was pursuant to G.L. c. 4, § 7 (26 (c)). The Defendant further admits it had previously published names and charges of the individuals arrested. As to the remainder of Paragraph Twenty-Four of the Complaint, including Plaintiff's characterizations, those allegations are denied.

25. The Defendant admits that it received correspondence from the ACLUM on September 20, 2019 "flagging" its concern that records were missing. The Defendant further admits it corresponded with the ACLUM that same day indicating it would "reach out again to BPD on this" and that it believed all records were provided.

#### **CLAIMS FOR RELIEF**

##### ***Count I: Violation [of] The Massachusetts Public Records Law - G.L. c. 66, § 10***

26. The Defendant repeats and incorporates each response contained in paragraphs 1 through 25 as though specifically set forth herein.

27. Paragraph Twenty-Seven of the Complaint alleges conclusions of law and therefore no response is required.

28. Paragraph Twenty-Eight of the Complaint alleges conclusions of law and therefore no response is required.

29. The Defendant admits the allegations contained in paragraph Twenty-Nine of the Complaint.

30. The Defendant denies the allegations contained in Paragraph Thirty of the Complaint.

The Defendant acknowledged receipt of the ACLUM's request on August 12, 2019, the date the request was sent. The Defendant was in contact with the ACLUM subsequently, and on August 26, 2019 the Defendant indicated it needed additional time to complete the request pursuant to G.L. c. 66, § 10(b)(iv); 950 CMR 32.06(2)(i). The Defendant remained in contact with the ACLUM, and provided documents for the first time on September 17, 2019.

31. The Defendant admits the allegations set forth in Paragraph Thirty-One of the Complaint.

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32. Paragraph Thirty-Two of the Complaint alleges conclusions of law and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Thirty-Two of the Complaint.

33. Paragraph Thirty-Three of the Complaint alleges conclusions of law and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Thirty-Three of the Complaint.

34. Paragraph Thirty-Four of the Complaint alleges conclusions of law and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Thirty-Four of the Complaint.

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<sup>1</sup> The Defendant intends to supplement its production on or before October 25, 2019.



***Count II - Declaratory Judgment - G.L. c. 231A***

35. The Defendant repeats and incorporates each response contained in paragraphs 1 through 34 as though specifically set forth herein.
36. The Defendant admits the allegations set forth in Paragraph Thirty-Six of the Complaint.
37. Paragraph Thirty-Seven of the Complaint alleges conclusions of law and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Thirty-Seven of the Complaint.

**PRAYERS FOR RELIEF**

38. Paragraph Thirty-Eight of the Complaint is a prayer for relief and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Thirty-Eight of the Complaint.
39. Paragraph Thirty-Nine of the Complaint is a prayer for relief and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Thirty-Nine of the Complaint.
40. Paragraph Forty of the Complaint is a prayer for relief and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Forty of the Complaint.
41. Paragraph Forty-One of the Complaint is a prayer for relief and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Forty-One of the Complaint.



42. Paragraph Forty-Two of the Complaint is a prayer for relief and therefore no response is required. To the extent a response is required, the Defendant denies the allegations set forth in Paragraph Forty-Two of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

By way of affirmative defense, the Defendant states that its acts and conduct do not exceed its authority.

#### **THIRD AFFIRMATIVE DEFENSE**

The Defendant states that at all times relevant it acted reasonably within the scope of its official discretion and with an objectively reasonable belief that its actions were lawful and not in violation of any clearly established statutory or constitutional right of which a reasonable person would have known with regard to all matters which bear on a question of state or federal laws.

#### **FOURTH AFFIRMATIVE DEFENSE**

The Defendant states that at all times it acted in good faith and upon reasonable belief that its actions were required and in compliance with all relevant laws and circumstances.

#### **FIFTH AFFIRMATIVE DEFENSE**

The Defendant states that its was justified in its acts or conduct and therefore the Plaintiff cannot recover.

### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to assert the claims alleged in the Complaint.

### **SEVENTH AFFIRMATIVE DEFENSE**

The Defendant hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this case and hereby reserve the right to amend this Answer and assert such defenses.

**WHEREFORE**, the Defendant prays that the Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted,

DEFENDANT,  
CITY OF BOSTON

Eugene L. O'Flaherty  
Corporation Counsel

By its attorney:



Winifred B. Gibbons, BBO # 692724

Assistant Corporation Counsel

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Date: October 11, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a true copy of the above document was served, by mail,  
upon:

Ruth A. Bourquin (BBO #552985)  
Jessica Lewis (BBO #704229)  
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Date: October 11, 2019

  
Winifred B. Gibbons