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June 1, 2020

via First Class mail

Civil Clerk's Office
Suffolk County Courthouse
3 Pemberton Square
Boston, MA 02108

Re: ***ACLU of Massachusetts v. City of Boston,***
No. 1984CV02998

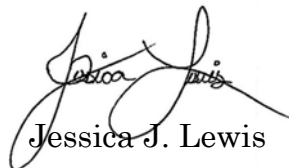
Dear Sir/Madam:

Enclosed for filing in the above-entitled action, please find the following:

1. Plaintiff's Motion for Partial Summary Judgment;
2. Memorandum in Support of Motion;
3. Plaintiff's Statement of Material Facts Not in Dispute;
4. Affidavit of Jessica J. Lewis with Exhibits; and
5. Four (4) compact discs (Exhibit G to Affidavit of J. Lewis).

Thank you for your time and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica J. Lewis".

Jessica J. Lewis

cc: Winifred B. Gibbons, Esq. (by first class mail)

Encl.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

SUFFOLK, SS

SUPERIOR COURT
DOCKET NO. 1984CV02998

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

CITY OF BOSTON,

Defendant.

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Pursuant to G.L. c. 66, § 10A, Mass. R. Civ. P. 56, and Superior Court Rule 9A, Plaintiff American Civil Liberties Union of Massachusetts, Inc. ("ACLU") hereby moves for partial summary judgment and requests the Court order Defendant City of Boston to produce videos responsive to ACLU's August 12, 2019 request for public records without any redactions or blurring or, at most, with only the faces of private individuals obscured if that can be accomplished promptly. As grounds, ACLU refers to the accompanying memorandum of law and statement of material facts not in dispute.

June 1, 2020

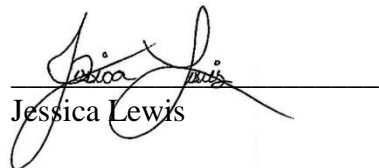
Respectfully submitted,



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Certificate of Service

I, Jessica Lewis, hereby certify that on this 1st day of June, 2020, I caused to be served by U.S. mail, first class postage prepaid, and by email, copies of this Motion, the Memorandum in support of the motion, the Statement of Material Facts Not in Dispute, and the Affidavit of Jessica Lewis on counsel for the defendant, Winifred B. Gibbons, Association Corporation Counsel, Office of the Legal Advisor, Boston Police Department, 1 Schroeder Plaza, Boston, MA 02120, winifred.gibbon@pd.boston.gov.



Handwritten signature of Jessica Lewis over a horizontal line.

Jessica Lewis

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

SUFFOLK, SS

SUPERIOR COURT
DOCKET NO. 1984CV02998

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

CITY OF BOSTON,

Defendant.

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

INTRODUCTION

Pursuant to G.L. c. 66, § 10A, Mass. R. Civ. P. 56, and Superior Court Rule 9A, Plaintiff American Civil Liberties Union of Massachusetts (“ACLUM”) respectfully submits this Memorandum in support of its Motion for Partial Summary Judgment. ACLUM asks the Court to find that Defendant City of Boston (“the City”) must immediately produce videos responsive to ACLUM’s August 2019 request for public records related to the City’s activities during “Operation Clean Sweep.” ACLUM does not oppose limited redaction to obscure the faces of individuals who are not public employees or agents. But given the City’s long delay in producing responsive records, ACLUM respectfully requests that any such redaction be ordered to occur promptly. And if such redaction cannot occur within 2 weeks, ACLUM respectfully submits that the videos should be produced in their entirety.

To date, the City has produced 18 videos captured by handheld devices and 10 body worn camera videos. All 28 videos are blurred to such a degree that much of the details about the conduct of police and other public employees are indiscernible. The City purportedly distorted the videos

pursuant to G.L. c. 4, § 7(26)(c), the personal privacy exemption to G.L. c. 66, § 10 (“the Public Records Law”). However, even if it is applicable here, this exemption does not justify non-disclosure of the portions of the records showing the conduct of law enforcement and other public employees on public streets. It would instead justify, at most, only the blurring of the faces of private persons captured in the videos. To the extent the City claims that it is unable promptly to blur only those individuals’ faces, in the circumstances of this case, in which police dramatically cordoned off public streets and rounded up private individuals on those streets in a massive operation that was covered in real time by news organizations and other members of the public, the public interest in law enforcement accountability and transparency outweighs any personal privacy concerns that the City seeks to assert on behalf of the individuals the City itself recorded and arguably mistreated on public streets.

FACTS¹

I. The City conducted mass seizures of persons experiencing homelessness and seeking substance use treatment in a South End and Roxbury neighborhood in an action it dubbed “Operation Clean Sweep.”

Beginning on August 1, 2019, and continuing for at least several days thereafter, the City conducted what it terms “Operation Clean Sweep.” *See* Plaintiff’s Statement of Material Facts Not in Dispute (“PSOF”) ¶ 1. It used police officers and vehicles to close off streets in the area of Massachusetts Avenue and Melnea Cass Boulevard. *Id.* ¶ 2. Body worn camera videos produced by the City show officers on megaphones informing people in the area that they were not “free to leave,” and ordering them to stay in place pending demands for identification and the running of checks for outstanding warrants. *Id.* ¶ 9; Affidavit of Jessica Lewis (“Lewis Aff.”) ¶ 15, Exhibit

¹ The facts listed here are consistent with and, where material to the legal issues for summary judgment, supported by the Plaintiff’s Statement of Material Facts Not in Dispute, submitted with this Motion and Memorandum.

G. Officers effected this seizure without any individualized suspicion of criminal activity. *See* PSOF ¶ 2. Persons with outstanding warrants were arrested, and persons without outstanding warrants were told to leave the area and relocate elsewhere. *Id.* In addition, personnel from the City’s Department of Public Works (“DPW”) were in the area with garbage trucks – into which individuals’ wheelchairs were collected and crushed – as well as trucks for the collection of hazardous materials such as discarded needles and street sweeping vehicles. *See id.*

II. In August 2019, ACLUM sent a public records request to the City seeking records related to Operation Clean Sweep.

On August 12, 2019, ACLUM submitted a request for public records with regard to Operation Clean Sweep. PSOF ¶ 1. The request was directed to the City, including the Boston Police Department (“BPD”), DPW, and the Office of the Mayor. It requested, among other things, all records discussing, referring to, planning, ordering, describing, documenting, or evaluating the ‘directed patrols,’ including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD. *Id.* ¶ 3. The request is relevant to ACLUM’s desire to make an evaluation, in the public interest, of whether civil rights and civil liberties were violated during the Operation. The City failed to produce any responsive records or provide any substantive response within the 10 business days required by law. G.L. c. 66, § 10. *Id.* ¶ 4. The City did not seek or receive authority from the Secretary of State, pursuant to G.L. c. 66, § 10(c), to take up to 30 days to respond to the request. *Id.*

On September 17, 2019, the City produced some responsive records, but the production was woefully incomplete for several reasons, including that it produced no during-action reports showing communications among officers, no planning documents, and no communications between the different City divisions present during the Operation, which presumably had to plan

and coordinate movements. *Id.* ¶ 5. ACLUM brought to the attention of the City’s public records officers the glaring inadequacy of the production and provided relevant examples. *Id.* In response, the City insisted all records had been produced. *Id.* ¶ 6.

Accordingly, ACLUM commenced this action on September 24, 2019, alleging that the City failed to fulfill its obligations under the Public Records Law to adequately search for and produced responsive records within ten business days. *Id.* ¶ 7. On October 11, 2019, the City filed its Answer to the Complaint. *Id.* ¶ 8. In footnote 1 on page 6 of the Answer, the City expressed an intent to supplement its public records response by October 25, 2019. *Id.*

As is particularly relevant here, on October 25, the City provided a supplemental response in which it indicated that it had located certain videos from hand-held devices and body worn cameras. *Id.* ¶ 9. These videos² were produced to ACLUM on November 21 and December 12, 2019. *Id.* Noting that the videos capture images of members of the general public out on the streets or who were arrested, the City asserts that the video images of these individuals have to be obscured to protect their privacy, pursuant to G.L. c. 4, § 7(26)(c) (“exemption (c)”). *Id.* ¶ 11. However, even assuming the obscuring of images of people on public streets is warranted, instead of merely pixelating or otherwise obscuring the faces of the individuals whose privacy might be a legitimate concern, the City made the entirety of the videos blurry, making it nearly impossible to discern the nature of police actions occurring or to identify many of the City personnel involved. *Id.* ¶¶ 10-11.

On March 3, 2020, after discussions between the parties, the City agreed, without waiving its objections, to produce non-blurred versions of the videos. *Id.* ¶ 12. However, on May 15, the

² It is unexplained, given BPD’s body worn camera policy, why there are not more recordings than were thus far produced. See BPD Rule 405 - Body Worn Camera Policy, <https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/5cf18114f7532f00014abba7/1559331092720/Rule405.pdf>.

City notified ACLUM that it would not produce non-blurred videos based on its previous assertion of exemption (c). *Id.* ¶ 13. In response, ACLUM asked for a pre-motion conference as required by Superior Court Rule 9A. *Id.* ¶ 14. The conference was held by telephone on May 21, 2020, but, as of the time of service of this Motion, the issues have not been narrowed or resolved. *Id.* ACLUM now seeks partial summary judgment in the form of an order requiring prompt production, within two weeks, of the videos without unwarranted redaction or blurring.

ARGUMENT

The Public Records Law requires municipalities to respond to public records requests within 10 business days, except in limited circumstances not applicable here. Its primary purpose is to give the public broad access to governmental records. *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 436 Mass. 378, 382–83 (2002). It reflects “the Legislature’s considered judgment that the public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner, and that greater access to information about the actions of public officers and institutions is increasingly an essential ingredient of public confidence in government.” *Suffolk Const. Co. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 453 (2007) (internal marks and citations omitted).

In an action to enforce the Public Records Law, “the superior court shall have jurisdiction to enjoin . . . municipal action” and “a presumption shall exist that each record sought is public.” G.L. c. 66A, § 10A(d)(1)(i), (d)(1)(iv). “[T]he burden shall be on the defendant . . . 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.” *Id.* § 10A(d)(1)(iv). Thus the City has the burden to prove that its broad-based application of exemption (c) is warranted under the Public Records Law, the purpose of which is to provide expeditious access to public records for the purpose of

holding public officials accountable. *See, e.g., Harvard Crimson, Inc. v. President & Fellows of Harvard Coll.*, 445 Mass. 745, 749, 754 (2006); *Attorney General v. Collector of Lynn*, 377 Mass. 151, 158 (1979).

I. Standard of Review

“Summary judgment is warranted where ‘there is no genuine issue of material fact and, where viewing the evidence in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law.’” *Butcher v. Univ. of Massachusetts*, 483 Mass. 742, 747 (2019) (quoting *Harrison v. NetCentric Corp.*, 433 Mass. 465, 468 (2001)). *See also* Mass. R. Civ. P. 56 (c). However, although the Court views the evidence in the light most favorable to the non-moving party, it does not weigh evidence, assess credibility, or find facts. *Drakopoulos v. United States Bank Nat’l Ass’n*, 465 Mass. 775, 788 (2013) (quoting *O’Connor v. Redstone*, 452 Mass. 537, 550 (2008)). Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond with evidence of specific facts establishing the existence of a genuine dispute. *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989).

II. Exemption (c) does not justify the City’s wholesale blurring of videos depicting its employees’ own actions on public streets during Operation Clean Sweep.

The City attempts to apply G.L. c. 4, § 7(26)(c) (“exemption (c)”) to justify blurring the totality of the twenty-eight videos captured by hand-held device and body worn cameras depicting the actions of City personnel during the Operation. PSOF ¶ 11. In relevant part, exemption (c) excludes from the definition of “public records” any “materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.” G.L. c. 4, § 7(26)(c). Like all exemptions to the Public Records Law, exemption (c) must be strictly and narrowly construed. *Larrabee v. Massachusetts Comm’n Against Discrimination*, 96 Mass. App. Ct. 516, 519 (2019). Its protections are not absolute; instead, consistent with the

statutory text's focus on *unwarranted* invasions of personal privacy, application of exemption (c) requires a balancing between the seriousness of any invasion of privacy and the public right to know. *Dep't of Criminal Justice Info. Servs.*, 484 Mass. 279.

To determine whether disclosure of records would implicate exemption (c), “a court should first determine whether there is a privacy interest in the requested records.” *Bos. Globe Media Partners, LLC v. Dep't of Pub. Health*, 482 Mass. 427, 439 (2019). “If there is not, then the requested material does not fall under exemption (c). If there is a privacy interest, then ‘[e]xemption (c) requires a balancing test: where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield.’” *Id.* (quoting *PETA*, 477 Mass. at 291-292).

Here, after conducting a police and public works action that was expressly designed to “Sweep” human beings, the City now contends that it has invoked exemption (c) to mitigate “the risk of identifying specific individuals depicted, including displaced persons, persons suffering from mental illness or experiencing symptoms consistent with drug abuse.” *See* PSOF ¶ 11. The City has even redacted “[p]ortions of the audio in the body-worn camera footage.” *Id.* Although the City conducted the action, took the footage, and presumably retains that footage for its *own* use, the City contends that *the public's* interest in disclosure does not outweigh the privacy interest of the persons identified and the information is not readily available from another source. *Id.*

Lacking all sense of irony that the issue here is the City's own mistreatment of the individuals depicted, it supplemented the above explanation on May 15 stating, “The City is deeply committed to serving the homeless community as well as those persons who are struggling with addiction and recovery. Disclosure of video records that would identify this vulnerable population would only cause additional harm to these people who so desperately need assistance.” *Id.* ¶ 13.

In short, under the guise of protecting their privacy, the City attempts to apply exemption (c) to shield from the public information revealing its own (possibly illegal) actions towards those persons it targeted in the Operation. This argument must fail.

a. The City must produce the videos with no more redaction than necessary to protect any privacy interests of private persons.

Although not conceding that exemption (c) requires or justifies redactions of depictions of people openly recorded in their interactions with (or close proximity to) police officers performing their official duties, ACLUM does not object to the City redacting the videos if redactions can be done promptly and in a manner that obscures only the faces of private persons captured by the recordings.³ The City, however, distorted more of the videos than is necessary to protect any possible interest that a person not employed or acting on behalf of the government may have in their face or facial features.⁴ *See* PSOF ¶ 10-11. Each video was blurred beyond the simple distortion of private individuals' features and done in such a way as to make it difficult to discern

³ Of course, any software the City employs to make these redactions should not further invade persons' privacy interests through the use of facial recognition technology, which goes beyond simple face detection by cataloguing and learning a person's unique facial features. Fortunately, however, the Commissioner of BPD testified at a May 21, 2020 hearing before the Boston City Council that BPD does not use facial recognition technology.

⁴ Notably, the officers here captured footage on body worn cameras, which were clearly visible, and informed individuals of the fact of the recording. *See* Lewis Aff. ¶ 15, Exhibit G. This is consistent with BPD's Body Worn Camera Policy. BPD Rule 405 - Body Worn Camera Policy. Section 2.5 of the policy states: "The officer shall make a reasonable effort to inform civilians that the officer is recording them unless an immediate threat to the officer's life or safety or the life or safety of any other person makes BWC notification dangerous. . . . Officers shall not record civilians surreptitiously." *Id.* The policy further instructs officers to not record any individual who objects to the capture of their image on the cameras. *Id.* In addition, BPD's Body Worn Camera policy gives discretion to officers to stop visual and audio recordings to protect the privacy of individuals or where recording would otherwise invade a person's reasonable expectation of privacy (such as recording inside a residence). Officers chose not to stop recording here. Of importance, in one of the videos, BPD Captain Danilecki specifically told an officer to "stay live. The ACLU may subpoena these records and I want them to see we are being absolutely ethical." PSOF ¶ 11.

much of the videos' basic details such as location, time, and date and most importantly, what specifically police and other government personnel were doing. *See id.*

If the City possesses the means by which promptly and timely to redact the faces of non-government personnel from the videos, then ACLUM would not object to such limited, targeted redactions, but the law requires it promptly to release the remaining portions of the video unblurred and otherwise undistorted. The Public Records Law requires the City to produce all segregable portions of records not subject to exemption. G.L. c. 66, §10(a). *See generally Reinstein v. Police Comm'r of Boston*, 378 Mass. 281, (1979). It “specifically contemplates redaction of material that would be exempt, to enable the release of the remaining portions of a record.” *Champa v. Weston Pub. Sch.*, 473 Mass. 86, 92 (2015). “[E]xemption (c) does not cover,” and therefore does not authorize withholding, “information that does not permit the identification of an individual.” *Id.* at 97. It does not justify the blanket non-production of public records, as opposed to the redaction solely of the information that is purportedly covered by the exemption. *Id.* at 98. The breadth of the City’s blurring of the videos is unlawful. It is not targeted towards protecting any privacy interests actually protected under exemption (c), but instead cloaks much of the City’s actions during the Operation in secrecy.

- b. If the City is unable promptly to produce the videos with only targeted redactions, then it must produce the videos without redactions, as any privacy interests protected by exemption (c) are outweighed by the public interest in transparency in this case involving massive police action on public streets.**

Exemption (c) requires courts to balance the public interest against the privacy interest of specific individuals. *Dep’t of Pub. Health*, 482 Mass. at 449. Here, the public interest in disclosure substantially outweighs the seriousness of any invasion of privacy.

i. Any privacy interest is diminished here where the individual was recorded openly and their privacy interest has already been invaded by other sources.

In applying exemption (c), courts “have looked to three factors to assess the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources.” *Dep’t of Criminal Justice Info. Servs.*, 484 Mass. 279. While there may be instances where the public interest in transparency, accountability, and access does not outweigh an individual’s privacy interest in their facial features captured through government-owned or operated technology,⁵ in this instance the public interest in full disclosure substantially outweighs any potential privacy interests.

Individuals were recorded by police cameras because the City chose to engage in a mass action on public streets—an action which effected a mass seizure of dozens of persons, apparently without individualized suspicion and ostensibly due to those persons’ housing status or mental health or medical conditions. In addition, many details from the Operation were captured and previously released by news agencies and other observers. *See, e.g.*, Jerome Campbell, ‘Operation Clean Sweep’ Arrest Reports Show Most Arrests Were For Drug Possession, WBUR (Sept. 19, 2019), wbur.org/news/2019/09/19/south-end-arrests-review; Spencer Buell, A Scene from “Operation Clean Sweep” in the South End: Crushed Wheelchairs, Boston Magazine (Aug. 7, 2019), bostonmagazine.com/news/2019/08/07/operation-clean-sweep-wheelchairs. Moreover, to the extent the City is now seeking to protect the privacy of those arrested, that is contrary to its actions one day after the Operation began, when the BPD itself published a detailed list of the

⁵ This is particularly, but perhaps not only, true where the government is attempting to deploy facial recognition technology or otherwise employing surveillance technology.

names and ages of, as well as certain residential information about, people arrested during the Operation; the BPD even publicized those arrests via Twitter. *See* Boston Police Dept., BPD Operation “Clean Sweep” Results in 18 Arrests in the area of Massachusetts Avenue and Southampton Street (Aug. 2, 2019), <https://bpdnews.com/news/2019/8/2/bpd-operation>; Boston Police Dept. (@bostonpolice), Twitter (Aug. 2, 2019, 11:58 AM), <https://twitter.com/bostonpolice/status/1157319823405256704>. Hence, any privacy interests the City attempts to assert on behalf of the people it targeted on public streets are greatly diminished.

ii. Where the government engaged in a mass action that arguably invaded constitutional rights, the public interest in transparency and accountability substantially outweighs any privacy interests.

On the public interest side, the public has an interest in both the “broad access to governmental records” as well as “shining sunlight on government operations. *Id.* at 450. Where the conduct of public officials is at issue, “[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner.” *Globe Newspaper Co. v. Police Com’r of Bos.*, 419 Mass. 852, 858 (1995) (quoting *Collector of Lynn*, 377 Mass. at 158). As the Supreme Judicial Court recently emphasized, this interest is particularly strong with regard to the conduct of law enforcement officials who hold a position of special public trust. *Bos. Globe Media Partners, LLC v. Dep’t of Criminal Justice Info. Servs.*, 484 Mass. 279, 292 (2020). Indeed, the Court recognized that “[t]he public interests furthered by the public records law – transparency, accountability, and public confidence – ‘are at their apex if the conduct at issue occurred in the performance of the official’s professional duties or materially bears on the official’s

ability to perform those duties honestly or capably.” *Id.* (quoting *Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court*, 483 Mass. 80, 102 (2019)).⁶

Courts also give weight to the specific interest articulated by the requester. *Dep’t of Pub. Health*, 482 Mass. at 449. Here, ACLUM has a strong interest in learning about, and seeking to prevent the recurrence of, the mass seizure of dozens of persons without individualized suspicion—an act which may have violated their Fourth Amendment and art. 14 rights. *See Commonwealth v. Matta*, 483 Mass. 357, 360 (2019) (“[p]olice have seized a person in the constitutional sense ‘only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave’”). In one of the produced videos, officers are heard on a megaphone repeatedly announcing to individuals “you are not free to leave” and “stay where you are” as well as blocking off the street. Lewis Aff. ¶ 15(a), Exhibit G. Thus, it seems clear that persons were seized in the constitutional sense. However, due to the blurring, it is impossible to see exactly what the officers then did to or with the individuals, other than a few glimpses of handcuffed individuals being walked in close proximity of the camera and an apparent line up of persons possibly being forced to provide their identification for warrant checks. *Id.*

ACLUM also requested records to learn of the City’s potentially unlawful treatment of persons experiencing homelessness as well as persons with substance use disorder who were present on the days in question in the targeted area in the South End and Roxbury neighborhoods. *See* PSOF ¶ 2. In its request to the City, ACLUM specifically identified its concern over reports

⁶ The BPD’s acquisition of body worn cameras was specifically intended to promote transparency, accountability, and public confidence. BPD, “The Boston Police Department Will Begin Implementing Body Worn Cameras on Monday June 3, 2019” (May 13, 2019), <https://bpdnews.com/news/2019/5/31/body-worn-cameras> (use of body worn cameras is “an opportunity to showcase and enhance the department’s commitment to transparency while further strengthening the level of trust that exists between the men and women of the Boston Police Department and our community”).

that persons in the area were being made to leave the identified neighborhoods on threat of arrest and were additionally being made to empty their pockets for inspection by police officers. *See id.* Further, ACLUM identified reports that officers confiscated and destroyed personal property of persons on the streets, including wheelchairs and other items belonging to those with disabilities. *See id.* Of note, in one of the blurry videos already produced, officers are seen blocking off a road while persons presumably comb through and dispose of materials belonging to persons in these vulnerable populations; however, due to the blurring, it is impossible to make out what materials are being discarded or the actions of the city personnel in the background presumably picking through the materials. Lewis Aff. ¶ 15(d), Exhibit G.

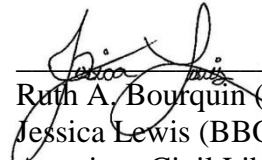
Thus, on balance, any privacy interests of the private persons openly recorded on the City's devices during the Operation due to their involuntary interactions with (or close proximity to) police officers performing their official duties is substantially outweighed by the public interest involved here.

CONCLUSION

For all the foregoing reasons, ACLUM respectfully requests that the Court grant its motion for partial summary judgment and – after months of delay by the City – order the *prompt* production of responsive videos without any redactions or blurring or, at most, with only the faces of private individuals obscured.

June 1, 2020

Respectfully submitted,



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**COMMONWEALTH OF MASSACHUSETTS
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AMERICAN CIVIL LIBERTIES UNION OF)
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Plaintiff,)

v.)

CITY OF BOSTON,)

Defendant.)

PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Mass. R. Civ. P. 56 and Superior Court Rule 9A(b)(5), Plaintiff American Civil Liberties Union of Massachusetts, Inc. (“ACLU”) hereby submits this Statement of Material Facts as to which there is no genuine dispute in support of its Motion for Partial Summary Judgment.

1. On August 12, 2019, ACLU sent a letter and public records request to the Mayor of Defendant City of Boston (“the City”) expressing concerns and asking for public records about an operation that began on August 1, 2019, and continued for at least several days thereafter, that the City itself termed “Operation Clean Sweep.” Complaint, Exhibit A and Exhibit A to Affidavit of Jessica Lewis (“Lewis Aff.”).

2. As discussed in that letter and public records request, “Operation Clean Sweep” was a mass action during which members of the Boston Police Department (“BPD”) surrounded people in the area of Massachusetts Avenue and Melnea Cass Boulevard, restrained their movements, demanded information from them, arrested some, forced others to leave the area, and

confiscated and destroyed personal property. Lewis Aff. ¶ 2, Exhibit A. The Operation was undertaken after a physical altercation on August 1 between a few people in the neighborhood and a corrections officer at the Suffolk County Jail. *Id.*

3. The public records request requested, among other things, “all records discussing, referring to, planning, ordering, describing, documenting, or evaluating the ‘directed patrols’ . . . , including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD.” *Id.* ¶ 3.

4. The City failed to produce any responsive records or provide any substantive response within the 10 business days required by law. G.L. c. 66, § 10. The City did not seek or receive authority from the supervisor of public records, pursuant to G.L. c. 66, § 10(c), to take up to a maximum of 30 days to respond to the request. Lewis Aff. ¶¶ 4-5.

5. On September 17, 2019, the City produced some responsive records, but ACLUM brought to the attention of the City’s public records officer that it believed the production was incomplete for many reasons, including that it contained no during-action reports showing communications among officers or the different City divisions present during the Operation which presumably had to coordinate planning and movements. Lewis Aff. ¶¶ 5-6, Exhibits C, D.

6. In response, the City insisted all records had been produced. *Id.* ¶ 7, Exhibit D.

7. This action was commenced on September 24, 2019, alleging that the City has failed to fulfill its obligations under the Public Records Law to adequately search for and produced responsive records within ten business days. Complaint and Lewis Aff. ¶ 2, 8.

8. On October 11, 2019, the City filed its Answer. In footnote 1 on page 6 of the Answer, the City expressed an intent to supplement its public records response by October 25, 2019. Def.'s Answer to Pl.'s Compl., Lewis Aff. ¶ 9.

9. On October 25, the City provided a supplemental response in which it indicated that it had located certain videos from a hand-held device and a few body worn cameras. Lewis Aff. ¶ 10, Exhibit F. After ACLUM affirmatively responded to the City that it wished to obtain these videos, 28 videos were produced to ACLUM on November 21 and December 12, 2019. The video recordings consist of 18 short videos recorded from a hand-held device and 10 videos recorded on body-worn cameras ("BWC"). *Id.* ¶¶ 10-11, Exhibits F, G.

10. Each of the 28 videos are blurred in their entirety so as to make many of the videos' details largely indecipherable, including with regard to exactly what police officers are doing and how they are interacting with members of the public, as well as the date and time information recorded in the top right-hand corner of each BWC video. *Id.* ¶¶ 14-16, Exhibit G.

11. Because the videos capture images of members of the general public out on the streets or who were arrested, the City asserts that the video images of these individuals have to be obscured to protect their privacy, pursuant to G.L. c. 4, § 7(26)(c) ("exemption (c)"). Lewis Aff. ¶¶ 12, 19, Exhibits F, H. However, instead of producing videos with only those individuals' faces blurred or blocked out, the City made the entirety of the videos blurry, thereby obscuring what the police and other public employees were actually doing, including but not limited to what they were doing at some distance from the recording, and making it difficult if not impossible to identify what City personnel were involved. This is so despite BPD Captain John "Jack" Danilecki's remarks in the BWC video titled "_Extraction_1_1___Extraction_2_1__Station_Assignment _1010_Massachusetts_Avenue," where he stated that a recording officer should "stay live"

because “the ACLU may subpoena these records, and I want them to see we are being absolutely ethical.” Lewis Aff. ¶ 15(b), Exhibit G.

12. On March 3, 2020, after discussions between the parties, the City agreed, without waiving its objections, to produce non-blurred versions of the videos. Lewis Aff. ¶ 18, Exhibit H.

13. However, on May 15, 2020, the City notified ACLUM that it had again reversed course and would not in fact produce non-blurred videos based on its previous assertion of exemption (c). *Id.* ¶ 19, Exhibit H.

14. In response, ACLUM asked for a pre-motion conference as required by Superior Court Rule 9A. The conference was held by telephone on May 21, 2020, but, as of the date of service of the Motion for Partial Summary Judgment, the issues have not been narrowed or resolved. *Id.* ¶ 20.

June 1, 2020

Respectfully submitted,



Ruth A. Bourquin (BBO #552985)
Jessica Lewis (BBO #704229)
American Civil Liberties Union
Foundation of Massachusetts, Inc.
211 Congress Street
Boston, MA 02110
(617) 482-3170
rbourquin@aclum.org
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

SUFFOLK, SS

SUPERIOR COURT
DOCKET NO. 1984CV02998

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

CITY OF BOSTON,

Defendant.

**AFFIDAVIT OF JESSICA J. LEWIS IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Jessica Lewis, hereby depose and state as follows:

1. I am an attorney with the American Civil Liberties Union Foundation of Massachusetts, Inc. at Boston, Massachusetts, a position I have held since late January 2019. I, along with Attorney Ruth Bourquin, represent the ACLU of Massachusetts, Inc. ("ACLUM") in this matter, and I submit this affidavit in support of its motion for partial summary judgment.

2. This case arises under G.L. c. 66, § 10 (the "Public Records Law") and was filed against the City of Boston ("the City") on September 24, 2019, claiming it failed to adequately search for and produce records responsive to ACLUM's public records request submitted August 12, 2019, via a letter to the Mayor of Boston.

3. Through its August 12 letter, ACLUM raised concerns about, and requested public record related to, the City's actions in the area of Massachusetts Avenue and Melnea Cass Boulevard undertaken on and after August 1, 2019, under what the City titled "Operation Clean

Sweep.” A copy of that letter is attached as Exhibit A to this Affidavit. Specifically, ACLUM requested the following records:

- (1) All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the actions taken by BPD during August 2019 in the area of Massachusetts Avenue, Southampton Street, Melnea Cass Boulevard and Atkinson Street, including but not limited to Operation "Clean Sweep," and including but not limited to all records reflecting or revealing arrests made, property seized, orders to carry out the actions taken, and/or policies and procedures followed or intended to be followed by BPD.
- (2) All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the "directed patrols" referred to by Michael Stratton, deputy superintendent of the BPD, in the *Boston Globe* article published on August 8, 2019, available at <https://www.bostonglobe.com/metro/2019/08/08/tensions-flare-homeless-and-drug-users-spread-into-south-end/6ezmt03vWJ2GEUvs2aRQhK/story.html>, and which seem to be ongoing on a daily or near-daily basis, including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD.
- (3) All records discussing, referring to, or containing any communications with the Massachusetts State Police, Governor Baker or any employee of his administration, members or officers of the corrections officers union representing South Bay corrections officers, and/or District Attorney Rachael Rollins concerning the BPD actions described in items #1 and #2 of this records request.
- (4) All records relating to the 2019 U.S. Conference of Mayors' 87th Annual Meeting in Honolulu, Hawaii concerning the issue of homelessness, including any materials provided or notes taken before, during or after the event.

4. On August 26, 2019, the City sent written correspondence to ACLUM asserting without explanation that it needed additional time to provide any responsive records. A copy of that communication is attached as Exhibit B. The City did not seek or receive authority from the supervisor of public records, pursuant to G.L. c. 66, § 10(c), to take up to 30 business days to respond to the request. The August 26 correspondence did not conform to the requirements of G.L. c. 66, § 10(b). On September 6, ACLUM communicated with the City that its August 26

response and assertion of additional time did not conform with the Public Records Law, and ACLUM requested prompt production of records. *See* Exhibit B.

5. The City failed to produce any responsive records or provide any substantive response until September 17, 2019, more than ten business days after the City's initial receipt of ACLUM's request. At that time, in response to requests no. 1-3, the City produced to ACLUM email communications and a spreadsheet of limited information about arrests made on August 1 and 2. A copy of the City's September 17 response letter is attached as Exhibit C.

6. On September 20, 2019, ACLUM brought to the attention of the City's Public Records Officer that the production was incomplete for many reasons. Those reasons included a lack of records showing communications among officers or the different City divisions present during the Operation which presumably had to coordinate planning and movements. A copy of that communication is attached as Exhibit D.

7. In response, the City insisted all records had been produced. *See* Exhibit D.

8. ACLUM filed its Complaint on September 24, 2019, alleging that the City failed to conduct an adequate search for records and respond within the ten business days allowed under the Public Records Law.

9. On October 11, 2019, the City filed its Answer to the Complaint. In footnote 1 on page 6 of its Answer, the City stated its intention "to supplement its production on or before October 25, 2019."

10. On October 25, 2019, the City produced to ACLUM additional responsive records and a supplemental response indicating that it had located video recordings that consist of (1) a set of short videos recorded from a handheld-held device and (2) video records on body-worn cameras. A copy of the City's October 25 supplemental response letter is attached as Exhibit E.

The October 25 response requested confirmation from ACLUM that it wished to obtain a copy of the video recordings to which ACLUM responded in the affirmative on October 28, 2019.

11. Twenty-eight videos were produced to ACLUM. Eighteen short videos recorded from a hand-held device were produced on December 12, 2019, and ten videos recorded on body-worn cameras (“BWC”) were produced on November 21, 2019. A copy of the City’s December 12 supplemental response letter is attached as Exhibit F.

12. In its supplemental response dated December 12, the City wrote, “The video recordings are blurred to omit the risk of identifying specific individuals depicted, including displaced persons, persons suffering from mental illness or experiencing symptoms consistent with drug abuse. Portions of the audio in the body-worn camera footage is redacted. The redactions are made pursuant to the second clause of exemption (c) of the public records law. The public interest in disclosure does not outweigh the privacy interest of the persons identified and the information is not readily available from another source. G. L. c. 4, § 7(26)(c); *see also PETA v. Dep’t of Agric. Res.*, 477 Mass. 280 (2017).” *See* Exhibit F.

13. I have personally reviewed all twenty-eight videos. True and correct copies of the videos are on the four compact discs (CDs) that are accompanied as Exhibit G to this Affidavit.

14. The videos are entirely blurred. Due to the blurring, it is difficult to discern details in the videos, including basic details such as location, time, and date and also what police and other government personnel were doing and how they interacted with members of the public.

15. The 10 BWC videos as named, ordered, and copied to the accompanying CDs depict the following:

- a. *Title:* _Extraction_1_1__1010_Mass_Ave
Description: This video shows police cruisers blocking off a road and captures audio of at least one officer, who is walking down the street, using a megaphone to announce to present persons: “Ladies and gentlemen, You are

not free to leave. You are not free to leave. Stay where you are. Stay where you are. Stay where you are.” The video also captures audio of an officer remarking, “We aren’t letting anyone leave.” Notably, the recording officer is stationed near the police cruiser at the end of the street, and the video captures arrested individuals only when they are close to the recording device. The video is too blurry to make out the actions of officers and private individuals who are otherwise interacting further away from the recording device. Officers are heard remarking over the need for a “dump truck,” and the video lastly captures a street sweeper coming and cleaning the area.

- b. *Title:* _Extraction_1_1__Extraction_2_1__Station_Assignment_1010_Massachusetts_Avenue
Description: The video captures officer informing present individuals that they are not free to leave, stopping individuals, and asking for their identification documents under the explanation that they are trespassing because the shelter closes its services at 7 p.m. Officers inform stopped individuals of the fact of the recording. The recording officer then reports to a different location where individuals are gathered along the sidewalk behind officers who are running identifications through a system. Officers are shown effecting arrests or informing individuals that they need to leave the area. Video captures an interaction between the recording officer and Captain Danilecki who tells the officer to “stay live. The ACLU may subpoena these records, and I want them to see we are being absolutely ethical.”
- c. *Title:* _Extraction_1_1__Operation_1010_Mass_Ave
Description: This video captures similar footage as video titled “_Extraction_1_1__Extraction_2_1__Station_Assignment_1010_Massachusetts_Avenue” taken from a different recording officer.
- d. *Title:* _Extraction_1_3__Clean_Sweep
Description: This video shows officers standing on the street; however, due to the blurring, it is not possible to distinguish what the officers, who are at a distance from the recording officer, are doing. The video captures audio of officers speculating over what might be found. Additionally, officers can be heard announcing “you are not free to leave” and “stay where you are.”
- e. *Title:* _Extraction_1_1__Extraction_2_1__Arrest_112_Southampton
Description: This video shows officers handcuffing an individual and escorting him into the back of a police cruiser, though he is informed that he is not yet under arrest at the time of the action. The officer wearing the camera informs the individual that everything is being recorded on his device. The individual is later arrested and searched. The video captures other officers present on the street, individuals with trash cans, as well as private individuals; however, due to the blurring, it is unclear what if any interactions occur between these parties.

- f. *Title:* _Extraction_1_1__112_Southampton_St
Description: This video has similar content as video titled “_Extraction_1_1__Extraction_2_1__Arrest_112_Southampton” taken from another officer present.
- g. *Title:* _Extraction_1_1__Extraction_1_1__Clean_Sweep
Description: This video shows officers standing on an empty road which has been closed off behind police cruisers. In a distance, officers notably can be heard announcing “stay where you are” and “you are not free to leave.” Officers also direct persons present behind the police cruisers and inform them they are not allowed on that particular street. Officers are shown searching a vehicle parked on the street and arresting the vehicle’s owner. The video also captures officers further down the road, but due to the blurring, it is unclear what those officers are doing.
- h. *Title:* _Extraction_1_1__Extraction_2_1__Sick_Assist_At_Washington_And_Ruggles
Description: This video starts with officers informing present individuals that they are being recorded. It shows officers interacting with an individual, who appears to be suffering a mental health episode, and escorting the individual presumably to a hospital due to the presence of an ambulance.
- i. *Title:* _Extraction_1_1__Extraction_1_3__Verbal_Dispute_1010_Mass_Ave
Description: This video contains no audio. It shows an interaction with two officers, a woman, and a child outside of a business.
- j. *Title:* _Extraction_1_1__Clean_Sweep
Description: This video captures the arrest of the vehicle owner in the video titled “_Extraction_1_1__Extraction_1_1__Clean_Sweep”

16. The 28 hand-held camera videos, each less than or about two minutes in duration, as named, ordered, and copied to the accompanying CDs depict the following:

- a. *Title:* 00000.mp4-Blur
Description: This video captures writing on a clipboard being held up before the camera lens that presumably describes the operation.
- b. *Title:* 00001.mp4-Blur
Description: This video shows police cruisers stationed and blocking off the end of a street.
- c. *Title:* 00002_1.mp4-Blur
Description: This video captures officers interacting with private individuals standing on a sidewalk.

- d. *Title:* 00003_1.mp4-Blur
Description: This video captures private individuals standing in a line outside of a police cruiser's open window.
- e. *Title:* 00004_1.mp4-Blur
Description: This video captures private individuals standing in a line outside of a police cruiser's open window and shows a woman interacting with the officer's hand-held device..
- f. *Title:* 00005_1.mp4-Blur
Description: This video shows individuals gathered in one spot on a sidewalk, surrounded by officers, and an apparent arrest being made.
- g. *Title:* 00006_1.mp4-Blur
Description: This video shows private individuals gathered in one area while officers check identifications.
- h. *Title:* 00007_1.mp4-Blur
Description: This video captures an individual being walked up a closed off street in handcuffs. It shows officers running people's identification and an individual requesting permission to leave the cordoned area where officers seem to have gathered individuals.
- i. *Title:* 00008_1.mp4-Blur
Description: This video captures an individual being waked up a closed off street in handcuffs presumably after standing in line to have their identification run.
- j. *Title:* 00009.mp4-Blur
Description: The video captures private individuals gathered along a sidewalk.
- k. *Title:* 00010.mp4-Blur
Description: This video captures images of discarded or seized property, including a bicycle, backpack, and needles.
- l. *Title:* 00011.mp4-Blur
Description: This video shows officers interacting with private individuals gathered along a sidewalk, some of whom approach and stand before the open window of a police cruiser. Presumably officers captured in this video are running persons' identification.
- m. *Title:* 00012.mp4-Blur
Description: This video shows officers interacting with private individuals gathered along a sidewalk. Presumably officers captured in this video are running persons' identification
- n. *Title:* 00013_1.mp4-Blur
Description: This video shows officers interacting with and gathered around a

private individual lying down on a sidewalk. The video also shows an individual being searched and apparently arrested. It further shows officers asking one section of the gathered individual to approach the window of a parked cruiser.

- o. *Title:* 00014.mp4-Blur

Description: This video captures individuals being searched and apparently arrested as well as City personnel administering aid to an individual lying on the sidewalk. It shows an individual handing their identification card through the window of a parked cruiser to an officer.

- p. *Title:* 00015.mp4-Blur

Description: This video captures individuals leaving the cordoned area.

- q. *Title:* 00016.mp4-Blur

Description: This video shows the presence of news agency representatives capturing footage at the end of a blocked off street.

- r. *Title:* 00017.mp4-Blur

Description: This video shows individuals leaving the cordoned area.

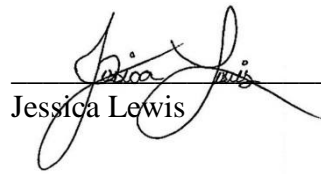
17. During a call with the City on December 13, 2019, and again by follow-up email on December 16, 2019, ACLUM brought to the attention of the City that the level of blurring in the videos distorted many of their details and requested the City produce non-blurred videos.

18. On March 3, 2020, the City left me voicemails in which it agreed, without waiving its objections, to produce non-blurred versions of the videos. A copy of the City's May 15 supplemental response letter is attached as Exhibit H.

19. In its supplemental response dated May 15, 2020, the City informed ACLUM that it would no longer produce non-blurred videos. In this response, the City wrote, "The City is deeply committed to serving the homeless community as well as those persons who are struggling with addiction and recovery. Disclosure of video records that would identify this vulnerable population would only cause additional harm to these people who so desperately need assistance." See Exhibit H.

20. In response, ACLUM asked for a pre-motion conference as required by Superior Court Rule 9A. The conference was held by telephone on May 21, 2020, but, as of the date of service of the Motion for Partial Summary Judgment, the issues have not been narrowed or resolved.

Signed under the pains and penalties of perjury this 1st day of June, 2020.



Jessica Lewis

EXHIBIT A



August 12, 2019

By Hand Delivery

The Honorable Martin J. Walsh
Mayor of the City of Boston
1 City Hall Square, Suite 500
Boston, MA 02201-2013

Re: Operation "Clean Sweep"

Dear Mayor Walsh,

We are writing on behalf of the American Civil Liberties Union of Massachusetts (ACLUM) to express deep concern about what appear to be serious violations of Constitutional and other legal protections caused by the recent police actions in the area of Melnea Cass Boulevard, Southampton Street, and Massachusetts Avenue, including Atkinson Street. These actions occurred on at least August 1, August 2 and August 6 and, according to eye witness reports, seem to be occurring on an on-going basis but perhaps on a less massive scale.

These actions, which the Boston Police Department (BPD) has apparently dubbed Operation "Clean Sweep," have targeted not just persons engaged in alleged criminal activity but, more generally, persons experiencing homelessness and individuals with disabilities in the area. On an ongoing basis, "directed patrols" are apparently occurring in the area, which reportedly include forcing individuals to move along on the streets upon threat of arrest and demanding they empty their pockets for inspection by the officers.

While we understand that public safety must be protected, it cannot be at the cost of compliance with basic legal rights. Therefore, we ask that you direct the BPD to cease and desist these activities, pending further discussions and implementation of appropriate policies and procedures.

We also ask that the City promptly provide the public records requested at the end of this letter.

Factual Background

Our understanding of the facts is informed by attendance by ACLUM staff at a public forum last week at which members of your Administration appeared, our review of media reports, a review of social media accounts of those present during the police actions, and conversations with some of those directly affected. Of course, responses to the enclosed public records request and ongoing discussions with eye witnesses and affected individuals will enable us to confirm the facts more specifically.

On August 1, 2019, a corrections officer on his way to work was allegedly assaulted in the neighborhood by certain individuals. The incident was captured on videotape, enabling identification of some or all of the individuals actually involved in this troubling incident.

Instead of addressing the matter by investigating those who were responsible, the BPD, reportedly at your direction¹ and clearly at the direction of BPD officials, entered the area—in substantial force—on August 1, August 2 and again on August 6. Officers reportedly surrounded individuals who were lawfully on the streets in the area, demanded to know their identities, arrested some on charges unrelated to the assault on the corrections officer, forced others to leave the area—including by accusing them of “loitering”—and confiscated and destroyed personal property of persons on the streets, including wheelchairs and other items belonging to those with disabilities.

As far as we can discern, the City provided no advance notice to affected persons of summarily destroyed personal property.

We understand that your Administration is committed to providing services to those in need, and we thank you for that. But efforts to provide services cannot be conducted in ways that violate basic legal rights.

Legal Issues

In addition to the moral and ethical issues raised by these actions against some of the most vulnerable members of our society, the conduct of the City and BPD in these regards raises a host of serious legal issues.

¹ See <https://whdh.com/news/boston-police-make-several-arrests-in-clean-sweep-response-to-attack-on-correction-officer/> and <https://defensemaven.io/bluelivesmatter/news/video-boston-mob-beats-corrections-officer-so-mayor-orders-clean-sweep-sPXRGZFIJUCFg69aioiPLQ/>.

First, our Constitutions do not allow police to assume guilt by association, and here many of the affected individuals indeed have no association with the alleged perpetrators of crimes, other than having no place other than the streets to sleep, sit and store their belongings. It is well established that forcing individuals to undergo questioning without reasonable, individualized suspicion of criminal conduct violates state and federal Constitutional protections against unreasonable searches and seizures. *See, e.g., U.S. v. Espinoza*, 490 F.3d 41 (1st Cir. 2007).

Second, seizing and destroying private, unabandoned property without prior notice and the opportunity to first remove that property, and without providing a system for individuals to reclaim confiscated property, violates the Fourth and Fourteenth Amendments of the U.S. Constitution and similar state Constitutional provisions. *See, e.g., Proctor v. District of Columbia*, 2018 WL 6181739 (D.D.C. 2018); *Russell v. City of Honolulu*, 2019 WL 6222714 (D. Ha. 2013); *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005 (C.D. Cal. 2011). *See also Lyall v. City of Denver*, 319 F.R.D. 558 (D. Colo. 2017) (certifying class action challenging sweeps and taking of property); *Kincaid v. City of Fresno*, 244 F.R.D. 497 (C.D. Cal. 2007) (same).

Third, we are unaware that the City or the BPD made any reasonable modifications for persons with disabilities, apparently resulting in such persons being left without wheelchairs and medication. This is in violation of Title II of the Americans with Disabilities Act and other state and federal laws protecting the rights of persons with disabilities.

Finally, the City of Boston's anti-loitering ordinance has been ruled unconstitutional. *Commonwealth v. Williams*, 395 Mass. 302 (1985). Yet officers apparently continue to cite it as a basis to force individuals to move away from locations on a public street where they have every right to be, thereby creating a strong likelihood of violations of the Massachusetts Civil Rights Act, G.L. c. 12, § 11H.

Requested Actions

In light of the foregoing legal issues, and to avoid the need for litigation, ACLUM urges you to immediately direct BPD and any others working with them in these actions to cease this problematic conduct.

We also would recommend that the City take affirmative steps to identify and provide compensation to those whose property and personal rights have been violated.

Finally, we request the following public records, pursuant to G.L. c. 66, § 10, within the 10 business days required by law. The request covers records in the custody of any individual employed by the City and any department thereof, including but not limited to the office of the Mayor and BPD. Since this request is in the public interest and for the benefit of very low income individuals, we ask that any fees for such records be waived.

The records requested at this time are as follows:

- 1) All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the actions taken by BPD during August 2019 in the area of Massachusetts Avenue, Southampton Street, Melnea Cass Boulevard and Atkinson Street, including but not limited to Operation “Clean Sweep,” and including but not limited to all records reflecting or revealing arrests made, property seized, orders to carry out the actions taken, and/or policies and procedures followed or intended to be followed by BPD.
- 2) All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the “directed patrols” referred to by Michael Stratton, deputy superintendent of the BPD, in the Boston Globe article published on August 8, 2019, available at <https://www.bostonglobe.com/metro/2019/08/08/tensions-flare-homeless-and-drug-users-spread-into-south-end/6ezmt03vWJ2GEUvs2aRQhK/story.html>, and which seem to be ongoing on a daily or near-daily basis, including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD.
- 3) All records discussing, referring to, or containing any communications with the Massachusetts State Police, Governor Baker or any employee of his administration, members or officers of the corrections officers union representing South Bay corrections officers, and/or District Attorney Rachael Rollins concerning the BPD actions described in items #1 and #2 of this records request.
- 4) All records relating to the 2019 U.S. Conference of Mayors’ 87th Annual Meeting in Honolulu, Hawaii concerning the issue of homelessness, including any materials provided or notes taken before, during or after the event.

Conclusion

On behalf of ACLUM, and the vulnerable individuals being adversely affected by these police actions, we urge you to promptly and publicly order the cessation of these activities. BPD would remain free to address actual or suspected criminal activity based on probable cause and reasonable suspicion. What cannot continue is this targeting of vulnerable individuals *en masse* based only on the fact that they are present in a location with other vulnerable individuals.

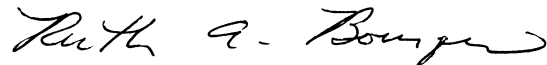
We also urge a prompt response to the public records request set forth above.

If you would like to schedule a time to meet and discuss these issues, including how public safety can be protected and appropriate services can be provided consistent with law, we would be more than willing to make time. In any event, we would respectfully request a timely response to our request that these actions be suspended.

Sincerely,



Matthew Segal
Legal Director
msegal@aclum.org
Ext. 330



Ruth Bourquin
Senior & Managing Attorney
rbourquin@aclum.org
Ext. 348

cc: Shawn Williams, City of Boston Records Officer (by email)
Eugene O'Flaherty, Corporation Counsel (by email)
Nicole O'Connor, Counsel for BPD (by email)

EXHIBIT B



PUBLIC RECORDS
OFFICE OF THE RECORDS ACCESS OFFICER
Martin J. Walsh, Mayor

August 26, 2019

Ruth A. Bourquin
Senior Attorney
ACLU Massachusetts
211 Congress Street
Boston, MA 02110
rbourquin@aclum.org

Re: August 12, 2019 Public Records Request

Dear Ruth:

The City of Boston (City) has received your request for public records from the Boston Police Department. 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). 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 requested the following, including your clarification of Request 2:

1. *All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the actions taken by BPD during August 2019 in the area of Massachusetts Avenue, Southampton Street, Melnea Cass Boulevard and Atkinson Street, including but not limited to Operation "Clean Sweep," and including but not limited to all records reflecting or revealing arrests made, property seized, orders to carry out the actions taken, and/or policies and procedures followed or intended to be followed by BPD.*
2. *All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the "directed patrols" referred to by Michael Stratton, deputy superintendent of the BPD, in the Boston Globe article published on [August 8, 2019](#), and which seem to be ongoing on a daily or near-daily basis, including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD.*

With regard to request #2 of our public records request, please be advised that that is intended to cover "maintenance patrols" or "directed patrols" or any police actions in the identified area directed at people who congregate there. I write to make this clarification because we have just seen a distinction being made by City personnel between "maintenance" and "directed" patrols. [[Boston.com article published August 9, 2019](#)]

3. *All records discussing, referring to, or containing any communications with the Massachusetts State Police, Governor Baker or any employee of his administration, members or officers of the corrections officers union representing South Bay corrections officers, and/or District Attorney Rachael Rollins concerning the BPD actions described in items #1 and #2 of this records request.*
4. *All records relating to the 2019 U.S. Conference of Mayors' 87th Annual Meeting in Honolulu, Hawaii concerning the issue of homelessness, including any materials provided or notes taken before, during or after the event.*

The City needs additional time to provide any responsive records. 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 an explanation is provided. G. L. c. 66, § 10(b)(vi); 950 CMR 32.06(2)(i). I will provide a written follow up to this letter in ten (10) business days.

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).

Very truly yours,



Shawn A. Williams, Esq.
Director of Public Records

Jessica Lewis

From: Ruth Bourquin
Sent: Thursday, May 28, 2020 11:27 AM
To: Jessica Lewis
Subject: FW: 19-08-12 Acknowledgment of Receipt of August 12 ACLU Public Records Request

From: Ruth Bourquin
Sent: Friday, September 6, 2019 10:41 AM
To: Shawn Williams <shawn.williams@boston.gov>
Cc: Laura Oggeri <laura.oggeri@boston.gov>; Boyle, John <johnt.boyle@pd.boston.gov>; David Fredette <david.fredette@pd.boston.gov>; Public Record Request <publicrecordrequest@pd.boston.gov>
Subject: RE: 19-08-12 Acknowledgment of Receipt of August 12 ACLU Public Records Request

Good morning, Shawn,

I am writing to ask for an update on a substantive response to this public records request.

You asserted in your August 26 letter that the City is free to give itself up to 25 business days to respond, solely based on compliance with G.L. c. 66, section 10(b)(vi). You failed to note that such an extension is authorized only if all the conditions under 10(b)(i)-(ix) are met. Among others, the conditions under 10(b)(iv) and (v) were not met.

We therefore are of the opinion that the City has failed to satisfy its obligations under the public records law. More importantly, however, we feel we have a right to the documents.

Please let me know when the requested records will be available.

Thank you,
Ruth

Ruth A. Bourquin
Senior and Managing Attorney
American Civil Liberties Union Foundation of Massachusetts, Inc.
211 Congress Street, Boston, MA 02110
617.482.3170 ext. 348 | rbourquin@aclum.org
aclum.org



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

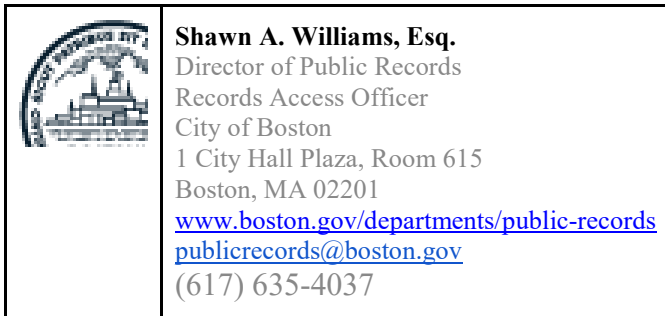
From: Shawn Williams <shawn.williams@boston.gov>
Sent: Monday, August 26, 2019 6:30 PM

To: Ruth Bourquin <RBourquin@aclum.org>; Matthew Segal <MSegal@aclum.org>
Cc: Laura Oggeri <laura.oggeri@boston.gov>; Boyle, John <johnt.boyle@pd.boston.gov>; David Fredette <david.fredette@pd.boston.gov>; Public Record Request <publicrecordrequest@pd.boston.gov>
Subject: Re: 19-08-12 Acknowledgment of Receipt of August 12 ACLU Public Records Request

Good Afternoon Ruth:

Please see attached.

Yours truly,

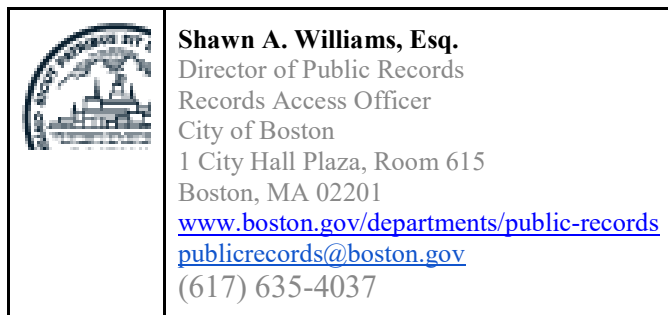


On Mon, Aug 12, 2019 at 2:13 PM Shawn Williams <shawn.williams@boston.gov> wrote:

Good Afternoon Ruth:

The City of Boston has received your request for records and will provide a response once the review of your request is complete.

Yours truly,



On Mon, Aug 12, 2019 at 12:57 PM Ruth Bourquin <RBourquin@aclum.org> wrote:

Dear all,

Attached please find a letter to Mayor Walsh being hand-delivered shortly concerning the recent police actions and containing a public records request.

The City's and BPD's attention prompt attention to this correspondence will be greatly appreciated. Please let me know if you have any questions.

Sincerely,

Ruth A. Bourquin

Senior and Managing Attorney

American Civil Liberties Union Foundation of Massachusetts, Inc.

211 Congress Street, Boston, MA 02110

617.482.3170 ext. 348 | rbourquin@aclum.org

aclum.org



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EXHIBIT C



PUBLIC RECORDS
OFFICE OF THE RECORDS ACCESS OFFICER
Martin J. Walsh, Mayor

September 17, 2019

Ruth A. Bourquin
Senior Attorney
ACLU Massachusetts
211 Congress Street
Boston, MA 02110
rbourquin@aclum.org

Re: Final Response to August 12, 2019 Public Records Request

Dear Ruth:

The City of Boston (City) has received your request for public records from the Boston Police Department. 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). 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 requested the following, including your clarification of Request 2:

1. *All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the actions taken by BPD during August 2019 in the area of Massachusetts Avenue, Southampton Street, Melnea Cass Boulevard and Atkinson Street, including but not limited to Operation "Clean Sweep," and including but not limited to all records reflecting or revealing arrests made, property seized, orders to carry out the actions taken, and/or policies and procedures followed or intended to be followed by BPD.*
2. *All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the "directed patrols" referred to by Michael Stratton, deputy superintendent of the BPD, in the Boston Globe article published on [August 8, 2019](#), and which seem to be ongoing on a daily or near-daily basis, including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD.*

With regard to request #2 of our public records request, please be advised that that is intended to cover "maintenance patrols" or "directed patrols" or any police actions in the identified area directed at people who congregate there. I write to make this clarification because we have just seen a distinction being made by City personnel between "maintenance" and "directed" patrols. [[Boston.com article published August 9, 2019](#)]

3. *All records discussing, referring to, or containing any communications with the Massachusetts State Police, Governor Baker or any employee of his administration, members or officers of the corrections officers union representing South Bay corrections officers, and/or District Attorney Rachael Rollins concerning the BPD actions described in items #1 and #2 of this records request.*
4. *All records relating to the 2019 U.S. Conference of Mayors' 87th Annual Meeting in Honolulu, Hawaii concerning the issue of homelessness, including any materials provided or notes taken before, during or after the event.*

The records responsive to Requests 1-3 are located [here](#). Please note that one (1) document, identified as [17.pdf](#), is partially redacted to omit personally identifiable information regarding certain persons arrested during this period. This redacted information is exempt pursuant to the first and second clause of the privacy exemption to the public records law. This information identified persons who may have a substance abuse problem. This information is both medical, as it is diagnostic in nature, as well as an intimate detail. The courts have stated information is an intimate detail if it identifies a person and relates to substance abuse. The public interest in disclosure is not outweighed by this privacy interest. G. L. c. 4, § 7 (26) (c). All responsive records are provided and no records are withheld or redacted other than the portions identified above.

The records responsive to Request 4 are located [here](#). Please note that one email is redacted to omit attorney-client protected communications. To withhold a record under the common law attorney-client privilege a government custodian must "provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed." G. L. c. 66, § 10A(a). The portion of the record redacted is entitled [Subject: Fw: Checking in - USCM meeting with Mayor Walsh](#). The redacted portion does not contain information relative to the substance of your request for records. All responsive records are provided and no records are withheld or redacted other than the portions identified above.

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).

Very truly yours,



Shawn A. Williams, Esq.
Director of Public Records

EXHIBIT D

Jessica Lewis

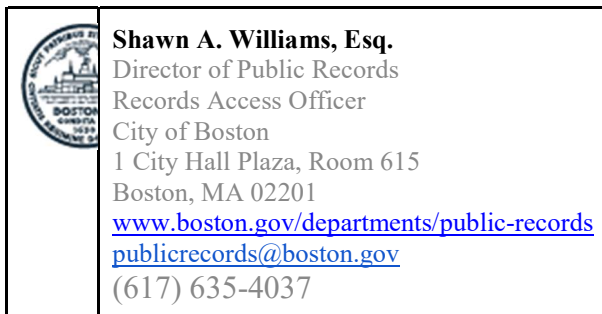
To: Shawn Williams; Ruth Bourquin
Cc: Taisha Lazare; Winifred Gibbons; Martha DeMaio
Subject: RE: 119-10-25 Ruth Bourquin - Supplemental Response to August 12 Request for Records

On Fri, Sep 20, 2019 at 3:26 PM Shawn Williams <shawn.williams@boston.gov> wrote:

Good Afternoon Ruth:

I will check in with BPD but to the best of my knowledge, we have provided everything. The numbering system for the files is not indicative of records that are responsive but not provided. I will reach out again to the BPD on this but I do believe we have provided everything. I will forward your email to that office for its review.

Yours truly,



On Fri, Sep 20, 2019 at 3:10 PM Ruth Bourquin <RBourquin@aclum.org> wrote:

Dear Shawn,

Before the week is out I wanted to reconnect to be sure you produced all the records you intend to produce in response to this request.

Most of what we received are copies of repetitive email threads, none of which provide any feedback on August 1 during the Operation.

No documents reflecting planning for the operation or orders for the operation are included. No communications as to planning or coordination between BPD and DPW, State police, or the Sheriff's office were included. No after action reports or police reports are provided. No arrest logs are provided. No documents explaining the purpose of the operation were provided. And none of the documents referred to in the emails in response to #4 are provided.

The documents you provided are all numbered in their saved titles, but several numbers in the chronology are missing.

This is not a complete list of what seems to be missing, but I wanted to flag our concern as a courtesy.

If you intended to provided other documents, please do so yet today.

Thank you.

Ruth

Sent from my Verizon, Samsung Galaxy smartphone

EXHIBIT E



PUBLIC RECORDS
OFFICE OF THE RECORDS ACCESS OFFICER
Martin J. Walsh, Mayor

October 25, 2019

Ruth A. Bourquin
Senior Attorney
ACLU Massachusetts
211 Congress Street
Boston, MA 02110
rbourquin@aclum.org

Re: Supplemental Response to August 12, 2019 Public Records Request

Dear Ruth:

The City of Boston (City) has received your request for public records. Records were provided to you, most recently by letter dated [September 17, 2019](#). In your September 20, 2019 [response](#), you asked if additional records exist. Specifically, you stated:

No documents reflecting planning for the operation or orders for the operation are included. No communications as to planning or coordination between BPD and DPW, State police, or the Sheriff's office were included. No after action reports or police reports are provided. No arrest logs are provided. No documents explaining the purpose of the operation were provided. And none of the documents referred to in the emails in response to #4 are provided.

The documents you provided are all numbered in their saved titles, but several numbers in the chronology are missing.

In my September 20, 2019 [response](#), I stated:

I will check in with BPD but to the best of my knowledge, we have provided everything. The numbering system for the files is not indicative of records that are responsive but not provided. I will reach out again to the BPD on this but I do believe we have provided everything. I will forward your email to that office for its review.

The process for numbering emails and attachments

The software program used by the City provides an automatically generated number for each email or attachment to an email. The records provided to you include all of records that were thought to be responsive at the time of the response. To produce the responsive records numerous other records were also reviewed. The records deemed non-responsive are omitted from the results. What remains are the responsive records and while they are not exactly sequential they do appear chronologically and represent all of the records believed to be responsive at the time of the response.

As I indicated in my September 20, 2019 email, I needed to confer with BPD to determine if any other records exist. Additional records were located using additional search terms, such as “high visibility patrol” to assist in producing responsive records. Not all remaining responsive records brought to my attention will be provided in this letter as the review is ongoing. In your September 20, 2019 email you identified several categories of records you thought to be outstanding and due to be provided to you:

“No documents reflecting planning for the operation or orders for the operation are included”

Response: There are no records that describe the events of August 1-3 other than those records that have been provided to you, any additional email correspondence is described below. No other records exist.

“No communications as to planning or coordination between BPD and DPW, State police, or the Sheriff’s office were included”

Response: There are no records responsive to this request other than the communications between City departments that will be provided in my follow-up letter described below. No other records exist.

“No after action reports or police reports are provided”

Response: There are no after action reports responsive to this request. Police reports are included with this response and are located [here](#). A description of these records is provided below.

“No arrest logs are provided”

Response: The BPD’s arrest log is known as the Public Journal and is available online [here](#). The Public Journal for August 1-3 is provided [here](#).

“No documents explaining the purpose of the operation were provided”

Response: There are no records responsive to this request other than the emails provided to you. There are no written communications “explaining the purpose” other than those provided in this letter and the one to follow. No other records exist.

“And none of the documents referred to in the emails in response to #4 are provided”

Response: The records responsive to Request 4 are located [here](#). Please note that one email is redacted to omit attorney-client protected communications. To withhold a record under the common law attorney-client privilege a government custodian must “provide a detailed description of the record, including the names of the author and recipients, the date, the substance of such record, and the grounds upon which the attorney-client privilege is being claimed.” G. L. c. 66, § 10A(a). The portion of the record redacted is entitled [Subject: Fw: Checking in - USCM meeting with Mayor Walsh](#). The redacted portion does not contain information relative to the substance of your request for records. All responsive records are provided and no records are withheld or redacted other than the portions identified above.

To assist you in understanding the additional records provided or remaining to be provided I will restate your original request below, followed by BPD's response. Specifically, in your request you sought copies of the following records:

1. *All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the actions taken by BPD during August 2019 in the area of Massachusetts Avenue, Southamptn Street, Melnea Cass Boulevard and Atkinson Street, including but not limited to Operation "Clean Sweep," and including but not limited to all records reflecting or revealing arrests made, property seized, orders to carry out the actions taken, and/or policies and procedures followed or intended to be followed by BPD.*

Response: Additional records include emails that evaded our initial search for responsive records. Those additional records are provided here.

Included in this group of records are emails related to an all-points bulletin, also known as a Be On the Lookout (BOLO) bulletin for a missing person. It is not clear whether this record is responsive, but as it is a record related to the August 1-3 dates cited in your request it is provided [here](#). Please note that identifying information is redacted from these records pursuant to the second clause of exemption (c) of the public records law. The public interest in disclosure does not outweigh the privacy interest of the person identified in the BOLO bulletin. G. L. c. 4, § 7 (26) (c).

Also responsive are incident reports, also known by the BPD as "1.1." documents. These records consist of reports of persons arrested during the high visibility patrol on August 1-3. As referenced above, those records are provided [here](#). Please note the records are redacted pursuant to exemptions (c) and (f) of the public records law. The records contain intimate details of a highly personal nature, the public interest does not outweigh the privacy interest, and the information is not readily available from another source. Further, the records contain information related to ongoing investigations, as well as information that would identify voluntary witnesses. G. L. c. 4, § 7 (26) (c); (f).

2. *All records discussing, referring to, planning, ordering, describing, documenting, or evaluating the "directed patrols" referred to by Michael Stratton, deputy superintendent of the BPD, in the Boston Globe article published on [August 8, 2019](#), and which seem to be ongoing on a daily or near-daily basis, including but not limited to all records reflecting or revealing arrests made, property seized, orders to take the actions taken, and/or policies and procedures followed or intended to be followed by BPD.*

With regard to request #2 of our public records request, please be advised that that is intended to cover "maintenance patrols" or "directed patrols" or any police actions in the identified area directed at people who congregate there. I write to make this clarification because we have just seen a distinction being made by City personnel between "maintenance" and "directed" patrols. [[Boston.com article published August 9, 2019](#)]

3. *All records discussing, referring to, or containing any communications with the Massachusetts State Police, Governor Baker or any employee of his administration, members or officers of the corrections officers union representing South Bay corrections officers, and/or District Attorney Rachael Rollins concerning the BPD actions described in items #1 and #2 of this records request.*

Response: The records initially provided responsive to Requests 1-3 are located [here](#). Please note that one (1) document, identified as [17.pdf](#), is provided again [here](#), with fewer redactions. The new copy omits only date of birth, Social Security Numbers and FBI Numbers. This content is exempt from disclosure pursuant to the second clause of exemption (c) of the public records law and the public interest in disclosure does not outweigh the privacy interest.

4. *All records relating to the 2019 U.S. Conference of Mayors' 87th Annual Meeting in Honolulu, Hawaii concerning the issue of homelessness, including any materials provided or notes taken before, during or after the event.*

Response: As indicated above these records are provided [here](#).

Other responsive records not yet reviewed

We are reviewing additional email correspondence that may be responsive to your request. These additional emails will be provided in my next letter, to be provided five (5) business days from the date of this letter. Should any portion be withheld or redacted a description will be provided at that time.

Audio and video records

In our second search, we located additional records that may or may not be responsive. These records consist of audio and video records. The audio records consist of one record for each day - August 1, 2, and 3 - recorded on the BPD public audio channel. The audio recordings must be reviewed to determine if any portion is exempt from disclosure. For example, records containing allegations of sexual assault are exempt from the public records law. Any such allegation must be omitted from any recording provided, should you wish to make such a request. G. L. c. 41, § 97D; G. L. c. 4, § 7 (26) (a). Please let me know if you wish to obtain a copy of the audio recordings.

In addition to the audio recording, we located video recordings. These video recordings consist of (1) a set of short videos recorded from a hand-held device, and (2) video recorded on body-worn cameras. As with the audio recordings, the video recordings must be reviewed to determine whether any portion is exempt from disclosure. The videos may contain medical information or intimate details and may also contain information that relates to open investigations or identifies voluntary witnesses. G. L. c. 4, § 7 (26) (c), (f). Please let me know if you wish to obtain a copy of the video recordings.

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).

Very truly yours,

A handwritten signature in blue ink, appearing to read "Shawn Williams". The signature is fluid and cursive, with the first name "Shawn" and last name "Williams" clearly distinguishable.

Shawn A. Williams, Esq.
Director of Public Records

EXHIBIT F



PUBLIC RECORDS
OFFICE OF THE RECORDS ACCESS OFFICER
Martin J. Walsh, Mayor

December 12, 2019

Ruth A. Bourquin
Jessica Lewis
ACLU Massachusetts
211 Congress Street
Boston, MA 02110
rbourquin@aclum.org
jlewis@aclum.org

Re: Supplemental Response to August 12, 2019 Public Records Request

Dear Ruth and Jessica:

The City of Boston (City) has received your request for public records. Records were provided to you on [September 17](#) with a second letter provided on [October 25](#) and an email provided on [November 21](#). This letter provides additional records.

Email

The software program used by the City provides an automatically generated number for each email or attachment to an email. The records provided to you include all of records that were thought to be responsive at the time of the response. To produce the responsive records numerous other records were also reviewed. The records deemed non-responsive are omitted from the results. What remains are the responsive records and while they are not exactly sequential they do appear chronologically and represent all of the records believed to be responsive at the time of the response. The responsive emails are found [here](#). Please note that some emails were redacted to omit social security numbers. Some emails are redacted to omit mobile phone numbers. As I explained in my October 25 letter some emails are redacted to omit identifying information related to an all-points bulletin, also known as a Be On the Lookout (BOLO) bulletin for a missing person. The redactions are made pursuant to the second clause of exemption (c) of the public records law. The public interest in disclosure does not outweigh the privacy interest of the persons identified and the information is not readily available from another source. G. L. c. 4, § 7 (26) (c); see also PETA v. Dep't of Agric. Res., 477 Mass. 280 (2017).

Two (2) emails were redacted to omit non-responsive information associated with ongoing investigations. G. L. c. 4, § 7 (26) (f). One email attachment is withheld as it contains information related to a CJIS warrant check. This information is not available from another source. G. L. c. 4, § 7 (26) (c); see also PETA v. Dep't of Agric. Res., 477 Mass. 280 (2017).

Audio and video records

In my October 25 letter, I informed you that in our second search we located audio and video records for August 1, 2, and 3. The audio recordings are provided [here](#). Please note that the audio recordings are provided in their entirety, with the exception of portions that are removed as relates to allegations of sexual assault or domestic violence. By statute, such records are exempt from disclosure under the public records law in an effort to protect victims. G. L. c. 41, § 97D; G. L. c. 4, § 7 (26) (a). Also provided is a [log](#) of the recordings, with portions omitted as indicated above. No other portion of the audio recordings are redacted or otherwise withheld.

In addition to the audio recording, we located video recordings. The video recordings consist of (1) a set of short videos recorded from a [hand-held device](#), and (2) video recorded on [body-worn cameras](#). I previously provided a link to the body-worn camera video to you on [November 21](#). The video recordings are blurred to omit the risk of identifying specific individuals depicted, including displaced persons, persons suffering from mental illness or experiencing symptoms consistent with drug abuse. Portions of the audio in the body-worn camera footage is redacted. The redactions are made pursuant to the second clause of exemption (c) of the public records law. The public interest in disclosure does not outweigh the privacy interest of the persons identified and the information is not readily available from another source. G. L. c. 4, § 7 (26) (c); see also PETA v. Dep't of Agric. Res., 477 Mass. 280 (2017). For the body-worn camera records please note the first thirty (30) seconds of each video contains no sound. This is not a redaction; this is how the recording equipment operates. Please let us know if you have a question about that.

Boston 311

There may be additional records found on the City of Boston's 311 page. See the [website](#) for more information.

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).

Very truly yours,



Shawn A. Williams, Esq.
Director of Public Records

EXHIBIT H



City of Boston
Mayor Martin J. Walsh
Public Records

May 15, 2020

Ruth A. Bourquin
Jessica Lewis
rbourquin@aclum.org
jlewis@aclum.org

Re: [December 20, 2019 Correspondence \(August 12, 2019 Public Records Request\) \(B000980-08191\) \(ACLU v. COB, 1984-CV-02998\)](#)

Dear Ruth and Jessica:

The City of Boston (City) has received your [December 20, 2019](#) email regarding your [August 12, 2019](#) request for public records, Boston Police Department (Department) reference number (B000980-08191). Records were provided to you on [September 17](#), [October 25](#), [November 21](#), and [December 12](#). In your recent email you stated:

We are writing again with respect to records that still seem to be missing, incomplete, or unclear even after the December 12, 2019 supplemental production. These are in addition to the matters we brought to your attention on Monday and the email sent yesterday about the fact that the audio log numbers do not match up with the numbers on the audio actually produced.

1. *With regard to the 10 videos that have been produced, as noted previously, they are so blurred that it is hard to decipher much of what is happening. This blurring of them all is not justified by any exception to the Public Records Law. Pending receiving non-blurred copies of them all, we would ask for you to:*
 - a. *Immediately provide the date and time stamps for all 10 videos. Even these are blurred and unreadable.*

On March 3 it was my understanding that the Department would provide the video to you unredacted. The Department and City have decided to maintain its position with respect to the video and no other copy of the video will be provided to you.

The City is deeply committed to serving the homeless community as well as those persons who are struggling with addiction and recovery. Disclosure of video records that would identify this vulnerable population would only cause additional harm to these people who so desperately need assistance.

Please note that AXON timestamps use Coordinated Universal Time (UTC), also known as Zulu time. AXON is the manufacturer of the body-worn cameras. What follows is the information from each of the ten (10) videos referenced above.

112_Southampton_St. 2019-08-01 T22:24:40Z
AXON BODY 2 X81329108

1010_Mass_Ave. 2019-08-01 T23:22:38Z
AXON BODY 2 X81329513

Arrest_112_Southampton 2019-08-01 T22:24:54Z
AXON BODY 2 X81329834

Clean_Sweep(1) 2019-08-01 T23:23:26Z
AXON BODY 2 X91329398

Clean_Sweep(2) 2019-08-01 T23:23:20Z
AXON BODY 2 X81326998

Clean_Sweep 2019-08-01 T23:49:03Z
AXON BODY 2 X81329398

Operation_1010_Mass_Ave. 2019-08-01 T23:34:12Z
AXON BODY 2 X81324384

Sick_Assist_At_Washington_And_Ruggles 2019-08-02 T21:24:03Z
AXON BODY 2 X81332257

Station_Assignment_1010_Massachusetts_Avenue 2019-08-02 T23:34:17Z
AXON BODY 2 X81416877

Verbal_Dispute_1010_Mass_Ave. 2019-08-01 T12:01:25Z
AXON BODY 2 X81329280

- b. Expedite production of non-blurred copies of the 5th, 7th and 9th videos you produced, which are respectively entitled Extraction _1_1__Station Assignment - 1010 Massachusetts Avenue; Extraction __1__1010_ Mass_Ave; and Extraction _1_1_ Operation_ 1010 _Mass_ Ave.

As indicated above, there will be no other video copies provided.

2. Also with regard to videos, given the large number of police officers on the scene over several nights and the BPD body worn camera policy, we would like an explanation, or records revealing body worn policy or protocol sufficient to explain, why there is not more body worn camera or other video footage. We also seek non-blurred copies of what seem to be missing recordings.

It is my understanding that not all police officers were equipped with body-worn cameras during this time, and that all responsive body-worn camera video [has been provided to you](#). Please see the May 31, 2019 [press release](#) issued by the Department for more information.

3. We would like any unproduced complaints or reports about the City seizing people's property during the Operation. We know more must exist because in the document numbered 1003, on August 15, Kristin McCosh refers to disability advocates having expressed concerns and her efforts to craft a response. We would request these records, along with any complaints filed by affected persons with anyone affiliated with the City, including but not limited to BPD and DPW.

Records responsive to Request 3 are provided [here](#).

4. In document 900, Buddy Christopher asks multiple people/departments for a response with regard to resources they can bring to the ongoing project. Yet, the documents produced contain no responses. We would ask for them.

Records responsive to Response 4 are provided [here](#).

5. The produced records reveal that the City purported to employ powers under Section 35 to force individuals caught in the Sweep to obtain treatment for addiction. This is revealed in an August 23, 2019 email from Mr. Stratton to Mr. Boyle numbered 1035. In the 7th video referenced above at around 52.36, a woman is told that she either has to go to the hospital or be arrested. We would ask for all records showing use of Section 35 in the context of Operation Clean Sweep (seemingly also referred to as Mass and Cass) follow up directed patrols and all policies, protocols and/or training materials related to BPDs use of Section 35.

It is my understanding that no records exist "showing use of Section 35 in the context of Operation Clean Sweep." With respect to records regarding "policies, protocols and/or training materials," responsive video training records are provided [here](#).

6. To the extent they played any role in the decision to conduct Operation Clean Sweep and related actions, we would ask for any and all complaints from the public about crime or other conduct in the area of the Sweep filed or logged between June 1 and July 31, 2019, such as 311 complaints/messages.

It is my understanding that any complaint or comment would be available for public viewing on the City's website. For more information please see the City's website for [Boston 311](#).

7. Document 802 refers to a "class" that was attended and power point being shared from Buddy Christopher. We seek the power point, records identifying the "class" and any materials received by City personnel at or in connection with the "class."

Records responsive to Request 7 are provided [here](#).

8. *The produced records (e.g. document 798) reveal that City officials told the press that BPD had offered to find new wheelchairs for anyone who needs them. We seek documents discussing, showing or revealing how and when this alleged offer was made and to whom. In addition, we seek records showing whether, to whom, when and how any replacement wheelchairs were provided.*

Records responsive to Response 8 are provided [here](#).

In addition to the above, please note that, with regard to the earlier request for all CJIS records, and not just the one officer's report that has been produced, document 97 says that more than 100 warrant checks were done on August 1 alone. So we know there are many documents missing that show warrant checks done on in the area during the Operation and/or continued directed patrols during the months of August and September.

It is my understanding that an officer is able to log into the CJIS network to review information. In this one instance the record was saved and provided to you. It is my understanding that no other such records were retained.

[s]everal of the recently produced documents are blank and labeled Unable to Process or are totally blacked out with a City symbol. We would appreciate a review of these documents and explanations.

These documents consist of clip art of the City of Boston logo used in emails. There is no other information on these documents.

[T]he numbers in the first column of the log...of the produced audios, do not match up with the numbers assigned to the actual audios. All the audios begin with 41, while all the numbers on the log begin with 42.

Can you get us an explanation? It would also help if you could explain if all the audios provided on 12-12 are related to Operation Clean Sweep or are of all calls on the days in question.

The audio recordings and the spreadsheet provided are the records that exist that are responsive to this request. The spreadsheet data is extracted from the BPD's CAD system. It is not clear as to whether or why any item on the log would fail to match the audio; however, the public records law does not require a custodian of records to conduct research in response to a request. Accordingly, whereas the records have been provided, no other records exist, the Department has satisfied this request.

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).

Very truly yours,

A handwritten signature in blue ink, appearing to read "Shawn Williams", is positioned above the printed name.

Shawn A. Williams, Esq.
Director of Public Records