

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC. and TAYLOR R. CAMPBELL,

Plaintiffs,

v.

CITY OF BOSTON, BOSTON POLICE DEPARTMENT, and REBECCA S. MURRAY, in her official Capacity as the Supervisor of Records of the Public Records Division of the Commonwealth of Massachusetts,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND ACTION IN THE NATURE OF CERTIORARI

Docket No. _____

INTRODUCTION

1. The public’s ability to hold their government accountable relies on their timely access to public records. Over the past seventeen months, the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) and Taylor R. Campbell (collectively, “Plaintiffs”) have submitted public records requests seeking information about the Boston Police Department’s (“BPD”) use of force against, and surveillance of, people in Massachusetts, as well as the BPD’s and the City of Boston’s (“City”) potential communications with federal law enforcement agencies. In response, Plaintiffs have regularly been met with silence or unmet assurances of future updates rather than records. Nine of these requests are now well past-due, including four that have been pending for seven months or more. Plaintiffs therefore seek declaratory and injunctive relief requiring the City and the BPD (collectively, “City Defendants”) to comply with their obligations

to produce responsive documents in the timeframe required by the Massachusetts Public Records Law (“PRL”), G.L. c. 66, § 10.

2. In the wake of the recent nationwide unrest over the police killings of George Floyd and Breonna Taylor, conversations about police practices in Massachusetts have taken on new urgency as the State House and local city councils consider various policing bills and ordinances. At the same time, federal intervention in racial justice demonstrations throughout the country has ignited a conversation about local communication and collaboration with federal law enforcement agencies.

3. Individuals and organizations throughout the Commonwealth are searching for facts to inform these important, and time-sensitive, discussions.

4. To obtain such information, both Mr. Campbell and ACLUM sent public records requests to the BPD and the City in June 2020. Specifically, Plaintiffs submitted requests regarding the BPD’s use of force during the May and June racial justice demonstrations in Boston, as well as the City Defendants’ potential communications about and with federal law enforcement agencies during that same period. ACLUM additionally submitted a request regarding the BPD’s deployment of teargas and other chemical weapons since 2016 to contextualize reports of the Department’s recent use of such weapons.

5. To date, Plaintiffs have not received any documents responsive to these requests.

6. This is not an isolated occurrence, nor is it due to complications related to the coronavirus. Instead, it is reflective of a longstanding pattern of delay that violates the PRL.

7. In March 2019, ACLUM submitted a public records request to both BPD and City Hall regarding potential collaboration between the BPD and U.S. Immigration and Customs Enforcement (“ICE”), including any requests by ICE that the City provide information or take

particular action. Although the BPD produced some responsive records in October 2019, City Hall provided none. ACLUM agreed to the City's request to extend the deadline to produce any documents in its possession until December 23, 2019. To date, City Hall has neither produced responsive documents nor stated that none exist.

8. In September 2019, Plaintiffs each submitted a public records request regarding the BPD's use of force during the so-called "Straight Pride Parade," and ACLUM submitted a public records request for the location of surveillance cameras in Boston. The City Defendants still have not produced responsive documents or stated that none exist.

9. The City Defendants responded to the majority of the requests described above with a combination of silence and repeatedly unmet assurances that an update would be provided soon. The production deadlines and enforcement mechanisms of the 2016 amendments to the PRL were designed to eliminate exactly this kind of rampant deferral.

10. In response to three of the more recent records requests—namely, Plaintiffs' requests regarding the City Defendants' potential communications about and with federal law enforcement agencies and ACLUM's request regarding BPD teargas deployment since 2016—the City Defendants petitioned the Supervisor of Public Records ("the Supervisor") for an extension of time to produce documents. Here too, however, the City Defendants failed to comply with the amended PRL.

11. Rather than demonstrate the statutorily required "good cause" to justify its petitions, and without timely compliance with the requirements of G.L. c. 66, § 10(b), the City Defendants suggested they needed an undetermined number of extra days because "portions of any existing records responsive to [the] request may contain information that is exempt from

disclosure,” and “[u]ntil a review of the records is conducted it is not clear what if any exemptions may apply to require redaction or withholding.”

12. Such statements do not justify an extension of time under the plain language of the PRL and controlling regulations.

13. The Supervisor rejected the most recent of the City Defendants’ extension petitions. However, she granted extensions of the City’s deadline to respond to ACLUM’s request regarding potential City Hall communications about and with federal law enforcement agencies until August 5—a deadline the City has failed to meet—and the BPD’s deadline to respond to ACLUM’s request regarding its teargas deployment since 2016 until August 14.

14. The PRL contemplates conversations between requestors and municipalities regarding production deadlines, G.L. c. 66, § 10(b)(vi), and Plaintiffs were open to such dialogues.

15. But under the PRL, timely initial responses and production of records is not a suggestion; it is the law. The City Defendants’ failure to comply with that law has been consistent, and the delays have not been short-lived. Instead, they have repeatedly failed to produce records weeks and months past production deadlines without meaningfully engaging with Plaintiffs regarding the existence of the records, their efforts to obtain them, or alternative production schedules.

16. In the face of these systemic deficiencies, Plaintiffs need the requested records to contribute to real-time conversations and legislative decisions, as well as a clear declaration that the City Defendants, like other municipalities, must comport with statutory obligations to produce timely records in the future. Plaintiffs therefore file this action to obtain the records and to seek declaratory relief as to the City Defendants’ obligations to timely produce responsive records under the PRL. ACLUM also seeks to quash the Supervisor’s July 8 decision to grant the BPD an

extension to respond to ACLUM's request regarding teargas deployment since 2016, as well as declaratory relief clarifying the standards the Supervisor must apply to analyze time extension petitions.

PARTIES

17. Plaintiff American Civil Liberties Union of Massachusetts, Inc. is a non-profit membership organization with a principal place of business in Boston dedicated to the protection of civil rights and civil liberties. To advance the interests of open government, ACLUM works to shed light on law enforcement practices in order to preserve and extend constitutional rights.

18. Plaintiff Taylor R. Campbell is a resident of Quincy, Massachusetts. He believes that timely access to government records is necessary to inform public conversation and legislative action.

19. Defendant the City of Boston is a municipal corporation that is subject to suit and the Massachusetts Public Records Law.

20. Defendant Boston Police Department is a department of the City of Boston that is subject to suit and the Massachusetts Public Records Law.

21. Defendant Rebecca S. Murray is the Supervisor of Records for the Public Records Division of the Commonwealth of Massachusetts. The Supervisor issues determinations on petitions for extensions of time to produce responsive records, which are appealable in the nature of a certiorari action under the Public Records Law. She is sued by ACLUM in her official capacity regarding an extension of time to produce responsive documents granted to the BPD on July 8, 2020, and for declaratory relief with regard to the appropriate standards for granting petitions for additional time to produce.

JURISDICTION AND VENUE

22. Jurisdiction and venue are proper pursuant to G.L. c. 66, § 10A(c), G.L. c. 212, § 4, G.L. c. 214, § 1, G.L. c. 231A, § 1, and G.L. c. 249, § 4.

FACTUAL BACKGROUND

I. The 2016 Public Records Law amendments were designed to eliminate lengthy delays in records production.

23. Before 2016, Massachusetts agencies and municipalities were “notoriously weak in providing public records, since the laws governing them [we]re essentially toothless, and thus easily ignored.”¹ As a result, “[w]hen an ordinary citizen request[ed] basic government records in Massachusetts, he or she often face[d] frustrating delays and opacity.”²

24. These delays extended to institutional requestors. For example, in 2013, reporter Shawn Musgrave submitted testimony to the Joint Committee on State Administration and Regulatory Oversight explaining, “the average wait [time] for a response from state agencies is now 76 days.”³ Two years later, Greater Boston Legal Services reported that it had been waiting seven months for records from the Department of Transitional Assistance.⁴

¹ The Editorial Board, *With Mass. Public Records Law In Tatters, It's Time For Reform*, THE BOSTON GLOBE, March 13, 2015, <https://www.bostonglobe.com/opinion/editorials/2015/03/13/with-mass-public-records-law-tatters-time-for-reform/bxvKeY9koA6himuTqBUJ5O/story.html?hootPostID=a69d341d2cde65d47cfb250077180901>).

² *Id.*

³ Shawn Musgrave, *Commonsense Updates Need for Massachusetts Public Records Law*, MUCKROCK.COM, Oct. 16, 2013, <https://www.muckrock.com/news/archives/2013/oct/16/muckrock-supports-commonsense-updates-massachusett/>.

⁴ ACLU of Mass., *Updating The Public Records Law*, May 26, 2015, <https://www.aclum.org/sites/default/files/wp-content/uploads/2015/06/legislative-public-records-testimony.pdf>.

25. Reflecting the ubiquity of these kinds of delays, in 2015 the Center for Public Integrity’s review of state governments’ accountability and transparency gave the Commonwealth an “F” for public access to information.⁵ This failing grade was largely due to the Center’s findings that “[r]equesters in Massachusetts regularly face multiple month or year delays in obtaining information through public records requests.”⁶

26. In the wake of a groundswell of public pressure to increase timely access to government records, the Legislature ultimately passed the 2016 amendments to the PRL. The Governor described the unanimously adopted amendments as a “new way of doing business.”⁷

27. The “intended purpose” of these amendments include “improv[ing] communications between requestors and records custodians,” and “establish[ing] enforceable timeframes for producing public records.”⁸

28. Specifically, the 2016 amendments generally require municipalities to produce responsive records within 10 business days of a request. G.L. c. 66, § 10(a).

29. Under G.L. c. 66, § 10(b), if a municipality cannot provide responsive records in this timeframe, within 10 business days of a request they must provide the requestor with a written response that, among other things:

- confirms receipt of the request;
- identifies the records that the municipality intends to produce;

⁵ The Center for Public Integrity, *Massachusetts Gets D+ Grade in 2015 State Integrity Investigation*, Dec. 1, 2015, <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/massachusetts-gets-d-grade-in-2015-state-integrity-investigation/>.

⁶ *Id.*

⁷ *Gov. Baker Signs Law Overhauling State’s Public Records System*, WBUR NEWS & WIRE SERVICE, June 3, 2016, <https://www.wbur.org/news/2016/06/03/baker-public-records>.

⁸ Jonathan M. Albano, Emma D. Hall, *A “New Way of Doing Business” Under the Public Records Law*, Boston B.J., Fall 2016, at 15, 19.

- identifies the records that the municipality intends to withhold and the specific reasons for such withholding;
- identifies a reasonable timeframe for production that shall not exceed 25 business days from the receipt of the request;
- suggests any reasonable modifications that would enable the municipality to more efficiently produce the records; and
- provides an itemized good faith estimate of any fees for production that may be charged.

30. Producing this information is no mere ministerial task. Instead, statutorily requiring the municipality to provide this information serves at least two important functions. First, it helps ensure that the municipality does not request an additional 15 business days without first conducting a records search and analyzing whether this additional time is actually necessary. And second, it helps foster communication between the requestor and the municipality, providing the opportunity for them to discuss alternative production schedules or explore potential ways to narrow the scope of the search.

31. If a municipality is unable to provide records within the extended timeframe of 25 business days, they can request an extension of up to an additional 30 business days to produce the documents. G.L. c. 66, § 10(c). But the municipality must first comply with G.L. c. 66, § 10(b), including the obligation to set a reasonable time frame for production under § 10(b)(vi). Indeed, a petition for extra time does not eliminate the obligation to provide the information required under G.L. c. 66, § 10(b) within ten business days of receipt. 950 C.M.R. 32.06(2)(b) & (4)(b). And the Supervisor can grant the petition only upon an additional showing of good cause, which requires

consideration of several statutorily delineated factors including the municipality's efforts to produce the documents and their ability to do so without an extension. G.L. c. 66, §10(c).

32. The Legislature intended these timeframes to have real meaning, as demonstrated by the enforcement mechanisms undergirding the deadlines.

33. For one thing, a municipality is barred from charging fees for the production of documents if they do not comply with their obligation to either produce the documents or a written response that comports with G.L. c. 66, § 10(b) within ten days. G.L. c. 66, § 10(e). For another, there is generally a presumption in favor of awarding attorney's fees if a requestor must bring a civil action to obtain public documents. G.L. c. 66, § 10A(d)(2). Finally, punitive damages are available if a requestor demonstrates that the municipality's failure to timely produce the requested records was not in good faith. G.L. c. 66, §10 A(d)(4).

II. Timely access to public records is especially critical in this moment to inform the current legislative, municipal, and public conversations about police practices.

34. The public's need to have timely access to public records about policing practices and local communications with federal law enforcement agencies is especially potent right now given the fast-moving statewide conversations and pending legislative actions on these two matters.

A. The demand to reform police officers' use of force.

35. Since the police killings of Breonna Taylor and George Floyd, waves of protests have spread across American cities. According The New York Times, in the past few months, an estimated 15 to 26 million people in the United States participated in demonstrations demanding police reform and racial justice.⁹

⁹ See Larry Buchanan, et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

36. Notably, these protests have both *pushed for* police reform, and become an example of the *need for* police reform themselves, as numerous police departments have responded with widespread use of teargas, rubber bullets and bean bags.¹⁰

37. In Massachusetts, demonstrators in Boston added their voices to the call for police reform throughout May and June.¹¹ Newspapers reported that BPD officers responded by launching chemical agents, including teargas and pepper spray, into crowds of demonstrators.¹² BPD officers also reportedly shot “pepper ball projectiles” at protesters.¹³

38. In the wake of these protests, in mid-June, Boston City Councilors Ricardo Arroyo and Andrea Campbell introduced a proposed ordinance to restrict police deployment of teargas and other chemical agents.¹⁴ That ordinance is still pending, and an initial hearing was held on

¹⁰ See Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES, July 10, 2020, <https://www.nytimes.com/article/george-floyd-protests-timeline.html>; Aliyya Swaby, et al., *Texas Police Using Tear Gas and Rubber Bullets on Protesters Incites More Violence, Experts Say*, TEX. TRIBUNE, June 3, 2020, <https://www.texastribune.org/2020/06/03/texas-police-force-protests-george-floyd/>; Larry Neumeister & Tom Hays, *Injuries at George Floys Protests Draw Scrutiny to Use of ‘Nonlethal’ Police Weaponry*, STARTRIBUNE, June 21, 2020, <https://www.startribune.com/injuries-at-protests-draw-scrutiny-to-use-of-police-weaponry/571407242/>.

¹¹ See, e.g., Quincy Walters, *‘I’m In A Perpetual State Of Anger’: Hundreds In Boston Protest George Floyd’s Death*, WBUR, May 30, 2020; *Peaceful Protesters Hold ‘Die-In’ on Boston Common, March City Streets*, NBC BOSTON, June 3, 2020; Douglas Hook, et al., *How Massachusetts’ three largest cities have responded to calls for police reforms*, MASSLIVE.COM, July 19, 2020.

¹² See Ally Jarmanning, *How A Day of Peaceful Protest Turned to Hours of Unrest in Boston*, WBUR NEWS, June 4, 2020, <https://www.wbur.org/news/2020/06/04/boston-protests-sunday-peaceful-police>.

¹³ *Id.*

¹⁴ Isaiah Thompson, *Boston City Council Members Propose Restricting Police Use of Tear Gas, Pepper Spray, Rubber Bullets*, WBUR NEWS, June 17, 2020, <https://www.wgbh.org/news/local-news/2020/06/17/boston-city-council-members-propose-restricting-police-use-of-tear-gas-pepper-spray-rubber-bullets>.

August 10, 2020.¹⁵ In July 2020, the Massachusetts Senate and House of Representatives each adopted separate police reform bills that include proposed limits on use of force as a means of crowd control.¹⁶ Negotiations to determine the final parameters of the bill continue with sessions that have spilled into late nights and weekends.¹⁷ Any compromise version of these bills will likely be only the beginning of an ongoing discussion, as each version proposes ongoing study commissions and analyses to inform additional actions over the course of the next several months.

39. Access to public data is necessary to inform these critical decisions. As Boston City Councilor Michelle Wu has emphasized, conversations and legislative actions regarding policing reform require accurate records “to have a baseline of what we are talking about when it comes to equipment and weapons and vehicles as well as tactics and how all of the above has been deployed over the years.”¹⁸

B. The need for transparency regarding communications about and with federal law enforcement officers.

40. While demonstrations for police reform have increased, so too has the need for greater transparency regarding local communications about and with federal law enforcement

¹⁵ *Ordinance Restricting The Use of Chemical Crowd Control Agents and Kinetic Impact Projectiles*, City of Boston, July 27, 2020 (last updated), <https://www.boston.gov/public-notices/13659996>.

¹⁶ Matt Murphy, *Mass. Senate Approves Policing Reform After Overnight Session*, WBUR NEWS, July 14, 2020, <https://www.wbur.org/news/2020/07/14/massachusetts-senate-police-reform-bill-passes-qualified-immunity>; Chris Van Buskirk, *Mass. House of Representatives Approves Policing Reform Bill*, WBUR NEWS, JULY 25, 2020, <https://www.wbur.org/news/2020/07/25/mass-house-of-representatives-approves-policing-reform-bill>.

¹⁷ Steph Solis, *Massachusetts Policing Bill Differences Remain Unresolved as Negotiations Stretch Into August*, MASSLIVE.COM, Aug. 1, 2020, <https://www.masslive.com/politics/2020/08/massachusetts-policing-bill-differences-remain-unresolved-as-negotiations-stretch-into-august.html>.

¹⁸ Kevin Andrade, *City Council Orders Examination Of Boston Police's 'Militarized' Equipment, Tactics*, WGBH, June 10, 2020, <https://www.wgbh.org/news/local-news/2020/06/10/city-council-orders-examination-of-boston-polices-militarized-equipment-tactics>.

officers as the President threatens to send—and in some instances has already deployed—federal law enforcement agents into cities across the country.

41. On June 2, 2020, the federal government deployed officers from numerous agencies within the Department of Homeland Security and the Department of Justice to Washington D.C. demonstrations.¹⁹

42. Federal agents first deployed in Portland, Oregon, at the start of July remained in the city for weeks, and the President has sent or threatened to send more federal agents to Albuquerque, Chicago, Kansas City, Detroit, and other cities led by “liberal Democrats.”²⁰

43. In Massachusetts, the National Guard remained in the streets of Boston for more than a week in June after being deployed during the demonstrations.²¹

44. Shortly after the President threatened to “dominate” demonstrators,²² Attorney General William Barr met with BPD Commissioner William Gross on June 18, 2020.²³ According

¹⁹ See Zolan Kanno-Youngs and Katie Benner, *Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests*, N.Y. TIMES, June 2, 2020, <http://nytimes.com/2020/06/02/us/politics/trump-lawenforcement-protests.html>.

²⁰ Peter Baker, et al., *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 24, 2020 (updated), <https://www.nytimes.com/2020/07/20/us/politics/trump-chicago-portland-federal-agents.html>; Charles Davis, *People in Albuquerque are Protesting Trump’s Deployment of Federal Agents to The City as Local Leaders Condemn The Show of Force*, BUSINESS INSIDER, Aug. 1, 2020, <https://www.businessinsider.com/albuquerque-protests-trump-federal-agent-depoyment-2020-7>; Jeremy Gerner, *Chicago’s FBI Boss Seeks to Calm City Over Operation Legend*, CHICAGO TRIBUNE, Aug. 7, 2020, <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-fbi-boss-presser-20200807-gi54fekvs5g7jmzmncd5va3npi-story.html>.

²¹ See, e.g., Zoe Greenberg, *Continued military presence in Boston is troubling, activists and scholars say*, THE BOSTON GLOBE, June 9, 2020, <https://www.bostonglobe.com/2020/06/09/metro/continued-military-presence-boston-is-troubling-activists-scholars-say/>.

²² See Kanno-Youngs, *supra* note 22.

²³ WBUR News & Wire Service, *Attorney General Barr Meets With Boston Police Commissioner as Protest Against Police Brutality Continue*, WBUR NEWS, June 19, 2020, <https://www.wbur.org/news/2020/06/18/ag-barr-boston-police-commissioner-meet>.

to reports, they talked about “police reform, the feelings of Black people across the country,[] the death of George Floyd” and “the protests in Boston following Floyd’s death.”²⁴

45. One month later, in response to the federal incursion in Portland, Mayor Walsh explained, “[t]hat behavior and that kind of so-called help is not welcome here in the city of Boston.”²⁵

46. Yet on August 4, 2020, Deputy Secretary Ken Cuccinelli submitted written testimony to the Senate Judiciary Subcommittee on the Constitution declaring, “DHS does not need permission from governors or mayors to do our duty,” and “the Department will continue our mission with or without th[e] support” of state and local officials.²⁶

47. Against this backdrop, the public has significant interest in the existence or non-existence of local communications about and with federal law enforcement agencies over the last two months.

III. The City and the BPD have failed to timely respond to ACLUM and Mr. Campbell’s 2020 public records requests regarding police use of force during recent demonstrations and potential communications with federal law enforcement agencies.

48. Plaintiffs have each sought records to inform these conversations. To date, the City Defendants have not produced any responsive records.

²⁴ Arianna MacNeill, *‘I’m Not a Black Man That is Going to be Silent’: Boston Police Commissioner William Gross Defends Meeting With U.S. AG Barr*, BOSTON.COM, June 21, 2020, <https://www.boston.com/news/local-news/2020/06/21/william-gross-speaks-meeting-william-barr-roxbury-community-college>.

²⁵ Danny McDonald & Travis Anderson, *Walsh rips Trump Administration for Sending Federal Agents to Respond to Protest in Portland, Ore.*, July 21, 2020, https://www.bostonglobe.com/2020/07/21/metro/walsh-rips-trump-administration-sending-federal-agents-respond-protests-portland-ore/?p1=Article_Inline_Text_Link.

²⁶ Homeland Security, *Submitted Written Testimony of Sr. Official Performing The Duties of The Deputy Secretary Ken Cuccinelli Before the U.S. Senate Committee on The Judiciary Subcommittee on the Constitution on Aug, 4th, Aug. 4, 2020*, <https://www.dhs.gov/news/2020/08/04/submitted-written-testimony-senior-official-performing-duties-deputy-secretary-ken>.

A. May/June Demonstrations Requests.

49. On June 8, 2020, Mr. Campbell submitted a public records request seeking records from the BPD related to its response to the racial justice demonstrations in May and June (“Campbell Demonstrations Request”) (attached hereto as Exhibit A). The Campbell Demonstrations Request generally sought documents about the BPD’s operational responses to, and reporting during, the May 25, 2020 through June 8, 2020 demonstrations, as well as communications between the BPD and other governmental agencies during that same period.

50. Shawn Williams, the Director of Public Records and Records Access Officer (RAO) for the City of Boston, which includes the BPD, acknowledged receipt of the request that same day.²⁷

51. More than two months since Mr. Campbell submitted the request, and more than 30 business days past the deadline to produce the requested documents or provide a statutorily adequate written response, the BPD has not produced a single responsive record or provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt. Nor have they reached out to Mr. Campbell to discuss a production schedule for the documents.

52. On June 9, 2020, ACLUM submitted a public records request seeking records from the BPD related to its response to the racial justice demonstrations in May and June (“ACLUM Demonstrations Request”) (attached hereto as Exhibit B). Much like the Campbell Demonstrations Request, the ACLUM Demonstrations Request generally sought documents related to the Department’s use of force during the demonstrations and its communications with other agencies. The ACLUM Demonstrations Request also sought the BPD’s use of force policies

²⁷ The BPD also has a Public Information Officer, Martha DeMaio, but Mr. Williams routinely responds to requests for BPD records and files time extension petitions for the BPD with the Supervisor.

(both generally and with respect to the specific demonstrations), and its use of surveillance technologies and long-range acoustic devices during the demonstrations.

53. The BPD acknowledged receipt of the request on June 9, 2020 via automated response, but has provided no substantive responses to the request. After the statutory deadline for production or submission of the information required under G.L. c. 66, § 10(b) had passed without any further information from the BPD, ACLUM twice emailed Mr. Williams, offering to discuss the scope of the request and asking when the documents would be produced.

54. Mr. Williams did not accept ACLUM's offer to discuss the scope of the request or a production schedule.

55. More than two months after ACLUM submitted the request, and more than 30 business days past the deadline to produce the requested documents or provide a statutorily adequate written response, the BPD has not produced a single responsive record or provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt.

B. Teargas Request.

56. To gain a contextual understanding of the BPD's reported use of teargas during the May and June demonstrations, ACLUM submitted a public records request on June 18, 2020, seeking documents regarding the BPD's use of chemical agents, including pepper spray and teargas, since 2016 ("Teargas Request") (attached hereto as Exhibit C).

57. The BPD acknowledged receipt that same day through an automated response.

58. On July 2, 2020, Mr. Williams sent ACLUM the BPD's petition for an extension of time to produce responsive records and for permission to charge fees which it had submitted to the Supervisor. This was the first communication ACLUM had received from the BPD regarding this request since its automated acknowledgement of receipt. The BPD had not contacted ACLUM to discuss the content or the scope of the request, or to offer an alternative production schedule.

Nor had ACLUM received a written response providing the information required under G.L. c. 66, § 10(b).

59. In response to the petition, ACLUM emailed Mr. Williams and offered to discuss the scope of the request, but he did not respond. On July 8, 2020, ACLUM submitted an opposition to the BPD's petition.

60. That same day, the Supervisor granted an extension of time to produce the records until August 14, 2020, but stated that she could not opine on the BPD's petition to charge fees because it had not demonstrated that the petition was timely.

61. Under the applicable regulations, "a records access officer shall provide a written response under M.G.L. c. 66, § 10(b) to a request for public records no later than the tenth business day following the receipt of a request *notwithstanding the applicability of any petition [for extension of time].*" 950 C.M.R. 32.06(2)(b) (emphasis added). Nevertheless, more than 30 business days after ACLUM submitted this request, the BPD still has not satisfied its obligations under G.L. c. 66, § 10(b). The BPD also has not yet produced any responsive records.

C. Federal Agencies Requests.

62. On June 9, 2020, ACLUM submitted a public records request seeking documents from the City regarding potential or past deployment of federal agents to Massachusetts since May 24, 2020, including any communications within the Mayor's Office and between the Mayor's Office and any other state, or local entity or various federal agencies regarding such deployment ("ACLUM Federal Agencies Request") (attached hereto as Exhibit D).

63. The City acknowledged receipt that same day via automated response.

64. On June 24, 2020, Mr. Williams sent ACLUM the City's petition for an extension of time to produce responsive records and for permission to charge fees which it had submitted to the Supervisor. This was the first communication ACLUM had received from the City regarding

this request since its automated acknowledgement of receipt. The City had not contacted ACLUM to discuss the content or the scope of the request, or to offer an alternative production schedule. Nor had the City provided ACLUM with a written response containing the information required under G.L. c. 66, § 10(b).

65. The Supervisor granted a production extension until August 5, 2020, but stated that she could not opine on the City's petition to charge fees because the City had not demonstrated that the petition was timely.

66. Although the extended deadline has passed, the City has neither produced a single responsive record in response to this request nor stated that none exist. In addition, the City has not provided ACLUM or the Supervisor the information required under G.L. c. 66, § 10(b).

67. On the night of June 18, 2020, Mr. Campbell submitted a public records request seeking all records from the BPD related to the Department's communications with the United States Department of Justice between June 8 and June 18, 2020, and any communications outside of that timeframe relating to the June 18 meeting between Attorney General Barr and BPD Commissioner Gross, as well as records from and in preparation for the meeting itself ("Campbell Federal Agencies Request") (attached hereto as Exhibit E).²⁸

68. The BPD acknowledged receipt that same day.

69. On July 6, 2020, Mr. Williams sent Mr. Campbell the BPD's petition for an extension of time to produce responsive records and for permission to charge fees which it had

²⁸ The timestamp on the request, which states "Friday, June 19, 2020 1:19:18 +0000[,]" was based on Coordinate Universal Time, or UTC, which is four hours ahead of eastern daylight savings time in the summer. As a result, the request was submitted at 9:19 pm eastern time on June 18, 2020. In her determination on the BPD's request to extend the time to respond to this request, the Supervisor stated, "it appears that Mr. Campbell's request was submitted on June 18, 2020."

submitted to the Supervisor. The BPD had not previously contacted Mr. Campbell to offer an alternative production schedule. Nor had BPD provided Mr. Campbell with a written response containing the information required under G.L. c. 66, § 10(b).

70. On July 9, the Supervisor denied the extension petition based on her determination that the BPD had not demonstrated good cause. She further stated that she could not opine on the BPD's petition to charge fees because the BPD had not demonstrated that the petition was timely.

71. A month and a half after Mr. Campbell submitted the request, and despite the ruling from the Supervisor, the BPD has not produced any responsive records or provided the information required under G.L. c. 66, § 10(b).

IV. The City's and the BPD's continued failure to respond to ACLUM and Mr. Campbell's 2019 public records requests regarding police use of force and potential communications with federal agencies demonstrates a longstanding pattern and practice of delay.

72. The City Defendants' delays in production did not start during the pandemic. To the contrary, the City Defendants have a long-standing practice of failing to comply with the PRL's production deadlines for months on end which began far before COVID-19.

73. Indeed, both Plaintiffs have unfulfilled 2019 public records requests for documents that would both be informative in their own right, and critical to understanding the current conversations regarding police practices and local communications about and with federal law enforcement agencies. For this reason, they are included in this Complaint. These include requests regarding police use of force during the August 2019 "Straight Pride Parade"—where BPD reportedly deployed pepper spray—as well as the locations of surveillance cameras linked into the City's Critical Infrastructure Monitoring Systems (CIMS) network. It also includes requests regarding potential communications about and with ICE regarding potential collaboration between that federal agency and the BPD.

74. Each of these requests has been pending for seven months or more, yet the City Defendants have failed to produce responsive documents or state that they do not exist.

A. Straight Pride Parade Requests.

75. On August 31, 2019, a group called “Super Happy Fun America” organized the so-called “Straight Pride Parade.” About 200 hundred people marched from Copley Square to a rally at City Hall Plaza in Boston,²⁹ while an estimated 600 individuals counter-protested both the parade and the rally.³⁰

76. BPD Commissioner Gross stated that “appropriate staffing and security measures” were put in place to ensure the safety of both parade participants and protestors.³¹ However, the BPD reportedly used riot gear and pepper spray to break up the crowds of counter-demonstrators, which drew criticism from the public and at least one member of the Boston City Council.³² In particular, BPD Captain John Danilecki was accused by witnesses of instigating aggressive altercations between law enforcement and counter-protesters.³³

77. On September 1, 2019, Mr. Campbell submitted a public records request seeking records regarding the BPD’s response to the Straight Pride Parade (“Campbell Straight Pride

²⁹ John Hilliard, *36 Arrested During “Straight Pride” Protests Due in Court This Week*, THE BOSTON GLOBE, Sept. 1, 2019, <https://www.bostonglobe.com/metro/2019/09/01/three-dozen-arrested-during-straight-pride-protests-due-court-this-week/MQwa87MXhgiNWnwUzl2iHL/story.html>; John Hilliard, *Protesters jeer Straight Pride Parade marchers along route to City Hall*, THE BOSTON GLOBE, Aug. 31, 2019 John Hilliard, et al. *Protesters Jeer Straight Pride Parade Marchers Along Route to City Hall*, THE BOSTON GLOBE, Aug. 31, 2019, <https://www.bostonglobe.com/metro/2019/08/31/counterprotesters-rally-across-city-from-straight-pride-parade-starting-point/qFStqXFPcWoOWAaxkDyDfI/story.html>.

³⁰ Hilliard, et al., *supra* note 29.

³¹ See Nik DeCosta-Klipa, *Boston Police Commissioner Defends Officers’ Actions At “Straight Pride Parade,”* BOSTON.COM, Sept. 9, 2019, <https://www.boston.com/news/local-news/2019/09/09/boston-police-commissioner-straight-pride-parade>.

³² See DeCosta-Klipa, *supra* note 31.

³³ See Alyssa Vaughn, *Rachael Rollins Locks in Her Next Target: The Straight Pride Police*, BOSTON MAGAZINE, Sept. 10, 2019, <https://www.bostonmagazine.com/news/2019/09/10/rollins-straight-pride-police/>.

Parade Request”) (attached hereto as Exhibit F). The Campbell Straight Pride Parade Request generally sought documents about the BPD’s operational plans, responses to, and reporting of, events related to the parade as well as communications between and among the BPD, Massachusetts State Police, and/or Massachusetts Bay Transit Authority about the parade.

78. The BPD acknowledged the request via automated response on September 10, 2019.

79. After the 10 business days permitted by the PRL had elapsed without the production of records or provision of the information required under G.L. c. 66, § 10(b), Mr. Campbell followed-up with Mr. Williams via email. Over a period of nine months, Mr. Campbell repeatedly followed up with Mr. Williams only to be met with vague promises to provide a status update as soon as possible, which was never provided.

80. More than eleven months after Mr. Campbell submitted the request, and long past the deadline to produce the requested documents or provide a statutorily adequate written response, the BPD still has not produced any responsive records or provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt. Nor have they suggested a production schedule.

81. On September 8, 2019, ACLUM submitted a public records request seeking records from the City and the BPD related to the BPD’s use of force during the Straight Pride Parade (“ACLUM Straight Pride Request”) (attached hereto as Exhibit G). The ACLUM Straight Pride Parade Request generally sought documents related to the BPD’s operational plans and interactions with private individuals during the parade, and complaints against Captain Danilecki. It also sought, among other things, records related to the BPD’s use of chemical agents, force, and

other crowd-control methods, as well as agreements with other law enforcement agencies governing their cooperation with the BPD during the parade.

82. After more than the 10 business days permitted by the PRL had elapsed without any substantive response or production of records, ACLUM followed-up with Mr. Williams via email to inquire into the status of the production. In a series of emails throughout the fall of 2019, Mr. Williams stated that the BPD was actively working on the request, at one point indicating that he hoped to provide an update that could include a partial or complete production by the end of October 2019. When by December 5, 2019 the BPD still had not produced the documents, ACLUM again followed-up via email. During a phone call the next day, Mr. Williams suggested that the request was almost done, and that he was conducting a final review of the video and audio files, which would then require final approval before production. After further email follow-up from ACLUM in December and January, Mr. Williams stated via email on January 10, 2020 that his goal was to send a letter to ACLUM by the following week.

83. To date, ACLUM has not received any such letter and has not received the requested records. Thus, eleven months after ACLUM submitted the request, and long past the deadline to produce the requested documents the BPD still has not produced any responsive records.³⁴

B. Surveillance Camera Request.

84. To inform public conversations about police practices, ACLUM has also sought information regarding the City's use of surveillance cameras to monitor individuals in Boston. The

³⁴ The BPD's public records portal erroneously states that this request is "complete." The portal's simultaneous description of the status of this request as merely "assigned" is more accurate, as ACLUM still has not received any responsive records, nor are any posted on the portal.

CIMS network houses footage from surveillance cameras throughout the metropolitan Boston area. Pursuant to a 2019 public records request, ACLUM received spreadsheets identifying and locating surveillance cameras linked into the CIMS network from eight out of the nine cities in the Metropolitan Boston Homeland Security Region. Boston was the only missing city.

85. On September 30, 2019, ACLUM submitted a public records request to the City for documents reflecting the identification and location of the surveillance cameras in Boston that are connected to the CIMS network (“Camera Locations Request”) (attached hereto as Exhibit H).

86. Mr. Williams acknowledged receipt of the request that same day. On October 15, 2019, Mr. Williams sent records associated with an RFP that was not responsive to the request. After ACLUM clarified that the request sought records that listed the surveillance cameras to which the BPD had access, Mr. Williams stated that he would work with the BPD to determine whether any responsive records existed.

87. ACLUM followed-up with Mr. Williams via email and by telephone at least nine times between December 2019 and July 2020, but received either vague promises to provide a status update as soon as possible or no response at all.

88. More than ten months after ACLUM submitted the request, and long past the deadline to produce the requested documents or provide a statutorily adequate written response, the City has not produced any responsive records, nor stated that none exist, nor provided any of the information required under G.L. c. 66, § 10(b) other than confirmation of receipt.

C. ICE Request.

89. Finally, ACLUM also has an outstanding 2019 public records request regarding local communications about and with federal law enforcement agents.

90. In a 2019 federal district court complaint, the U.S. Department of Labor alleged that a Boston employer unlawfully retaliated against an injured worker by causing the worker to

be arrested by ICE, and that this arrest was orchestrated with the help of BPD Sergeant Detective Gregory Gallagher, a member of a BPD-ICE “task force.”

91. On March 7, 2019, ACLUM submitted a public records request to the City and the BPD seeking records regarding potential cooperation between the City, the BPD and ICE (“ICE Request”) (attached hereto as Exhibit I). The ICE Request generally sought documents from the BPD and the City related to the potential collaboration between ICE and BPD.

92. Mr. Williams confirmed receipt that same day, stating that he had received the request for BPD records. On March 9, 2019, ACLUM responded via email clarifying that the request sought records in the possession of both the BPD and the City.

93. After seven months of follow-up by ACLUM, on October 6, 2019 the City produced some responsive records that were in the *BPD's* possession. However, the City failed to search for or produce any records held by *the City*, even though ACLUM explicitly sought records from both the City and BPD, including communications within and between Boston City Hall and BPD regarding potential cooperation with ICE, and any requests for information or action between ICE and the City of Boston.

94. On November 6, 2019, ACLUM sent a letter to the City identifying that the City had failed to produce, or even search for, any records in City Hall’s possession, and noting other deficiencies in the City Defendants’ production (attached hereto as Exhibit J).

95. On November 14, 2019, the City acknowledged receipt of the November 6 letter, stated that it would treat this letter as a new public records request, and proposed an extension of 30 business days from the date of receipt to produce responsive records. ACLUM agreed to the requested extension, which pushed the deadline back to December 23, 2019.

96. That deadline passed without the production of any records. ACLUM has since followed-up with the City several times to discuss the production of records; each time the City has asserted that it would give a status update in the coming days or weeks, and then failed to do so.

97. Seventeen months after ACLUM submitted the original ICE Request, and long past both the deadline to produce the requested documents specified in the PRL and the extended deadline agreed-upon by ACLUM and the City in November 2019, the City has still not produced any responsive records in the possession of City Hall or stated that none exist. Nor has it provided any additional documents in response to the November 2019 deficiency letter.

V. The BPD's and the City of Boston's petitions for extensions of time did not demonstrate the statutorily mandated good cause required to grant such requests.

98. As noted above, in some instances, the City Defendants petitioned the Supervisor for an extension of time to produce responsive records. Yet these petitions did not meet the statutory standards for such requests.

A. Standards for extension of time petitions.

99. Demonstrating a commitment to ensure that extensions to the general production deadlines are limited to situations in which they are truly necessary, the 2016 PRL amendments authorizes the Supervisor to grant petitions for such extensions only if the municipality has timely set an initial reasonable period of compliance pursuant to G.L. c. 66, §10 (b)(vi), and upon an additional showing of good cause, G.L. c. 66, § 10(c).

100. Under G.L. c. 66, § 10(c), the Supervisor's determination of whether a municipality has satisfied the prerequisites for an extension of time must consider:

- the need to search for, collect, segregate or examine records;
- the scope of redaction required to prevent unlawful disclosure;

- the capacity of the municipality to produce the documents without an extension;
 - the municipality’s efforts to fulfill the current and previous requests;
 - whether the request is frivolous or intended to harass or intimidate the municipality;
- and
- the public interest served by expeditious disclosure.

101. To consider these factors, the Supervisor must be able to review information with respect to these factors. As the only entity with access to such information, municipalities are responsible for providing it to the Supervisor to inform her determination. As the Supervisor explained in an SPR bulletin that was distributed to all records access officers, municipalities “should include as much detail as possible” regarding the requested extension and “in particular, the petition should address the applicability of the factors described in G.L. c. 66, § 10(c).”³⁵ *See also* 950 C.M.R. 32.06(4)(e) (noting petitions “shall include a brief narrative detailing why an extension of time is necessary”).

102. What is more, a petition for an extension of time to produce does not remove the municipality’s statutory responsibility to provide a written response to the requestor that includes the information required in G.L. c. 66, § 10(b) within 10 business days of receipt of the request. 950 C.M.R. 32.06(4)(b). Indeed, under G.L. c. 66, § 10(c), a municipality may petition for an extension of time to produce when they are “unable to complete the request in the time provided in clause (vi) of subsection (b),” indicating that the municipality must *first* fulfill its duty to identify

³⁵ Public Records Division, Massachusetts, SPR Bulletin 03-17, <https://www.sec.state.ma.us/pre/prepra/significant-interest/SPR-Bulletin-03-17-Petitions-Bulletin.htm>.

such a timeframe for production in a written response under G.L. c. 66, § 10(b) within 10 business days of the request *before* any time extension petition may be granted.

B. The City Defendants’ petitions for extension.

103. The City Defendants’ petitions to extend their time to produce records responsive to the Teargas Request, the ACLUM Federal Agencies Request, and the Campbell Federal Agencies Request did not satisfy these statutory requirements.

104. On June 24, 2020, the City submitted a petition to extend its time to produce records responsive to ACLUM’s Federal Agencies Request (“June 24 petition”) (attached hereto as Exhibit K). This was the first communication regarding this request that ACLUM had received since the City confirmed receipt on June 9, 2020. The City did not reach out to ACLUM to discuss an alternative production deadline. Nor did it provide a written response under G.L. c. 66, § 10(b) identifying the records it would produce and withhold, or suggesting a modification to narrow the scope of the request.

105. The June 24 petition did not include this information, nor did it meaningfully address any of the statutory factors for good cause. For example, it did not provide any specifics regarding the need to search for the documents or the scope of the redactions, and was likewise silent about the City’s capacity to produce the documents without an extension, or the efforts it had undertaken to fulfill the request thus far.

106. Instead, the June 24 petition twice stated, “if responsive records exist,” suggesting that no such efforts had yet begun. The June 24 petition was similarly non-committal regarding the potential application of exemptions. It began by stating, “[u]ntil a review of the records is conducted it is not clear what if any exemptions may apply to permit or require redaction or withholding.” The June 24 petition went on to hypothesize that any potentially responsive records “are likely” to contain attorney-client communications or “information related to ongoing matters

currently under deliberation,” and “may contain” information regarding “ongoing investigatory matters.”

107. Far from demonstrating the statutorily required “good cause” for additional time, the June 24 petition did not even estimate how much additional time it was requesting, suggesting instead the “number of hours will be provided” if the extension was granted.

108. The BPD’s July 2, 2020 petition to extend its time to produce documents responsive to ACLUM’s Teargas Request (“July 2 Petition”) (attached hereto as Exhibit L), and its July 6 petition to extend its time to produce documents responsive to the Campbell Federal Agencies Request (“July 6 Petition”) (attached hereto as Exhibit M), adopted a nearly identical approach.

109. In both instances, the BPD did not offer an alternative production deadline. Nor did it provide the other information required under G.L. c. 66, § 10(b) other than confirmation of receipt, either via written response to the requestor or in the petition itself, which similarly failed to meaningfully address any of the statutory factors for good cause. The petitions were silent regarding capacity to fulfill the requests in a timely manner, efforts to search for the records, or proposed production timeframe.

110. Instead, they echoed almost all of the language of the June 24 petition. Both began by stating, “[u]ntil a review of the records is conducted it is not clear what if any exemptions may apply to permit or require redaction or withholding.” Both went on to suggest that any responsive records “are likely” to contain attorney-client privileged communication, while the July 2 Petition added that responsive records “may” contain information regarding ongoing investigations, and that “it is possible” that they could contain information that would result in an “unwarranted invasion of privacy.” Finally, both offered that the numbers of hours would be provided only after an extension was granted.

111. Although she did not have the information necessary to consider the statutory requirements for good cause, the Supervisor granted the City Defendants' first two petitions (attached hereto as Exhibits N, O).

112. With respect to the June 24 Petition, the Supervisor determined "that in light of the need to collect and segregate the request, the City has established good cause to permit an extension of time." She extended the production deadline until August 5, 2020. To date, the City still has not provided any responsive records.

113. On July 8, 2020, ACLUM submitted an opposition to the July 2 Petition, arguing that the BPD did not satisfy the statutory standards for an extension (attached hereto as Exhibit P). That same day, the Supervisor nevertheless granted the petition, determining "that in light of the need to collect and segregate the request, as well as the potential scope of redaction required to prevent unlawful disclosure, the City has established good cause to permit an extension of time." She extended the production deadline until August 14, 2020.

114. Most recently, however, the Supervisor denied the BPD's July 6 Petition because of its failure to satisfy the statutory requirements (attached hereto as Exhibit Q). Quoting the same language that had appeared in both the June 24 and July 2 Petitions, the Supervisor concluded, "it is unclear why this request requires the additional time beyond the statutory allotment." The Supervisor therefore determined "that in light of the lack of explanation in the City's petition, the City has not established good cause to warrant an extension of additional time to respond to this request." To date, the BPD still has not provided any responsive records.

CLAIMS FOR RELIEF

Count I – Violation of the Massachusetts Public Records Law – G.L. c. 66, § 10 (Plaintiffs Against the City and the BPD)

115. Plaintiffs incorporate by reference and re-allege all of the allegations in the preceding paragraphs.

116. The Public Records Law strongly favors disclosure by creating a presumption that all government records are public records. G.L. c. 66, § 10A(d)(1)(iv).

117. The Public Records Law requires municipalities to respond to requests for public records within ten business days, to conduct an adequate search for responsive documents, and to demonstrate application of any exemptions. G.L. c. 66, § 10(a)-(b).

118. On information and belief, the City Defendants have custody of public records requested by Plaintiffs.

119. The City Defendants failed to provide a written response with the information required under G.L. c. 66, § 10(b) to any of Plaintiffs' requests within 10 business days. At the time of filing of this Complaint, they still have not provided such information, which is months after their receipt of these requests.

120. On information and belief, the City Defendants have failed to conduct an adequate search for records responsive to Plaintiffs' requests.

121. The City Defendants have failed to provide responsive records to the Campbell Demonstrations Request, the ACLUM Demonstrations Request, the Teargas Request, the ACLUM Federal Agencies Request, the Campbell Federal Agencies Request, the Campbell Straight Pride Parade Request, the ACLUM Straight Pride Parade Request, the Camera Locations Request, and the ICE Request within the timeframe mandated by the Public Records Law. At the time of filing, the delay is already numerous weeks or months past the statutory deadline.

122. Defendants have violated the Public Records Law by failing to provide timely access to public records.

123. Plaintiffs are entitled to injunctive relief requiring the City Defendants to produce the requested records. G.L. c. 66, § 10A(c)-(d).

124. Plaintiffs are entitled to injunctive relief prohibiting the City Defendants from charging any fee for the production of the records sought. G.L. c. 66, §§ 10(e), 10A(c)-(d).

125. Plaintiffs are entitled to an award of reasonable attorney fees and costs. G.L. c. 66, § 10A(d)(2).

126. To the extent that the evidence shows that the City Defendants did not act in good faith, Plaintiffs are entitled to an award of punitive damages to be deposited into the Public Records Assistance Fund established in G.L. c. 10, § 35DDD. G.L. c. 66, § 10A(d)(4).

**COUNT II – Certiorari Action– G.L. c. 249, § 4
(ACLUM Against the Supervisor)**

127. Plaintiff incorporates by reference and re-alleges all of the allegations in the preceding paragraphs.

128. The Public Records Law authorizes the Supervisor to approve a petition for extension of time only upon a demonstration of good cause as to why the municipality cannot produce the records within the time initially indicated pursuant to G.L. c. 66, §10(b)(vi). And it requires the Supervisor’s good cause analysis to consider, at a minimum, six enumerated factors in this analysis. G.L. c. 66, § 10(c).

129. The filing of a petition does not affect the requirement that a municipality must provide a written response that comports with the requirements of G.L. c. 66, § 10(b). 950 C.M.R. 32.06(4)(b). Indeed, the right to obtain an extension of time pursuant to G.L. c. 66, § 10(c) presupposes the municipality has previously, and within 10 business days, fulfilled its obligation

to provide a reasonable timeframe, not to exceed 25 business days, for producing the documents pursuant to G.L. c. 66, § 10(b)(vi).

130. The BPD's July 2 Petition to the supervisor of records, which requested additional time to produce records responsive to ACLUM's Teargas Request, did not provide information regarding the enumerated statutory factors for good cause. G.L. c. 66, § 10(c). The BPD also did not provide a written response that comports with the requirement of G.L. c. 66, § 10(b), either within the statutorily required 10 business days or at any point afterwards.

131. Due to this lack of information, the Supervisor could not have analyzed the statutory factors necessary to determine good cause.

132. Under the PRL, the Supervisor was therefore required to deny the BPD's July 2 Petition. G.L. c. 66, § 10(c).

133. The PRL authorizes a requestor to seek review of the Supervisor's determination in the nature of certiorari under G.L. c. 249 § 4. G.L. c. 66, § 10A(a).

134. ACLUM is entitled to relief quashing the Supervisor's July 8 order granting the BPD's July 2 Petition. G.L. c. 249, § 4.

**Count III – Declaratory Judgment – G.L. c. 231A
(Plaintiffs Against the City and the BPD)**

135. Plaintiffs incorporate by reference and re-allege all of the allegations in the preceding paragraphs.

136. There is an actual controversy between Plaintiffs and the City Defendants regarding their failure to produce the requested records.

137. Pursuant to G.L. c. 231A and the PRL, Plaintiffs are entitled to declarations that the records they requested are public records within the meaning of G. L. c. 66, § 10; that the City Defendants did not have legal justification for not providing written responses which comport with

the requirements of G.L. c. 66, § 10(b) within 10 business days; and that the City Defendants have violated the Public Records Law by their failure to timely produce responsive records to numerous requests.

**Count IV – Declaratory Judgment – G.L. c. 231A
(ACLUM Against the Supervisor)**

138. ACLUM incorporates by reference and re-alleges all of the allegations in the preceding paragraphs.

139. There is an actual controversy between ACLUM and the Supervisor regarding the Supervisor’s July 8 order granting the BPD’s July 2 Petition for an extension of time to produce records responsive to ACLUM’s Teargas Request.

140. Pursuant to G.L. c. 231A and the PRL, ACLUM is entitled to declarations that the Supervisor cannot grant a petition to extend the time to produce records unless the municipality has fulfilled its obligation under G.L. c. 66, § 10(b)(vi); that the Supervisor cannot grant an extension of time to produce the actual records when the municipality’s petition does not provide specific information regarding the good cause factors enumerated in G.L. c. 66, § 10(c); and that the Supervisor’s July 8 order granting the BPD’s July 2 Petition violated the Public Records Law.

PRAYER FOR RELIEF

Wherefore, Plaintiffs ACLUM and Mr. Campbell ask this Court to grant the following relief:

- Issue a declaratory judgment pursuant to G. L. c. 231A that the BPD and the City have violated the law by refusing to timely produce responsive records;
- Issue a declaratory judgment pursuant to M.G.L. c. 231A that the Supervisor cannot grant an extension petition either when the municipality has not provided the requestor with the information required under G.L. c. 66 § 10(b)(vi) within 10 business days or when the municipality’s petition does not provide specific information regarding the good cause factors enumerated in G.L. c. 66, § 10(c), and that the Supervisor’s July 8 order granting the BPD’s July 2 Petition violated the Public Records Law;

- Enter a judgment pursuant to G.L. c. 249, § 4 quashing the Supervisor’s July 8 order granting the BPD’s July 2 Petition to extend the time to produce documents responsive to the ACLUM’s Teargas Request;
- Enter permanent injunctions pursuant to G. L. c. 66, § 10A(c) & (d) ordering the BPD and the City to produce the requested records to ACLUM and Mr. Campbell in a timely fashion;
- Enjoin the BPD and the City from charging ACLUM and Mr. Campbell search, review, or duplication fees for processing the requests;
- To the extent that the evidence shows that the BPD and the City acted in bad faith in failing to timely furnish the requested records, award punitive damages against the BPD and the City to be deposited into the Public Records Assistance Fund established in G.L. c. 10, § 35DDD;
- Award ACLUM and Mr. Campbell costs and reasonable attorney fees in the action; and
- Grant such other and further relief as the Court may deem just and proper.

Dated: August 12, 2020

/s/ Jessie J. Rossman

Jessie J. Rossman (BBO No. 670685)
 Jessica Lewis (BBO No. 704229)
 Ruth A. Bourquin (BBO No. 552985)
 AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION OF MASSACHUSETTS
 211 Congress Street
 Boston, MA 02110
 (617) 482-3170
 jrossman@aclum.org
 jlewis@aclum.org
 rbourquin@aclum.org



William D. Dalsen (BBO No. 689334)
 PROSKAUER ROSE LLP
 One International Place
 Boston, MA 02110
 Telephone: (617) 526-9600
 Facsimile: (617) 526-9899
 wdalsen@proskauer.com

Colin G. Cabral (BBO No. 670234)
 Christina Maria Assi (*pro hac vice*
 forthcoming)
 PROSKAUER ROSE LLP
 2029 Century Park East, Suite 2400
 Los Angeles, CA 90067-3010
 Telephone: (310) 557-2900
 Facsimile: (310) 557-2193
 ccabral@proskauer.com
 cassi@proskauer.com

*Attorneys for
 American Civil Liberties Union of Massachusetts, Inc. and Taylor R. Campbell*