

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.

**RULE 9A(b)(5) CONSOLIDATED
STATEMENT OF FACTS**

Docket No. 2084-cv-01802-H

RULE 9A(b)(5) CONSOLIDATED STATEMENT OF FACTS

Pursuant to Mass. Super. Ct. R. 9A(b)(5), Plaintiffs the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) and Taylor R. Campbell (“Campbell,” and together with ACLUM, “Plaintiffs”) respectfully submit this Consolidated¹ Statement of Facts for which they contend there is no genuine issue to be tried in support of their Motion for Partial Summary Judgment.

I. The Parties

1. Defendant the City of Boston (the “City”) is a municipal corporation that is subject to suit and the Massachusetts Public Records Law. Compl. ¶ 19; Answer ¶ 19.

2. Defendant Boston Police Department (the “BPD,” and together with the City, the “City Defendants”) is a department of the City of Boston that is subject to suit and the Massachusetts Public Records Law. Compl. ¶ 20; Answer ¶ 20.

II. The Public Demonstrations Requests

A. The Campbell Demonstrations Requests

3. On June 8, 2020, Mr. Campbell submitted a public records request seeking records from the City Defendants related to the BPD’s response to the racial justice demonstrations in May and June of 2020 (“Campbell Demonstrations Requests”). Affidavit of Taylor R. Campbell (“Campbell Aff.”) ¶ 2 & Ex. A; Compl. Ex. A; Compl. ¶ 49; Answer ¶ 49.

4. The Campbell Demonstrations Requests requested the following records:

1. All threat assessments and situational awareness reports related to any public gatherings, protests, riots, and/or burglaries, between May 25th and June 8th, 2020.

¹ The City Defendants (as defined herein) did not serve a response to this statement of facts pursuant to Rule 9A(b)(5)(iii), and instead state in their opposition brief: “For the purposes of this Opposition, the City does not contest Plaintiffs’ Statement of Facts In Support of Plaintiffs’ Motion for Partial Summary Judgment.” Opp. at 2. As such, Plaintiffs’ Statement of Facts without responses constitutes the Consolidated Statement of Facts.

2. All records discussing, referring to, planning, ordering, describing, documenting, or evaluating actions taken by Boston Police related to any public gatherings, protests, riots, and/or burglaries, between May 25th and June 8th, 2020.

3. All

- (a) staffing directives,
- (b) time and labor reports,
- (c) pre-action communications,
- (d) after-action reports,
- (e) incident reports,
- (f) use-of-force reports,
- (g) complaints to the police department,

for the time from May 25th to June 8th, 2020.

4. All compilations of

- (a) equipment,
- (b) munitions,
- (c) vehicles,

used, ready to be used, and/or damaged in the time from May 25th to June 8th, 2020.

5. All communications about COBRA activations between May 25th and June 8th, 2020.

6. All communications with the Massachusetts National Guard between May 25th and June 8th, 2020.

7. All communications with the Massachusetts Bay Transit Authority between May 25th and June 8th, 2020.

8. All communications with the Mayor's office between May 25th and June 8th, 2020.

9. All communications with the Governor's office between May 25th and June 8th, 2020.

Campbell Aff. ¶ 2 & Ex. A.

5. 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 Campbell

Demonstrations Requests on June 8, 2020, the same day the requests were submitted. Compl. ¶ 50; Answer ¶ 50.

6. As of February 26, 2021, the BPD has not produced any documents in response to the Campbell Demonstrations Requests. Campbell Aff. ¶ 3.

7. As of February 26, 2021, the City Defendants have not provided a written response containing the information required under G.L. c. 66, § 10(b). Campbell Aff. ¶ 4.

8. As of February 26, 2021, the City Defendants have not asserted that any exemptions to disclosure apply to the Campbell Demonstrations Requests. Campbell Aff. ¶ 5.

B. The ACLUM Demonstrations Request

9. 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”). Affidavit of Jessie J. Rossman (“Rossman Aff.”) ¶ 2 & Ex. A; Compl. Ex. B; Compl. ¶ 52; Answer ¶ 52.

10. The ACLUM Demonstrations Requests requested the following records:

1. All records and communications describing, discussing, containing, or reflecting Boston Police Department use of force policies.

2. All records and communications describing, discussing, containing, or reflecting the Boston Police Department policies regarding the following, both in general and during any demonstration since May 25, 2020:

- a. The use of dogs;
- b. The use of chemical agents, including, but not limited to, pepper spray and tear gas;
- c. The use of riot gear;
- d. The use of rubber bullets.

3. All records and communications describing, discussing, containing, or reflecting the Boston Police Department policies regarding the following during any future or anticipated demonstration:

- a. The use of dogs;
- b. The use of chemical agents, including, but not limited to, pepper spray and tear gas;
- c. The use of riot gear;
- d. The use of rubber bullets.

4. All records and communications describing, discussing, containing, or reflecting the Boston Police Department's use of the following during any demonstration since May 25, 2020.

- a. The use of dogs;
- b. The use of chemical agents, including, but not limited to, pepper spray and tear gas;
- c. The use of riot gear;
- d. The use of rubber bullets.

5. All records and communications describing, discussing, containing or reflecting footage from Boston Police Department Officers body-worn cameras and handheld videos during any demonstration since May 25, 2020, including the footage itself.

6. All records and communications describing, discussing, containing or reflecting the use of surveillance technologies before, during or after any demonstration since May 25, 2020. These technologies include, but are not limited to, cell-site simulators/IMSI catchers (commonly known as "stingrays"), automatic license plate readers, drones/unmanned aerial vehicles, gunshot detection, face recognition, tattoo recognition, and security cameras.

7. All records and communications describing, discussing, containing or reflecting the use of long range acoustic devices ("LRAD"), sound cannons, and any other related equipment during any demonstration since May 25, 2020.

8. All records describing, discussing, containing, or reflecting communication about potential deployment of federal agents to Massachusetts since May 24, 2020, including communications:

- a. Within the Boston Police Department;
- b. Between the Boston Police Department and any other state or local entity; and
- c. Between the Boston Police Department and the Drug Enforcement Agency, Federal Bureau of Prisons, US Marshals, Customs and Border Protection, Transportation Security Administration, Federal Bureau of Investigation,

Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Homeland Security, and/or other federal agencies.

9. All records describing, discussing, containing, or reflecting communication regarding the involvement of any federal agents in Massachusetts demonstrations since May 24, 2020, including communications:

- a. Within the Boston Police Department;
- b. Between the Boston Police Department and any other state or local entity; and
- c. Between the Boston Police Department and the Drug Enforcement Agency, Federal Bureau of Prisons, US Marshals, Customs and Border Protection, Transportation Security Administration, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Homeland Security, and/or other federal agencies.

Rossman Aff. ¶ 2 & Ex. A; Compl. Ex. B.; Compl. ¶ 52; Answer ¶ 52

11. The BPD acknowledged receipt of the ACLUM Demonstrations Requests on June 9, 2020 via automated response. Compl. ¶ 53; Answer ¶ 53.

12. ACLUM twice contacted Mr. Williams (the RAO) offering to discuss the scope of ACLUM's request and asking when documents would be produced. Compl. ¶ 53; Answer ¶ 53.

13. The BPD did not engage in any discussion about the scope of the ACLUM Demonstrations Request. Compl. ¶ 54; Answer ¶ 54.

14. The BPD did not produce any public records responsive to the ACLUM Demonstrations Request. Compl. ¶ 55; Answer ¶ 55.

15. As of February 26, 2021, the BPD has not produced any documents in response to the ACLUM Demonstrations Requests. Rossman Aff. ¶ 3.

16. As of February 26, 2021, the City Defendants have not provided a written response containing the information required under G.L. c. 66, § 10(b). Rossman Aff. ¶ 4.

17. As of February 26, 2021, the City Defendants have not asserted that any exemptions to disclosure apply to the ACLUM Demonstrations Requests. Rossman Aff. ¶ 5.

C. The Teargas Request

18. On June 18, 2020, ACLUM submitted a public records request seeking documents regarding the BPD's use of chemical agents, including pepper spray and teargas, since 2016 ("Teargas Request"). Rossman Aff. ¶ 6 & Ex. B; Compl. Ex. F; Compl. ¶ 56; Answer ¶ 56.

19. The Teargas Request sought the following records:

1. All records and communications describing, discussing, containing, or reflecting the use by the Boston Police Department of chemical agents, including but not limited to, pepper spray and tear gas, since 2016.

Rossman Aff. ¶ 6 & Ex. B; Compl. Ex. F; Compl. ¶ 56; Answer ¶ 56.

20. The BPD acknowledged receipt of the Teargas Request that same day (June 18, 2020) through an automated response. Compl. ¶ 57; Answer ¶ 57.

21. 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 received from the BPD regarding this request since the automated acknowledgement of receipt. The BPD had not contacted ACLU 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). Compl. ¶ 58; Answer ¶ 58.

22. ACLUM emailed Mr. Williams to offer to discuss the scope and/or content of the Teargas Request. Compl. ¶ 59; Answer ¶ 59.

23. Mr. Williams did not respond to ACLUM's email regarding the Teargas Requests. Compl. ¶ 59; Answer ¶ 59.

24. On July 8, 2020, ACLUM submitted an opposition to the BPD's petition to the Supervisor. Compl. ¶ 59; Answer ¶ 59.

25. Also on July 8, 2020, 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. Compl. ¶ 60; Answer ¶ 60.

26. As of February 26, 2021, the City Defendants have not produced any documents responsive to the Teargas Request. Rossman Aff. ¶ 7.

27. As of February 26, 2021, the City Defendants have not provided a written response containing the information required under G.L. c. 66, § 10(b). Rossman Aff. ¶ 8.

28. As of February 26, 2021, the City Defendants have not asserted that any exemptions to disclosure apply to the Teargas Request. Rossman Aff. ¶ 9.

D. Responsive Records Produced to Other Parties

29. On December 18, 2020, The Appeal, a news organization, published body camera footage from June 1, 2020. The footage came from a criminal defense attorney, who had received it via discovery produced in criminal proceedings against arrested demonstrators arising from those protests. This footage shows officers shoving and pepper-spraying protestors, as well as officers discussing actions they had taken against protestors, during the demonstrations. Campbell Aff. ¶ 6; Rossman Aff. ¶¶ 10-11 & Ex. C.

30. None of the videos published by The Appeal have been provided to Mr. Campbell or ACLUM. Campbell Aff. ¶ 7; Rossman Aff. ¶ 12.

E. The City Defendants Admit Responsive Records to the Public Demonstrations Requests and the Teargas Requests Exist.

31. The City Defendants admit that they have public records responsive to the Campbell Demonstrations Requests, the ACLUM Demonstrations Requests, and the Teargas Request. (Compl. ¶ 118; Answer ¶ 118).

32. The City Defendants admit they intend to produce “all responsive public records” in response to the Campbell Demonstrations Requests, the ACLUM Demonstrations Requests, and the Teargas Request. Answer ¶¶ 5, 7, 8, 9, 15, 51, 55.

33. The City Defendants admit they have not produced documents in response to the Campbell Demonstrations Requests, the ACLUM Demonstrations Requests, and the Teargas Request. Compl. ¶¶ 4-5, 53; Answer ¶¶ 5, 53.

Dated: April 29, 2021

/s/ Jessie J. Rossman

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2021, I caused a copy of the foregoing document to be served by U.S. Mail and electronic mail upon counsel to Defendants.

/s/ William D. Dalsen

William D. Dalsen