

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
C.A. NO. 2084CV01035**

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

**v.**

**BRISTOL COUNTY SHERIFF'S OFFICE,  
Defendant**

**DEFENDANT'S RESPONSE TO PLAINTIFF'S  
REQUEST FOR STATUS CONFERENCE**

The Defendant, Bristol County Sheriff's Office ("BCSO"), respectfully responds to Plaintiff American Civil Liberties Union of Massachusetts' ("ACLU") Request for Status Conference ("Request") to discuss the continued withholding of any public records in this matter in light of the completion of the investigation by the Office of the Attorney General ("AGO") and its Report,<sup>1</sup> dated December 15, 2020, regarding the violent disturbance on May 1, 2020 in the BCSO ICE Building by Immigration and Customs Enforcement ("ICE") Detainees that resulted in injuries to staff and ICE Detainees and significant property damage ("Incident"). The ACLU's premise is that the AGO's Report makes clear that disclosure of the records is warranted.

However, the ACLU's Request is actually a vilification of Sheriff Thomas Hodgson and the BCSO using the AGO's Report disguised as a request for a status conference. The ACLU could not send the Report directly to Judge Sharon E. Donatelle, who is presiding in this action, which the AGO appears to have done it on ACLU's behalf, so the ACLU

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<sup>1</sup> AGO Report titled "Investigation Into The Events Of May 1, 2020 At The C. Carlos Carreiro Immigration Detention Center, Unit B, Bristol County Sheriff's Office".

disguised the Report as a request for status conference. In fact, the Report has nothing to do with the public records issue in this matter and is being used to mislead and prejudice the Court by making it think that the investigation of the Incident is over while every reason the Court had for delaying release of the records is still relevant. This contention is borne out by the ACLUM's reliance on the AGO's improper assertion that there are no investigatory impediments preventing the BCSO from producing any documents responsive to ACLUM's request and the ACLUM's assertion that the AGO affirmatively supports the disclosure of the records in the public interest. (See ACLUM's Request, p. 2, ¶ 1). While that may be true for the partial, biased Report by the AGO, there are two other investigations by outside agencies that have not yet concluded, thus, investigatory impediments still exist that prevent the BCSO from producing any documents responsive to ACLUM's request for public records.

Further, the AGO, while not a party to this action, clearly appears to be acting as an advocate for the ACLUM, which raises questions regarding whether the ACLUM and the AGO are coordinating with each other in the course of these proceedings. The findings made by the AGO in its Report constitute the AGO's opinion regarding the Incident and leave little doubt that the AGO's opinion of the BCSO is less than favorable and politically motivated, particularly given its intervention in a civil action related to a public records request in which it has no direct interest. In support of the ACLUM's Request, the ACLUM cites certain findings made by the AGO in its Report and grounds for the immediate disclosure of the records. However, the AGO's findings are not relevant to the issue of whether the records should or should not be disclosed while investigations by outside agencies are being conducted and whether such disclosure would prejudice ongoing investigations.

Moreover, both the ACLUM and the AGO ignore the fact that two other investigations

are currently ongoing, by the Massachusetts Senate Committee on Post Audit and Oversight (“Senate”) and the Office of the Inspector General (“OIG”) for U.S. Department of Homeland Security (“DHS”), that the immediate release of the records would likely prejudice. Presently, the Senate and OIG’s investigations are ongoing and neither has issued a report or findings regarding their investigation. Further, here, as with most law enforcement investigations, witnesses and subjects of such investigations are not normally kept apprised of the status of such investigations. Further, the BCSO believes and expects that, unlike the AGO’s investigation and Report, the OIG is conducting an unbiased, impartial investigation of the Incident, which should be permitted to conclude prior to the disclosure of the records requested by the ACLUM. The issuance of the AGO’s Report while two other investigations are still ongoing evidences the AGO’s improper political motivation and questionable findings and effectively prejudices the BCSO and the Senate and OIG’s investigation by disclosing information regarding the Incident and its opinion of the information it considered.

With respect to the AGO’s Report, the BCSO disagrees with the AGO’s findings and will be issuing a response to it. The BCSO is aware that the AGO has mailed a copy of its Report to the Court and requests that the Court deny the ACLUM’s request to order the BCSO to disclose the records to the ACLUM immediately based on the AGO’s findings. While the BCSO contends that AGO’s actions in filing its Report in this action are inappropriate and prejudicial to the BCSO and the other two ongoing investigations, particularly since the BCSO has not yet issued a formal written response to the AGO’s Opinion, the records sought by the ACLUM should not be disclosed prior to the conclusion of the investigations by the Senate and the OIG. Further, the BCSO requests that the Court not enter the AGO’s Report into the record of this action and to deny the ACLUM’s request for the immediate disclosure of the records to ACLUM

until the conclusion of the Senate and OIG investigations. Moreover, as the AGO sent a copy of its Report directly to the Judge presiding in this action, thus intervening in this action, and was provided a copy of the records at issue in this matter as part of its investigation, the AGO should also be subject to the Protective Order for the Review of Records Submitted Under Seal issued by the Court on October 27, 2020 in order to, *inter alia*, prevent the AGO from directly or indirectly disclosing, disseminating or otherwise making available to any person or entity any of the materials, any portion thereof, or any of the contents of the records at issue herein.

With respect to the ACLUM claim that the BCSO has not complied with the Court's October 27, 2020 Second Order on Plaintiff's Request for Injunctive Relief ("Second Order"); the BCSO denies that it did not comply with the Second Order. The Second Order requires the BCSO to provide a written response and affidavit attesting to the existence or non-existence of email communications requested under Plaintiff's requests # 6, 8 and 10, and the status of the three pending investigations. Filed herewith is the BCSO's Response to the Second Order on Plaintiff's Request for Injunctive Relief and the Affidavit of Lorraine J. Rousseau regarding the records requested under # 6, 8 and 10 of the ACLUM's public records request. Further, as stated above, the status of the three investigations being conducted by outside agencies are that: (1) the AGO has concluded his investigation and issued a Report regarding such on December 15, 2020; (2) the Senate investigation is ongoing and no information is available regarding the status of the investigation; and (3) the OIG's investigation is ongoing and no information is available regarding the status of the investigation.

With respect to any delay in responding to the Court's Second Order, the BCSO states that any delay in responding is largely due to significant constraints being experienced by the BCSO's legal staff at this time, which consists of two full-time attorneys, two part-time attorneys and one part-time law clerk. The two full-time attorneys assigned to handle this matter are also

responsible for handling all civil actions filed by inmates against the BCSO, which currently includes 10 civil actions pending in Bristol and Suffolk Superior Court and five appeals pending in the Massachusetts Appeals Court and the U.S. Court of Appeals for the First Circuit. The five appeals have been particularly constraining as the briefs in four appeals were drafted and filed between July 17, 2020 and November 23, 2020 while the brief in the fifth appeal is due on February 1, 2021 pending a ruling on the BCSO's motion to dismiss appeal. The two-part time attorneys work on other legal actions and administrative legal issues. The part-time law clerk does not handle civil litigation. Further, the BCSO legal staff has been constrained by Covid-19 related employee and administrative matters and protocols.

With respect to the electronic communications requested in the ACLUM's public records request, the ACLUM requests under # 6, 8 and 10 of its public records request:

6. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and any federal department or agency (including the Department of Homeland Security and U.S. Immigration and Customs Enforcement), on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
8. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Office of the Inspector General for the Department of Homeland Security, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.
10. All records containing communications between the BCSO (including Sheriff Hodgson and BCSO employees), on the one hand, and the Executive Office of the President, on the other, concerning the Incident. The requested records include, but are not limited to, any such electronic mail and any and all attachments thereto.

The BCSO contends that these requests are overly burdensome and broad with respect to electronic communications ("emails"). Essentially, these requests seek email communications during the period of May 1, 2020 to the present between the BCSO, including Sheriff Thomas

Hodgson and *“BCSO employees”*, and *“any federal department or agency”*, including DHS and ICE, the Office of the Inspector General (“OIG”) for DHS, and the Executive Office of the President, relating to the Incident. A search of the BCSO email system requires the use of search terms and other parameters to find records that may be responsive to the records request.

First, the period time for the search is pretty straightforward, May 1, 2020 to the present. Second, the search requires using search terms to find emails that may contain words related to the Incident. As the ACLUM did not include search terms in its records request, the BCSO is using “May 1, 2020”, “May 1”, “riot”, “disturbance”, “covid” and “detainee” as terms to search for emails. However, these search terms will return numerous emails that may or may not be responsive to the records request. Third, searching for emails to and/or from Sheriff Hodgson and “BCSO employees”, which means *“all”* BCSO employees (approximately 600+ employees), means that the search will return numerous emails that may or may not be responsive to the records request. Fourth, searching for emails to and/or from *“any federal department or agency”*, DHS, ICE, the OIG, and the Executive Office of the President requires using the domain part of email addresses for such agencies, which is the part of an email address that follows the ampersand (“@”) in the email address. Finding emails for “any federal department or agency” requires using “.gov” as a search terms; however, this will return numerous emails that are not responsive to the records requested. Other search terms would include using “dhs”, “oig”, “@ice”, “.ice”, “@who” or “who” (White House Office), and “@eop” or “.eop” (Executive Office of the President).

Presently, a preliminary search for emails using the above search terms and parameters identified over 40,000 emails that may or may not be responsive to the records requested under # 6, 8 and 10. These records undoubtedly include numerous emails that are not responsive to the

records requested and include numerous emails that are duplicates of emails that are responsive and not responsive to the records requested. Regardless of the number of emails found based on the search terms used, each email must be read to determine if it is responsive to the records requested. The work involved in processing the ACLUM's public records request for email communications will be time-consuming and labor intensive and is subject to costs associated with the production of the requested records, as provided under 950 C.M.R. 32.07. The BCSO will not waive fees associated with this extensive production of email communications. If the ACLUM chooses to proceed based on the approximately 40,000 emails identified as described herein, the BCSO will provide the ACLUM with an estimate of the cost to review these emails in order to determine whether each record is responsive to the ACLUM's request.

However, given the vast number of email communications that have been identified as containing terms related to the ACLUM's records request, the BCSO recommends that the ACLUM narrow its records request or provide specific terms to be used to search for the requested emails. If the ACLUM chooses to narrow its search or provide terms to be used to perform a more narrowed search, the BCSO will provide the ACLUM with an estimate of the cost to review these emails in order to determine whether each record is responsive to the ACLUM's request.

With respect to written communications requested under # 6, 8 and 10 that are not emails, very few such records exist. Contemporaneous with the filing of this response, the BCSO has also filed a Response to the Second Order on Plaintiff's Request for Injunctive Relief and Affidavit of Lorraine J. Rousseau, as ordered by the Court, attesting to the existence or non-existence of any materials responsive to these requests. Further, a Second Custodial Index, dated December 23, 2020, listing two records that are being disclosed to the ACLUM as Record Nos.

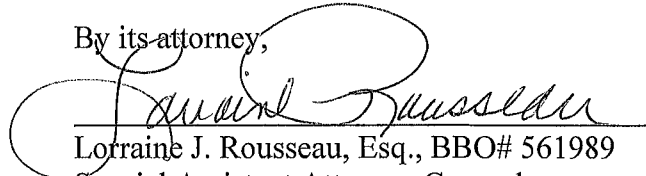
754 and 755, and copies of these two records are served on the ACLUM. The BCSO is continuing to search for any such other written communications (not emails) and will provide a further response on or before January 15, 2021 regarding whether any other such written communications exist.

Date: December 23, 2020

Respectfully submitted,

The Defendant,

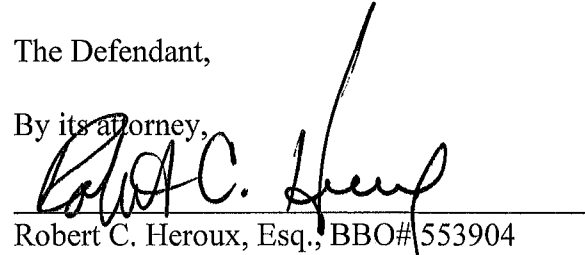
By its attorney,



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The Defendant,

By its attorney,



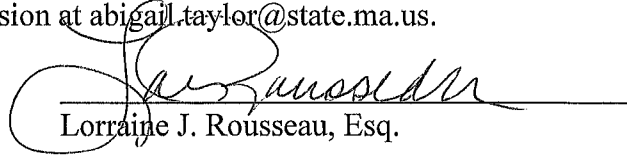
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CERTIFICATE OF SERVICE

I, Lorraine J. Rousseau, Esq., hereby certify that on this 23<sup>rd</sup> day of December, 2020, I have caused a copy of this response to be served by email transmission to:

Christopher E. Hart, Esq. at [CHart@foleyhoag.com](mailto:CHart@foleyhoag.com);  
Nicholas Anastasi, Esq. at [NAnastasi@foleyhoag.com](mailto:NAnastasi@foleyhoag.com);  
Amanda Hainsworth, Esq. at [amanda.hainsworth@mass.gov](mailto:amanda.hainsworth@mass.gov);  
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