

**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 SECOND ORDER ON  
PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF**

The Defendant, Bristol County Sheriff's Office ("BCSO"), respectfully responds to the Court's Second Order on Plaintiff's Request for Injunctive Relief regarding the existence or non-existence of any materials responsive to Request Nos. 6, 8 and 10 of Plaintiff American Civil Liberties Union of Massachusetts' ("ACLUM") public records request.

Nos. 6, 8 and 10 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 has concluded that these requests are overly burdensome and broad with respect to electronic communications (“emails”). Essentially, these requests seek email communications:

- a. during the period of May 1, 2020 to the present;
- b. between the BCSO, including Sheriff Thomas Hodgson and “BCSO employees”,
- c. and “any federal department or agency”, including Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), the Office of the Inspector General for DHS (“OIG”), and the Executive Office of the President,
- d. relating to the violent disturbance on May 1, 2020 in the BCSO ICE Building by ICE Detainees that resulted in injuries to staff and ICE Detainees and significant property damage (“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).

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 served the ACLUM with the BCSO's 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 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.

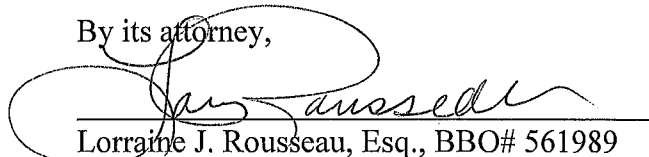
Further, the BCSO submits the Affidavit of Lorraine J. Rousseau attesting to the foregoing information and the existence of written communications that are responsive to # 6, 8 and 10 of ACLUM's records request.

Date: December 23, 2020

Respectfully submitted,

The Defendant,

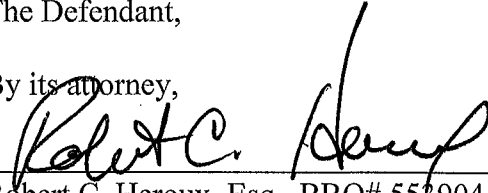
By its attorney,



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The Defendant,

By its attorney,

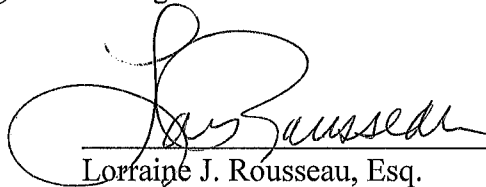


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CERTIFICATE OF SERVICE

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 and Affidavit of Lorraine J. Rousseau to be served by email transmission to:

Christopher E. Hart, Esq. at CHart@foleyhoag.com;  
Nicholas Anastasi, Esq. at NAnastasi@foleyhoag.com;  
Matthew Segal, Esq. at MSegal@aclum.org;  
Daniel L. McFadden, Esq. at DmcFadden@aclum.org;  
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Lorraine J. Rousseau, Esq.