

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 2084CV01802

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.

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Pursuant to Mass. R. Civ. P. 56 and Superior Court Rule 9A(b)(5), Defendant City of Boston (the "City") hereby submits this Memorandum in Opposition to Plaintiffs', American Civil Liberties Union of Massachusetts, Inc. (the "ACLUM") and Taylor Campbell, Motion for Partial Summary Judgment. The City has made, and continues to make, a good faith effort to adequately respond to the voluminous and exhaustive requests made by the Plaintiffs in this case, while also continuing to respond to the enormous number of public requests not the subject of this lawsuit. The City requests that this Court deny Plaintiffs' Motion for Partial Summary Judgment at this time and further proposes that the Court schedule a status date, at least 3 months from the date of filing this motion, for the City to provide the Court an update on the production of the outstanding responsive records.

## **Statement of Opposition**

For the purposes of this Opposition, the City does not contest Plaintiffs' Statement of Facts In Support of Plaintiffs' Motion for Partial Summary Judgment. The City also does not contest that the Plaintiffs are entitled to the responsive records, subject to exemptions laid out in G. L. c. 4, § 7(26).<sup>1</sup> Finally, the City does not contest that, due to complications stemming from the COVID-19 pandemic as well as the recent social unrest (which is the subject of the majority of the public records requests in question), it has been unable to produce all of the records responsive to Plaintiffs' voluminous requests within the statutory 10-day limit. However, as of April 16, 2021, the City has provided the Plaintiffs with the majority of the responsive records that are the subject of Plaintiffs' Motion for Partial Summary Judgment. Further, the City has offered to work with Plaintiffs' counsel to develop a schedule for the City to provide the outstanding records on a rolling basis.

Although the City has already provided the majority of the responsive records, there are still a number of outstanding responsive records which need to be reviewed for the necessary statutory exemptions and redactions prior to their release. Therefore, the City respectfully requests the Court schedule a status date, at least 3 months from the date of filing this motion, for the City to provide the Court with a status on the production of the outstanding responsive records.

## **Supplemental Facts**

### **1. Records Already Provided**

On March 17, 2021, the City provided partial responses to the Plaintiffs' public records requests. (See **Exhibit 1**, *City's Partial Response to ACLUM, Reference # B000835-060920 (ACLUM Demonstration Request)* and **Exhibit 2**, *City's Partial Response to Taylor Campbell*,

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<sup>1</sup> As of 4/16/21, Plaintiffs' have not objected to any redactions or exemptions made by the City to the records provided.

*Reference # B000821-060820 (Campbell Demonstrations Requests)*). The March 17, 2021 disclosures contained over 700 pages of incident reports, FOIS and policies, as well as over 118 hours of Boston Police Body Worn Camera video. Prior to the March 17<sup>th</sup> disclosure, the City was required to review all of the responsive records for the statutorily required exemptions and redactions, pursuant to G. L. c. 4, § 7(26)(a)-(u).

On April 8, 2021, the City provided counsel for Plaintiffs with an external hard drive containing over 212 hours of Boston Police Body Worn Camera video (all reviewed by counsel for the City for statutorily required exemptions and redactions, pursuant to G. L. c. 4, § 7(26)(a)-(u)). (See **Exhibit 3**, *City's Supplemental Partial Response to ACLUM, Reference # B000835-060920*). In addition, the external hard drive contains over one hundred hours of responsive street camera footage, which is approximately 250 gigabytes of data. Furthermore, the City has also provided approximately 30 minutes of handheld camera footage to Plaintiffs' counsel. As of April 8, 2021, the City has provided all video footage (approximately 400 hours) responsive to the Plaintiffs' public record requests at issue in Plaintiffs' Motion for Partial Summary Judgment.

## **2. Outstanding Records**

The outstanding responsive records that are the subject of Plaintiffs' Motion for Partial Summary Judgment are related to communications (the majority by email), Use of Force Reports, and complaints to the Boston Police Department. The complaints to the Boston Police Department and the Use of Force Reports are all currently the subject of open investigations by Internal Affairs and Department Command Staff and are therefore exempt from disclosure under to M.G.L. c. 4, §7(26)(f)(open investigation exemption). The City agrees to produce all records withheld under the open investigation exemption, subject to necessary redactions, upon completion of the investigations.

The City is currently conducting a review of all responsive communications and intends to produce the same, subject to necessary redactions. A City email search, using search terms responsive to both of Plaintiffs' requests, resulted in a total of 240,415 emails, which amounts to approximately 939,742 pages of documents. Upon initial review of the 240,415 emails, counsel for the City was able to segregate approximately 10,000 emails (with attachments), amounting to approximately 42,000 pages that are responsive to the Plaintiffs' requests. The City is now in the process of reviewing the 42,000 pages of emails and attachments for the necessary statutory exemptions and redactions prior to their release. Once reviewed, the City will provide all responsive communications, subject to the necessary redactions and exemptions.

### **3. Other Public Records Requests**

In the past 4 years, the City of Boston, and particularly the Boston Police Department, has received an increasing and overwhelming number of public records requests. (See **Exhibit 4**, *City of Boston Public Records Requests from 2017-2020*). As of April 8, 2021, the Boston Police Department has received approximately 680 public records requests this year alone. (See **Exhibit 5**, *BPD Requests Opened Year to Date 2021*). Furthermore, in addition to the public requests identified in Plaintiffs' Motion for Partial Summary Judgment, the ACLU has ten open unrelated public records requests, each of which similarly are comprehensive. (See **Exhibit 6**, *Open ACLU Public Records Requests*). Despite the issues related to COVID-19 and the social unrest and protests that transpired last summer, the Boston Police Department has fulfilled over 650 public records requests this year. (See **Exhibit 7**, *BPD Requests Closed Year to Date 2021*).

### **Argument**

The City made, and continues to make, a good faith effort to adequately respond to the voluminous requests made by the Plaintiffs in this case. Simultaneously, the City also continues

to respond to a multitude of unrelated public record requests. In each of these instances, the City is obligated by law to review each and every responsive record, prior to its release, for information that is statutorily exempt from disclosure. At the Boston Police Department specifically, such responsive records are reviewed to protect the privacy of the victims of crimes,<sup>2</sup> the privacy of witnesses and other individual citizens<sup>3</sup> (not necessarily those charged with a crime), and for general public safety.<sup>4</sup> In other words, the City reviews these records for precisely the reasons contemplated by the legislature in enacting the exemptions codified at G. L. c. 4, § 7(26)(a)-(u).

In this instance, in order to disclose the aforementioned responsive records to Plaintiffs, the City spent hundreds of hours reviewing video footage as well as approximately 700 pages of documents. In order to fulfill the outstanding requests related to this lawsuit, the City will be required to spend another 100 plus hours searching for the outstanding responsive documents as well as reviewing and redacting the more than 42,000 pages of responsive emails. Thus, in order to satisfy its duty under the law, the City requires at least an additional 3 to 6 months of time to conduct its review.

### **Conclusion**

Wherefore, the City respectfully requests that this Court deny Plaintiffs' Motion for Partial Summary Judgment and instead proposes that the Court schedule a status date, at least 3 months from the date of filing this motion, for the City to provide the Court with a status on the production of the outstanding responsive records.

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<sup>2</sup> G. L. c. 41, § 97D (Reports of Rape, Sexual Assault, and Domestic Violence).

<sup>3</sup> G. L. c. 4, § 7(26)(c).

<sup>4</sup> G. L. c. 4, § 7 (26)(n).

Respectfully submitted,  
DEFENDANTS,

BOSTON POLICE DEPARTMENT,

HENRY LUTHIN, ESQ,  
CORPORATION COUNSEL

By:



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Ian C. Keefe (BBO No. 680156)  
Assistant Corporation Counsel  
Office of the Legal Advisor  
Boston Police Department  
One Schroeder Plaza  
Boston, MA 02120-2014

Date: April 16, 2021

**CERTIFICATE OF SERVICE**

I, Ian C. Keefe, hereby certify that on April 16, 2021, I have served a copy of the foregoing Defendants' Memorandum In Opposition To Plaintiffs' Motion for Partial Summary Judgment via email, to:

Jessie J. Rossman, Esq.  
American Civil Liberties Union  
Foundation of Massachusetts  
[jrossman@aclum.org](mailto:jrossman@aclum.org)

William D. Dalsen, Esq.  
Proskauer Rose, LLP  
[wdalsen@proskauer.com](mailto:wdalsen@proskauer.com)

  
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Ian C. Keefe

April 16, 2021  
Date