

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 3:20-CV-30036

MAURA O'NEILL, as administrator of the  
Estate of Madelyn E. Linsenmeir,  
Plaintiff,

v.

CITY OF SPRINGFIELD, MOISES  
ZANAZANIAN, REMINGTON MCNABB,  
SHEILA RODRIGUEZ, HAMPDEN  
COUNTY SHERIFF'S DEPARTMENT, and  
JOHN/JANE DOES Nos.1-5,  
Defendants

DEFENDANT, CITY OF SPRINGFIELD,  
OPPOSITION TO PLAINTIFF'S MOTION  
TO COMPEL PRODUCTION OF  
DOCUMENTS AND TESTIMONY  
CONCERNING THE DISCIPLINARY  
AGREEMENT BETWEEN DEFENDANTS  
ZANAZANIAN AND CITY OF  
SPRINGFIELD

**I. Introduction**

The defendant, City of Springfield ("City"), submits this opposition to Plaintiff's Motion to Compel Production of Documents and Testimony Concerning the Disciplinary Agreement Between Defendants City and Moises Zanazanian ("Zanazanian") Document 109-111. Plaintiff moves to compel additional deposition testimony and privileged documents from the City in regards to Topic 6 of the Plaintiff's Fed. R. Civ. P. 30(b)(6) deposition. Specifically, Plaintiff seeks the following: a. the drafts of an agreement exchanged between and among the City, the Police Supervisor's Union, and defendant Zanazanian and their respective representatives, and associated correspondence; b. City attorney William Mahoney's email communications with SPD Captain Philip Tarpey concerning the negotiation and preparation of that agreement; and c. the emails that attorney Mahoney reviewed to educate himself as a 30(b)(6) witness and to prepare for his deposition.

It is the City's position that the it has provided the Plaintiff with a complete list of all the documents that its designee reviewed prior to his deposition, and that those documents have

either been provided to the Plaintiff in discovery or withheld pursuant to a privilege log on the assertion of either attorney-client privilege or work product. Therefore, this Court should deny the Plaintiff's motion.

The City is amenable to the Plaintiff's suggestion that an in-camera review of the documents would potentially be useful to resolving this dispute.

## **II. Facts**

On or about October 25, 2022, the Plaintiff noticed the defendant, City of Springfield, with a notice of deposition under Fed. R. Civ. P. 30(b)(6) identifying twenty topics ("Notice"). The City subsequently designated Attorney William Mahoney, head of the City's labor relations department, to testify with respect to Topic 6 of the Plaintiff's Notice which concerned the investigation and discipline of Defendant Zanzanian as it relates to facts alleged in Plaintiff's complaint, i.e. the detention of Ms. Linsenmeir from 9/29 to 9/30/2018. Defendant Zanzanian was subject to discipline, and the IIU investigation as well as a memorandum of agreement relating to his discipline have been provided to the Plaintiff well before the 30(b)(6) notice. On December 9, 2022, the deposition was held and counsel for the Plaintiff attempted to inquire of Attorney Mahoney regarding drafts and email communications regarding the creation of Exhibit No. 162, which is a memorandum of agreement between, *inter alia*, the City and Zanzanian ("Exhibit 162"). The City objected to these questions citing privilege and instructed Attorney Mahoney not to answer. The City also noted that the documents at issue are all settlement discussions, and thus not admissible.

Counsel also inquired if Attorney Mahoney reviewed any documents in preparation for his deposition, Attorney Mahoney responded that he had reviewed, *inter alia*, some emails between himself and the Captain Tarpey. Subsequent to the deposition, Plaintiff's counsel

requested that the City provide a list of documents that Attorney Mahoney reviewed in preparation for his deposition. The City provided the list on or about January 4, 2023. Exhibit A.

Plaintiff is requesting this Court to order the disclosure of the following documents which have previously been identified in the City's privilege log:

Line Item	Date of Doc	Document Type	Author	Recipient	Subject Matter	Privilege claimed	Status
1	03/08/2019	Email	Atty. Mahoney	Philip Tarpey	Edits regarding agreement in M.Z.'s Disciplinary Matter	Attorney-client privilege	Withheld
2	N/A	Draft memo	Atty. Mahoney	M.Z.	Supervisors Agreement-Labor Negotiations Draft	Attorney-client privilege	Withheld
3	03/11/2019	Email	Cpt. Tarpey	Atty. Mahoney	Edits regarding agreement n M.Z.'s Disciplinary Matter	Attorney-client privilege	Withheld
4	N/A	Draft memo	Atty. Mahoney	M.Z. (not sent-intended recipient)	Supervisors Agreement-Labor Negotiations Draft	Attorney-client privilege	Withheld
5	03/14/2019	Email	Monique McCoy	Atty. Mahoney	Draft/edits Notice of Suspension in M.Z.'s Disciplinary Matter	Attorney-client privilege	Withheld
7	03/14/19	Email	Monique McCoy	Atty. Mahoney	Draft/edits Notice of Suspension in M.Z.'s Disciplinary Matter	Attorney-client privilege	Withheld
9	03/14/2019		Atty. Mahoney	Monique McCoy	Draft/edits Notice of Suspension	Attorney-client privilege	Withheld
55	3/13/19	Email	Atty. Vigliotti	Brian Keenan Phil Tarpey [SPD]	forward of revisions to draft settlement relative to M.Z.	attorney-client and work-product doctrine	Withheld
	3/11/19		Atty. Vigliotti	Brian Keenan [SPD]	Draft settlement relative to M.Z.		
57	3/8/19	Email	Phil Tarpey [SPD]	Atty. Mahoney [City of Springfield]	Draft memo of understanding relative to M.Z.	attorney-client and work-product doctrine	Withheld
	3/11/19		Brian Keenan [SPD union rep]	Phil Tarpey [SPD]			
58	3/6/19	Email	Atty. Vigliotti	Brian Keenan [SPD]	Fw draft agreement re M.Z.	attorney-client and work-product doctrine	Withheld
	3/8/19	Email	Brian Keenan [SPD]	Phil Tarpey [SPD]	Fwd Emailing draft M.A. settlement 3-11-19		

Line Item	Date of Doc	Document Type	Author	Recipient	Subject Matter	Privilege claimed	Status
60	3/12/19	Email	Brian Keenan [SPD]	Atty. Vigliotti	Fwd 3/11/19 draft memo of understanding relative to M.Z.	attorney-client and work-product doctrine	Withheld
61	3/11/19	Email	Phil Tarpey [SPD]	Atty. Mahoney [City of Springfield]	draft memo of understanding relative to M.Z.	attorney-client and work-product doctrine	Withheld
63	3/11/19	Email	Phil Tarpey [SPD]	Atty. Mahoney [City of Springfield]	draft memo of understanding and union input	attorney-client and work-product doctrine	Withheld

### III. Argument

This is a discovery dispute that requires a basic application of Fed. R. Civ. P. 26(b)(1).

The Court should deny the Plaintiff's Motion to Compel based on the following.

#### A. The City Properly Invoked Attorney-Client and Work-Product Privileges

Plaintiff argues that the City's invocation of the attorney-client privilege does not apply because any specific communications with adverse parties or third parties destroy such privilege. As reflected in the City's privilege log and objections, the correspondence and draft agreements sent between parties at the City regarding the creation of Exhibit 162, were all protected by the attorney-client or work product privilege which has been extended through the common interest doctrine. SonyElects. Inc. v. Soundview Techs., Inc., 217 F.R.D. 104, 110 (D. Conn. 2002)

With respect to the appropriate areas of inquiry of an attorney designated as a 30(b)(6) witness, the law is clear:

Questions posed which elicit purely factual information that is now in the possession of corporate officials *and do not ask for the substance of communications between counsel and client* are to be answered as the answers to these inquiries will not be disclosing legal advice of counsel.

SonyElects. Inc. v. Soundview Techs., Inc., 217 F.R.D. 104, 110 (D. Conn. 2002) (emphasis supplied). In Sony, a party properly designated its general counsel as a 30(b)(6) witness. The designating party was later subjected to a challenge similar to the one here, addressing the invocation by the designee of the attorney-client privilege. The court held that it was appropriate for the general counsel to invoke both the attorney-client and joint defense privileges while still providing the factual information to which the deposing party was entitled. Id. Accord S.E.C. v. Morelli, 143 F.R.D. 42, 46 (S.D.N.Y. 1992) (a 30(b)(6) designee is not required to “divulge the substance of attorney-client conversations” or to testify as to “unwarranted inquiries into the files and the mental impressions of an attorney”) (quotations and citations omitted). Here, Attorney Mahoney was under no obligation to testify as to the substance of his privileged communications during the drafting of Exhibit 162.

Plaintiff also challenges the City’s ability to invoke the privilege claiming because a third party was used to pass communications any privilege was destroyed. Courts have long held that an attorney-client privilege can be invoked where communications were made to an attorney with an expectation that they not be disclosed to potential adversaries, regardless whether the attorney, in fact, represented the person with whom he or she had the confidential communication. See, e.g. Bays v. Theran, 418 Mass. 685, 639 N.E.2d 720 (Mass. 1994). Under the common interest doctrine in particular, it is well settled in this circuit and elsewhere that even where an individual is not represented by a particular attorney, its conversations with that attorney are privileged where they are conducted in forming a common legal strategy and are made with the expectation of confidentiality. See, e.g., U.S. v. Bay State Ambulance and Hosp. Rental Serv. Inc. 874 F.2d 20, 28 (1st Cir. 1989).

Here, then, even if Attorney Mahoney was not directly representing the third party, that party still had a common interest with the City and in completing Exhibit 162. Thus, the City properly invoked the attorney-client privilege in response to questions that asked Attorney Mahoney to divulge privileged emails and documents in relation to Exhibit 162.

Plaintiff's Motion highlights what was evident from the deposition of Attorney Mahoney: he was not merely asked about the underlying facts relating to the Topic 6 for which he was designated as the City's 30(b)(6) representative. Instead, he was asked to divulge the substance of privileged communications. That is not a proper area of inquiry in a 30(b)(6) deposition of any corporate designee, be it an attorney or non-attorney. The City was entirely within its rights to object to such questions on the ground of privilege.

**B. Records Reviewed to Educate and Prepare to Testify are Not Discoverable**

Plaintiff seeks disclosure of all documents "used by the City's 30(b)(6) designee to educate himself or herself for the deposition or otherwise to prepare to testify." As is set out in Exhibit A, many of the documents reviewed by Attorney Mahoney in anticipation of his testimony were previously disclosed in either initial disclosures or discovery, as evidenced by the Bate stamps. However, no such documents need to be disclosed. A party has no obligation to disclose privileged documents used in preparing for a deposition; only those documents used to refresh recollection could be forced to be disclosed if the Court determines that the interests of justice require disclosure. See Derderian v. Polaroid Corp., 121 F.R.D. 13, 17 (D. Mass. 1988) (declining to require production of 100 pages of notes reviewed by deponent the night prior to her testimony). Here, Plaintiff has pointed to no reason requiring disclosure of privileged documents or emails Mr. Mahoney used to prepare for his deposition.

The City has provided the Plaintiff with a list of specific documents that Mr. Mahoney used. Plaintiff has not proffered any reason why these emails, even if used to refresh Mr. Mahoney's recollection (which it was not) is required to be disclosed in the interests of justice.

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the Defendant requests that this Court deny the Plaintiff's Motion to Compel.

Respectfully submitted,  
The Defendants,  
City of Springfield and  
Sheila Rodriguez,  
By their Attorneys,

Date: January 26, 2023

/s/ Lisa C. DeSousa  
Lisa C. deSousa, Esq.  
City of Springfield Litigation Department  
1600 East Columbus Ave. 2d Floor  
Springfield, MA 01103  
Tel: (413) 787-6085  
[ldesousa@springfieldcityhall.com](mailto:ldesousa@springfieldcityhall.com)

Certificate of Service

I, the undersigned, do hereby certify that a true copy of the within was this day served upon the parties via the Federal Court's ECF Notice and Delivery System. I am not aware of any party who is a non-registered participant, and therefore electronic filing is the sole means of service of this document.

Signed under the pains and penalties of perjury.

Date: January 26, 2023

/s/ Lisa C. DeSousa  
Lisa C. deSousa, Esq.

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**From:** DeSousa, Lisa

**Sent:** Thursday, January 5, 2023 11:31 AM

**To:** Daniel McFadden <[DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)>; Santaniello, Natalie <[NSantaniello@springfieldcityhall.com](mailto:NSantaniello@springfieldcityhall.com)>; Kenefick, Tyler <[TKenefick@springfieldcityhall.com](mailto:TKenefick@springfieldcityhall.com)>; Thomas E. Day <[tday@efclaw.com](mailto:tday@efclaw.com)>; Michael G. McDonough <[mgm@efclaw.com](mailto:mgm@efclaw.com)>; Lauren F. Olanoff <[LFO@efclaw.com](mailto:LFO@efclaw.com)>; Lori A. Pegoraro <[LAP@efclaw.com](mailto:LAP@efclaw.com)>; attycoyle@aol.com; John K. Vigliotti <[jvigliotti@rja-law.com](mailto:jvigliotti@rja-law.com)>

**Cc:** Matthew Segal <[MSegal@aclum.org](mailto:MSegal@aclum.org)>; Jessie Rossman <[JRossman@aclum.org](mailto:JRossman@aclum.org)>; Mary Brown <[MBrown@aclum.org](mailto:MBrown@aclum.org)>; Rosensweig, Richard J. <[RRosensweig@GOULSTONSTORRS.com](mailto:RRosensweig@GOULSTONSTORRS.com)>; Looney, Josh <[JLooney@GOULSTONSTORRS.com](mailto:JLooney@GOULSTONSTORRS.com)>; Halstead, Julius A. <[JHalstead@GOULSTONSTORRS.com](mailto:JHalstead@GOULSTONSTORRS.com)>; Milton, David <[dmilton@plsma.org](mailto:dmilton@plsma.org)>

**Subject:** RE: [External] RE: [External] RE: Documents reviewed by Bill Mahoney prior to his 30(b) (6) deposition

I have checked with Mr. Mahoney and the notes he reviewed were previously produced to you as: CoS I.D. 000476-000482

Regards,

Lisa C. deSousa  
Deputy City Solicitor  
City of Springfield Law Department  
1600 East Columbus Avenue  
Springfield, MA 01103  
413-886-5205  
Pronouns: She/Her/Hers

---

**From:** Daniel McFadden <[DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)>

**Sent:** Wednesday, January 4, 2023 12:41 PM

**To:** Santaniello, Natalie <[NSantaniello@springfieldcityhall.com](mailto:NSantaniello@springfieldcityhall.com)>; DeSousa, Lisa <[LDeSousa@springfieldcityhall.com](mailto:LDeSousa@springfieldcityhall.com)>; Kenefick, Tyler <[TKenefick@springfieldcityhall.com](mailto:TKenefick@springfieldcityhall.com)>; Thomas E. Day <[tday@efclaw.com](mailto:tday@efclaw.com)>; Michael G. McDonough <[mgm@efclaw.com](mailto:mgm@efclaw.com)>; Lauren F. Olanoff <[LFO@efclaw.com](mailto:LFO@efclaw.com)>; Lori A. Pegoraro <[LAP@efclaw.com](mailto:LAP@efclaw.com)>; attycoyle@aol.com; John K. Vigliotti <[jvigliotti@rja-law.com](mailto:jvigliotti@rja-law.com)>

**Cc:** Matthew Segal <[MSegal@aclum.org](mailto:MSegal@aclum.org)>; Jessie Rossman <[JRossman@aclum.org](mailto:JRossman@aclum.org)>; Mary Brown <[MBrown@aclum.org](mailto:MBrown@aclum.org)>;



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**Subject:** [External] RE: [External] RE: Documents reviewed by Bill Mahoney prior to his 30(b) (6) deposition

Dear Ms. Santaniello,

Thank you for this list, which we will review.

Attorney Mahoney also testified that he reviewed notes to prepare for the 30(b)(6) deposition. This at 41:9-16 in his transcript. Are the notes included on the list below? I've quickly looked at the privilege log entries and produced documents you listed, and they don't appear to be notes.

Best regards,  
Dan McFadden

**Dan McFadden**

Pronouns: he, him, his

Staff Attorney  
American Civil Liberties Union Foundation of Massachusetts  
617.482.3170 x171 | [dmcfadden@aclum.org](mailto:dmcfadden@aclum.org)  
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**From:** Santaniello, Natalie <[NSantaniello@springfieldcityhall.com](mailto:NSantaniello@springfieldcityhall.com)>

**Sent:** Wednesday, January 4, 2023 12:17 PM

**To:** Daniel McFadden <[DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)>; DeSousa, Lisa <[LDeSousa@springfieldcityhall.com](mailto:LDeSousa@springfieldcityhall.com)>; Kenefick, Tyler <[TKenefick@springfieldcityhall.com](mailto:TKenefick@springfieldcityhall.com)>; Thomas E. Day <[tday@efclaw.com](mailto:tday@efclaw.com)>; Michael G. McDonough <[mgm@efclaw.com](mailto:mgm@efclaw.com)>; Lauren F. Olanoff <[LFO@efclaw.com](mailto:LFO@efclaw.com)>; Lori A. Pegoraro <[LAP@efclaw.com](mailto:LAP@efclaw.com)>; [attycoyle@aol.com](mailto:attycoyle@aol.com); John K. Vigliotti <[jvigliotti@rja-law.com](mailto:jvigliotti@rja-law.com)>

**Cc:** Matthew Segal <[MSegal@aclum.org](mailto:MSegal@aclum.org)>; Jessie Rossman <[JRossman@aclum.org](mailto:JRossman@aclum.org)>; Mary Brown <[MBrown@aclum.org](mailto:MBrown@aclum.org)>; Rosensweig, Richard J. <[RRosensweig@GOULSTONSTORRS.com](mailto:RRosensweig@GOULSTONSTORRS.com)>; Looney, Josh <[JLooney@GOULSTONSTORRS.com](mailto:JLooney@GOULSTONSTORRS.com)>; Halstead, Julius A. <[JHalstead@GOULSTONSTORRS.com](mailto:JHalstead@GOULSTONSTORRS.com)>; Milton, David <[dmilton@plsma.org](mailto:dmilton@plsma.org)>

**Subject:** RE: [External] RE: Documents reviewed by Bill Mahoney prior to his 30(b) (6) deposition

Counsel:

Below is a breakdown of the documents Attorney Mahoney reviewed prior to his 30(b)(6) deposition.

**Privilege Log:**

Privilege log line item 1

Privilege log line item 5 w. attachment containing draft edits

Privilege log line item 7 w. attachment containing draft edits

Privilege log line item 9 w. attachment containing draft edits

Privilege log line item 35 (produced)

Privilege log line item 57 w. attachment containing draft edits

Privilege log line item 61 w. attachments containing draft edits

**Produced:**

**City's 2<sup>nd</sup> Supp. Response**

Bates #2005-2006

**City's 7<sup>th</sup> Supp. Response**

Bates #8362

Bates #8440-8441

Bates #8444-8457

Bates #8458

Please reach out if you have any questions or concerns.

Best,

Natalie Santaniello  
City of Springfield Law Department  
1600 East Columbus Avenue, 2nd Floor  
Springfield, MA 01103  
Phone: 413-750-2414  
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**From:** Daniel McFadden <[DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)>

**Sent:** Tuesday, January 3, 2023 4:14 PM

**To:** DeSousa, Lisa <[LDeSousa@springfieldcityhall.com](mailto:LDeSousa@springfieldcityhall.com)>; Kenefick, Tyler <[TKenefick@springfieldcityhall.com](mailto:TKenefick@springfieldcityhall.com)>; Thomas E. Day <[tday@efclaw.com](mailto:tday@efclaw.com)>; Michael G. McDonough <[mgm@efclaw.com](mailto:mgm@efclaw.com)>; Lauren F. Olanoff <[LFO@efclaw.com](mailto:LFO@efclaw.com)>; Lori A. Pegoraro <[LAP@efclaw.com](mailto:LAP@efclaw.com)>; [attycoyle@aol.com](mailto:attycoyle@aol.com); John K. Vigliotti <[jvigliotti@rja-law.com](mailto:jvigliotti@rja-law.com)>; Santaniello, Natalie <[NSantaniello@springfieldcityhall.com](mailto:NSantaniello@springfieldcityhall.com)>

**Cc:** Matthew Segal <[MSegal@aclum.org](mailto:MSegal@aclum.org)>; Jessie Rossman <[JRossman@aclum.org](mailto:JRossman@aclum.org)>; Mary Brown <[MBrown@aclum.org](mailto:MBrown@aclum.org)>; Rosensweig, Richard J. <[RRosensweig@GOULSTONSTORRS.com](mailto:RRosensweig@GOULSTONSTORRS.com)>; Looney, Josh <[JLooney@GOULSTONSTORRS.com](mailto:JLooney@GOULSTONSTORRS.com)>; Halstead, Julius A. <[JHalstead@GOULSTONSTORRS.com](mailto:JHalstead@GOULSTONSTORRS.com)>; Milton, David <[dmilton@plsma.org](mailto:dmilton@plsma.org)>

**Subject:** [External] RE: Documents reviewed by Bill Mahoney prior to his 30(b) (6) deposition

Thank you, Lisa. We will review what Natalie sends.

I understand you are conferring with John Vigliotti, and that you are out of the office tomorrow. Would you be able to provide us with the City's final position on Thursday?

Best regards,  
Dan McFadden

**Dan McFadden**

Pronouns: he, him, his

Staff Attorney

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**From:** DeSousa, Lisa <[LDeSousa@springfieldcityhall.com](mailto:LDeSousa@springfieldcityhall.com)>

**Sent:** Tuesday, January 3, 2023 3:46 PM

**To:** Daniel McFadden <[DmcFadden@aclum.org](mailto:DmcFadden@aclum.org)>; Kenefick, Tyler <[TKenefick@springfieldcityhall.com](mailto:TKenefick@springfieldcityhall.com)>; Thomas E. Day <[tday@efclaw.com](mailto:tday@efclaw.com)>; Michael G. McDonough <[mgm@efclaw.com](mailto:mgm@efclaw.com)>; Lauren F. Olanoff <[LFO@efclaw.com](mailto:LFO@efclaw.com)>; Lori A. Pegoraro <[LAP@efclaw.com](mailto:LAP@efclaw.com)>; [attycoyle@aol.com](mailto:attycoyle@aol.com); John K. Vigliotti <[jvigliotti@rja-law.com](mailto:jvigliotti@rja-law.com)>; Santaniello, Natalie <[NSantaniello@springfieldcityhall.com](mailto:NSantaniello@springfieldcityhall.com)>

**Cc:** Matthew Segal <[MSegal@aclum.org](mailto:MSegal@aclum.org)>; Jessie Rossman <[JRossman@aclum.org](mailto:JRossman@aclum.org)>; Mary Brown <[MBrown@aclum.org](mailto:MBrown@aclum.org)>; Rosensweig, Richard J. <[RRosensweig@GOULSTONSTORRS.com](mailto:RRosensweig@GOULSTONSTORRS.com)>; Looney, Josh <[JLooney@GOULSTONSTORRS.com](mailto:JLooney@GOULSTONSTORRS.com)>; Halstead, Julius A. <[JHalstead@GOULSTONSTORRS.com](mailto:JHalstead@GOULSTONSTORRS.com)>; Milton, David <[dmilton@plsma.org](mailto:dmilton@plsma.org)>

**Subject:** Documents reviewed by Bill Mahoney prior to his 30(b) (6) deposition

Dan: Natalie Santaniello of my office will be providing you with a breakdown of the documents that Attorney Mahoney reviewed prior to his deposition as a 30 (b)(6) designee. They fall into 2 categories; documents we have already produced, which she will reference by Bate Number, and those we withheld claiming privilege, and she will direct you to the appropriate line in the privilege log.

I have sent the documents to John Vigliotti so he can also weigh in on production. I will provide you with an update when I receive it from John.

I will not be available tomorrow, but will be in on both Thursday and Friday.

Thank you.

Regards,

Lisa C. deSousa  
Deputy City Solicitor  
City of Springfield Law Department  
1600 East Columbus Avenue  
Springfield, MA 01103  
413-886-5205  
Pronouns: She/Her/Hers