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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
Civil No. 20-1802-H

AMERICAN CIVIL LIBERTIES UNION
OF MASSACHUSETTS, & another¹
Plaintiffs

vs.

CITY OF BOSTON, & others²
Defendants

Notice sent
12/13/2021
R./A. B.
A. C. L. U. OF M.
C. C.
P. R., LLP.
J. R. R.
W. D. D.
J. L.
E. R.
I. K.
O. B.
J. J. M.

MEMORANDUM AND ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

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In August 2020, plaintiffs filed this action for declaratory and injunctive relief after the City of Boston (“the City”) and the Boston Police Department (“BPD”) failed to respond and/or failed to provide documents in response to various public record requests plaintiffs made in June 2020, in the wake of the racial justice protests in Boston and across the nation. The case is before me on plaintiffs’ motion for partial summary judgment on a portion of Counts I and III. Plaintiffs seek a declaration that the City and BPD violated the Public Records Law, G.L. c. 66, § 1, *et seq.*, and seek an injunction to require the prompt production of records responsive to the three public record requests attached to the Complaint as Exhibits A, B, and C. For the following reasons, the motion is allowed.

¹ Taylor R. Campbell.

² 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.

BACKGROUND

On June 8, 2020, plaintiff Taylor R. Campbell submitted a public records request to the City for records related to BPD's response to the racial justice demonstrations in May and June 2020. Mr. Campbell's request is attached to the Complaint as Exhibit A. Shawn Williams, the City's Director of Public Records and Records Access Officer, acknowledged receipt of Mr. Campbell's request the same day.

On June 9, 2020, plaintiff American Civil Liberties Union of Massachusetts ("ACLUM") submitted a public records request to the City and BPD also seeking records related to BPD's response to the racial justice demonstrations in May and June 2020. ACLUM's June 9, 2020 request is attached to the Complaint as Exhibit B. BPD acknowledged receipt of this request via an automated response the same day.

On June 18, 2020, ACLUM submitted a public records request to the City and BPD for records regarding BPD's use of chemical agents including pepper spray and teargas, since 2016. ACLUM's June 18, 2020 request is attached to the Complaint as Exhibit C. BPD acknowledged receipt of this request via an automated response the same day. On or about July 2, 2020, BPD sought an extension of time to respond to this request from the Supervisor of Public Records ("the Supervisor"). On July 8, 2020, the Supervisor granted BPD an extension until August 14, 2020.

On August 12, 2020, plaintiffs filed this case. Counts I and III are relevant here. Count I alleges that the City and BPD violated the Public Records Law, G.L. c. 66, § 10, because they "failed to provide a written response with the information required under G.L. c. 66, § 10(b) . . . within 10 business days," and "failed to provide responsive records . . . within the timeframe mandated by the Public Records Law." Complaint ¶¶ 119, 121. See also *Id.* ¶ 122 ("Defendants

have violated the Public Records Law by failing to provide timely access to public records.”). Plaintiffs seek injunctive relief, as well as an award of reasonable attorney fees, costs, and “punitive damages to be deposited into the Public Records Assistance Fund.”³ *Id.* ¶¶ 123 -126. Count III seeks a declaratory judgment under G.L. c. 231A. Specifically, Count III seeks a declaration that (i) “the records [] requested are public records,” (ii) the City and BPD “did not have legal justification for not providing written responses which comport with the requirements of G.L. c. 66, § 10(b) within 10 business days,” and (iii) the City and BPD “violated the Public Records Law by their failure to timely produce responsive records to numerous requests.” Complaint ¶ 137.

On February 26, 2021, more than eight months after making the three relevant public records requests, plaintiffs served defendants with the motion for partial summary judgment, which is now before me. As of that date, the City and BPD had still not produced any documents in response to the three requests; and neither the City, nor BPD, had provided a written response to any of those three requests with the information required under G.L. c. 66, § 10(b).

The filing of the summary judgment motion, and the prospect of imminent judicial review, apparently raised the priority of these requests for defendants. On or about March 17, 2021, the City provided partial responses to Mr. Campbell’s request and ACLUM’s June 9, 2020 request, and produced some documents and body-worn camera video footage. On April 8, 2021, the City provided additional body-worn camera footage and street camera footage. In defendants’ opposition to the motion for partial summary judgment dated April 16, 2021, defendants were then able to argue against summary judgment because, by then, they had produced what they represented were “the majority of the responsive records that are the subject

³ Only the request for injunctive relief is before me on plaintiffs’ motion.

of Plaintiffs' Motion for Partial Summary Judgment." The City argued that it had been deluged by public record requests, was trying in good faith to respond to them, and would "require[] at least an additional 3 to 6 months of time to conduct its review" and produce the remaining responsive documents. (Emphasis added). Plaintiffs challenged the assertion that defendants had produced the "majority" of the responsive records and pointed out in their reply that defendants had not produced records that ACLUM requested on June 18, 2021.

The motion for partial summary judgment was argued before me on November 30, 2021, seven and a half months after defendants represented that they would need an additional three to six months to review and produce their responsive documents. Defendants did not produce any responsive records between the time defendants served their opposition (mid-April 2021) and the date of the hearing. On the hearing date, however, defendants produced another group of records. Defendants agreed that they still had additional responsive public records to produce, and that they hoped to be able to produce the remaining responsive records by January 14, 2022.

DISCUSSION

"The primary purpose of G.L. c. 66, § 10, is to give the public broad access to government documents." Harvard Crimson, Inc. v. President and Fellows of Harvard College, 445 Mass. 745, 749 (2006) (and cases cited). "In enacting the public records law, the Legislature recognized that the public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner, and that greater access to information about the actions of public officers and institutions is increasingly an essential ingredient of public confidence in government." Attorney General v. District Attorney for Plymouth District, 484 Mass. 260, 262-263 (2020) (internal quotations and citations omitted).

Given these legislative purposes, the Public Records Law creates a presumption that records sought are public records, G.L. c. 66, § 10A(d)(1)(iv), and requires strict and narrow construction of the exemptions from the definition of public records.⁴ Boston Globe Media Partners, LLC v. Dep't of Pub. Health, 482 Mass. 427, 432 (2019).

In addition, the Public Records Law creates an explicit procedure and expedited schedule for responding to public record requests. Upon receipt of a request for public records, the public agency or municipality is allowed ten days to provide a copy of the public records sought. G.L. c. 66, § 10(a). The statute obligates a public agency to have a designated "records access officer" and implicitly requires that person to have sufficient support to be able to respond to public record requests within the short deadlines the Public Records Law imposes. Id.

If the agency or municipality (i) "does not intend to permit inspection . . . of a requested record," or (ii) "is unable to do so within the timeframe established in subsection (a)," i.e. within ten days; then "the agency or municipality shall inform the requestor in writing not later than 10 business days after" receipt of the request. G.L. c. 66, § 10(b). The written notice to the requestor under § 10(b) must provide considerable information to the requestor, see G.L. c. 66, § 10(b)(i)-(ix), including identifying "a reasonable timeframe in which the agency or municipality shall produce the public records sought; provided, that for an agency, the timeframe shall not exceed 15 business days, . . . and for a municipality the timeframe shall not exceed 25 business days," following receipt of the request, unless the requestor "voluntarily agree[s] to a response date

⁴ The Public Records Law excludes certain records from the definition of public records, with the Legislature exercising its "considered judgment" and determining "that the public right of access should be restricted in certain circumstances." Harvard Crimson, 445 Mass. at 749-750 (internal quotations and citations omitted). See generally G.L. c. 4, § 26 (itemizing exceptions to the definition of "public records"). The propriety of any invocation of an exception to the definition of public records is not before me at this time.

beyond the[se] timeframes.” G.L. c. 66, § 10(b)(vi). If the agency or municipality cannot meet these production deadlines, the “records access officer may . . . within 20 business days after initial receipt of the request . . . petition the supervisor of records for an extension of the time for the agency or municipality to furnish copies of the requested record.” G.L. c. 66, § 10(c). Even the supervisor of records, however, has only limited authority to grant an extension. The supervisor of records may only grant “a single extension to a municipality not to exceed 30 business days” and may only do so on “a showing of good cause.” Id.

A party aggrieved by an agency or municipality’s failure to produce records may initiate a civil action in the Superior Court to enforce the Public Records Law. G.L. c. 66, §§ 10A(c), (d). In such a case, the court is required to “determine the propriety of any agency or municipal action de novo,” and must, “when feasible, expedite the proceeding.” G.L. c. 66, § 10A(d)(1). If the requester is successful in the Superior Court, the court “may award reasonable attorney fees and costs;” may waive fees imposed by the agency or municipality for the production of the public records that would otherwise be assessed under G.L. c. 66, § 10(d); and may award punitive damages. G.L. c. 66, §§ 10A(d)(2), (3) and (4).

In this case, defendants admit that plaintiffs’ three requests at issue here seek public records, they failed to produce documents within the time required under G.L. c. 66, §§ 10(a), (b), or (c), and they failed to provide written notice to plaintiffs as required under G.L. c. 66, § 10(b). Defendants’ explanations for these failings – we were busy with other requests; these requests were considerable; we did our best – are not countenanced by, and substantially undermine the purposes of, the Public Records Law. They certainly do not justify the kind of delays seen here.

A delay of nine months before the City or BPD produced a single responsive public record, and then seemingly only because plaintiffs moved for partial summary judgment, is inexcusable. A requester should not have to file an action in the Superior Court, let alone file a motion for partial summary judgment, before an agency or municipality produces admittedly public records on particularly sensitive and timely issues of public importance. The fact that defendants represented in April 2021 that they would need an additional three to six months to produce their responsive public records, but again did not produce any additional documents until the date of the Court's scheduled hearing at the end of November, substantially undercuts defendants' contentions that defendants have been acting in good faith and as quickly as they could. It is now approximately a year and a half since plaintiffs made their three requests. An order and a declaration are warranted and necessary.

ORDER

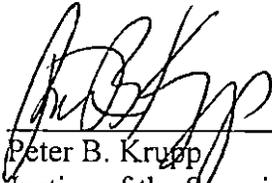
Plaintiff's Motion for Partial Summary Judgment Against Defendants City of Boston and Boston Police Department (Docket #7) is **ALLOWED**.

It is hereby **DECLARED** as follows: The City of Boston and the Boston Police Department violated the Public Records Law, G.L. c. 66, § 10, with respect to the public record requests attached to the Complaint as Exhibits A, B and C by failing to produce public records within the time required by G.L. c. 66, §§ 10(a), (b), or (c), and by failing to respond to the public records requests in compliance with G.L. c. 66, § 10(b).

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It is hereby **ORDERED** as follows: By January 14, 2022, the City and BPD shall provide plaintiffs with all public records responsive to the public record requests attached to the Complaint as Exhibits A, B and C.

Dated: December 7, 2021



Peter B. Krupp
Justice of the Superior Court